

**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY**

**FRANK J. GRECO,**

**Appellant,**

vs.

**EPC Case No. 23-EPC-009**

**6111 ROME LLC and ENVIRONMENTAL  
PROTECTION COMMISSION OF  
HILLSBOROUGH COUNTY,**

**Appellees.**

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**LINDA PARUPS,**

**Appellant,**

vs.

**EPC Case No. 23-EPC-011**

**6111 ROME LLC and ENVIRONMENTAL  
PROTECTION COMMISSION OF  
HILLSBOROUGH COUNTY,**

**Appellees.**

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**MICHAEL C. ADDISON,**

**Appellant,**

vs.

**EPC Case No. 23-EPC-013**

**6111 ROME LLC and ENVIRONMENTAL  
PROTECTION COMMISSION OF  
HILLSBOROUGH COUNTY,**

**Appellees.**

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**HENRY CRAMER,**

**Appellant,**

vs.

**EPC Case No. 23-EPC-016**

**6111 ROME LLC and ENVIRONMENTAL  
PROTECTION COMMISSION OF  
HILLSBOROUGH COUNTY,**

**Appellees.**

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### **FINAL ORDER**

In accordance with Chapter 84-446, as amended, Laws of Florida (EPC Act) and Chapter 1-2, Rules of the EPC, the assigned Hearing Officer submitted a Recommended Order (RO) to the Environmental Protection Commission of Hillsborough County (EPC) on June 19, 2024. The Recommended Order is attached as Exhibit 1. Two of the four Appellants filed exceptions to the Recommended Order. Appellant Greco filed Exceptions to the Recommended Order on June 28, 2024. Appellant Cramer filed Exceptions to the Recommended Order on June 29, 2024. Appellees 6111 Rome LLC and EPC filed a “Joint Response to Appellant Henry Cramer’s Exceptions” on July 8, 2024. Appellees 6111 Rome LLC and EPC filed a “Joint Response to Appellant Frank J Greco’s Exceptions” on July 8, 2024. On August 15, 2024, this matter came before the Commission of the EPC to hear arguments and review of the RO, the Exceptions, the Responses to the Exceptions, and its associated hearing record and to take action on the RO.

### **BACKGROUND**

1. 6111 Rome LLC (Appellee and Permittee) applied to the EPC to allow the company to impact wetlands to build a residential development on the property the company owns located

at 6111 N. Rome Avenue, Tampa, Hillsborough County, Florida (the “Property”). On November 3, 2023, the EPC issued a Wetland Impact and Mitigation Permit #77492 (Permit) to 6111 Rome LLC to impact 0.12 acres of wetlands, which requires the Permittee to offset the impacts with wetland mitigation. The EPC Executive Director issued the Permit pursuant to the EPC’s Wetlands Rule, Chapter 1-11, Rules of the EPC (Chapter 1-11) and the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (Basis of Review or BOR).

2. Frank Greco, Linda Parups, Michael Addison, and Henry Cramer (collectively “Appellants”) filed sufficient administrative appeals (collectively “Appeal”) in opposition to the Permit alleging that the Permit does not comply with Chapter 1-11.

3. In the RO, the Hearing Officer made findings of fact, conclusions of law, and recommended the Commission authorize issuance of the Permit.

4. As noted above, Appellants Greco and Cramer filed Exceptions to the RO pursuant to Section 1-2.35, Rules of the EPC, which allows the parties to argue exceptions and responses to the exceptions to the EPC Commission sitting as a quasi-judicial body. The Commission heard the parties’ arguments on August 15, 2024.

### **STANDARDS OF REVIEW FOR RECOMMENDED ORDERS**

5. Pursuant to Chapter 1-2, the Commission shall review the RO and issue a Final Order. Sections 1-2.35(d), (e) and (f), Rules of the EPC, state as follows:

(d) If exceptions are timely filed, they shall be heard by the Commission on reasonable notice. In such proceeding to review exceptions the Commission may hear argument from all parties on issues reasonably raised by the exceptions. Each party shall have ten minutes to argue their exceptions and respond to another party’s exceptions, unless the Commission approves a different time limit. Material questions of fact necessary to final application of the laws and rules, will be referred back to the Hearing Officer for review.

(e) The Commission may reject, reverse or modify a finding of fact only if it finds that the fact is not supported by substantial competent evidence in the record.

(f) The Commission shall affirm, reverse, or modify the Hearing Officer's findings of fact, make appropriate conclusions of law, and promptly render a written Final Order thereon, provided that the Commission shall not take any action which conflicts with or nullifies any provision of the EPC Act or the rules enacted pursuant to said act.

6. The EPC local regulatory programs are not subject to Chapter 120, Florida Statutes (Administrative Procedures Act), but for purposes of EPC administrative hearings Chapter 120 jurisprudence is persuasive at a minimum.

7. The agency (i.e., Commission) reviewing the RO may not reject or modify the findings of fact of a hearing officer unless they are not supported by substantial competent evidence in the record. Section 1-2.35, Rules of the EPC and Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, competent substantial evidence refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g.*, Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g.*, Rogers v. Dep't of Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep't of Env'tl. Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands County Sch. Bd., 652 So. 2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the hearing officer, as the "fact-finder" in these administrative proceedings. *See e.g.*, Tedder v. Fla. Parole Comm'n, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); Heifetz v. Dep't of Bus. Regulation, 475 So. 2d 1277, 1281 (Fla. 1st

DCA 1985). Also, the hearing officer's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State Dep't of Health and Rehabilitative Services*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). If there is competent substantial evidence to support the ALJ's finding of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1<sup>st</sup> DCA 1991).

A reviewing agency thus has no authority to evaluate the quantity and quality of the evidence presented at an administrative hearing, beyond making a determination that the evidence is competent and substantial. *See, e.g., Brogan v. Carter*, 671 So. 2d 822, 823 (Fla. 1st DCA 1996). However, scrivener's errors may be amended when the record reflects accurately. *Britt v. Department of Professional Regulation*, 492 So. 2d 697, 699 (Fla. 1st DCA 1986).

### **FINDINGS OF FACT**

8. Appellant Greco filed exceptions to the following Findings of Fact in the RO: Numbers 1, 5, 9, 10, 13, 14, 16, 19, 20, 27, 33, and 34 and argued that the Appellant has different testimony that should have been utilized.

a) Appellant Greco's exceptions to Findings of Fact Numbers 1, 9, 33, and 34 are focused on whether the EPC did a cumulative impact analysis. In the RO, the Hearing Officer properly cited to testimony in the record that supports that EPC did a cumulative impact analysis.

b) Appellant Greco's exceptions to Findings of Fact Numbers 5 and 14 argue that there is a spring on the Property. In the RO, the Hearing Officer properly cited to testimony in the record that supports that EPC did not identify a spring on the Property.

c) Appellant Greco's exceptions to Findings of Fact Numbers 10 and 13 argue that there is only one wetland on the property, not two. In the RO, the Hearing Officer properly cited to testimony in the record and to the Joint Prehearing Stipulation (Page 16, Paragraph 14) that there are two wetlands on the Property.

d) Appellant Greco's exception to Finding of Fact Number 16 does not directly dispute the finding of forested freshwater system, but merely asks where does the fresh water come from. This is not an exception but a question. Nonetheless, in the RO, the Hearing Officer properly cited to testimony in the record that there is a forested freshwater system.

e) Appellant Greco's exception to Findings of Fact Numbers 19 and 20 questions if a witness understood the zoning of the Property. In the RO, the Hearing Officer properly cited to testimony in the record that the EPC was aware of the Property's zoning.

f) Appellant Greco's exception to Finding of Fact Number 20 questions if the EPC properly applied the safety criteria in the BOR as it relates to road width concerns for emergency vehicles. In the RO, the Hearing Officer properly cited to testimony in the record that the EPC took into account these safety issues.

g) Appellant Greco's exceptions to Finding of Fact Number 27 argues that the EPC does not consider cost as part of the mitigation bank location analysis. In the RO, the Hearing Officer properly cited to testimony in the record that the EPC took into account cost among many other factors.

For each Finding of Fact disputed by Appellant Greco there is competent substantial evidence in the record to support the findings as detailed by the Hearing Officer in the RO. A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers*, 920 So. 2d at 30. If there is competent substantial evidence to support the ALJ's finding of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See e.g., Arand Constr. Co.*, 592 So. 2d at 280. Based on the foregoing reasons, the Commission denies all the exceptions to the Findings of Facts listed above.

9. Appellant Cramer filed a document intending to argue exceptions to the RO, but Appellant Cramer did not identify by paragraph number any allegedly incorrect finding of fact. Pursuant to section 1-2.35(a), a party filing exceptions to an RO must make specific reference to evidence in the record. Appellant Cramer made no specific references to evidence in the record. Thus, the exceptions can be disregarded, but in an abundance of caution they will be addressed below.

a) Appellant Cramer's exceptions to Findings of Fact argues that there is only one wetland on the property, not two. In the RO, the Hearing Officer properly cited to testimony in the record and to the Joint Prehearing Stipulation (Page 16, Paragraph 14) that there are two wetlands on the Property.

b) Appellant Cramer's exceptions to Findings of Fact alleges that EPC staff did not thoroughly inspect the wetlands on site. In the RO, the Hearing Officer properly cited to testimony in the record that the EPC inspected the Property, did not identify a spring, and reviewed documents regarding the Property.

c) Appellant Cramer's exception to Findings of Fact questions if the EPC properly applied the safety criteria in the BOR as it relates to road width concerns for emergency vehicles. In the RO, the Hearing Officer properly cited to testimony in the record that the EPC took into account these safety issues.

For each Finding of Fact disputed by Appellant Cramer noted above there is competent substantial evidence to support the findings as detailed by the Hearing Officer in the RO. A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers*, 920 So. 2d at 30. If there is competent substantial evidence to support the ALJ's finding of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See e.g., Arand Constr. Co.*, 592 So. 2d at 280. Based on the foregoing reasons, the Commission denies all the exceptions to the Findings of Facts generally described by Appellant Cramer.

10. Additionally, Appellant Cramer references an affidavit that was not accepted as part of the evidentiary hearing. Pursuant to section 1-2.35(a), a party filing exceptions to an RO must make specific reference to evidence in the record. The affidavit is not evidence in the record; thus, it cannot be referred to or utilized in this proceeding. Moreover, an agency may not supplement a recommended order with additional findings of fact. *Bekiempis v. Dep't of Prof'l Regulation*, 421 So.2d 693, 694 (Fla. 2d DCA 1982).

Based on the foregoing reasons, the Commission denies all the exceptions raised by Appellant Cramer.



## **CONCLUSIONS OF LAW**

11. Appellant Greco filed one exception to Conclusion of Law Number 40 in the RO. Appellant Greco does not argue an interpretation of the law, but merely argues that the four Appellants' testimony should be credible.

12. A reviewing agency may not reweigh the evidence presented at a final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers*, 920 So. 2d at 30. Based on the foregoing reason, the Commission denies the exception to Conclusion of Law Number 40 raised by Appellant Greco.

13. Appellant Cramer did not file an exception to any Conclusion of Law.

14. The Permit meets the laws and rules of the EPC Act, Chapter 1-11, and the Basis of Review.

## **CORRECTION OF SCRIVENER'S ERRORS**

15. The Commission also identified three scrivener's errors that do not have any material effect on the Findings of Fact, Conclusions of Law, or the ultimate disposition of the case. The three following scrivener's error are corrected as follows:

a) Finding of Fact Number 33, the transcript page reference in the parenthetical should be "Tr. p. 59" not "Tr. p. 29."

b) Conclusion of Law Number 9, the rule section reference should be "1-11.02(2)(b)," not "1-11.01(2)(b)."

c) Conclusion of Law Number 29, the word "offside" should be "offsite."

## CONCLUSION

Having considered the applicable laws and standards of review in light of the Findings of Fact and Conclusions of Law set forth in the Recommended Order, hearing the arguments of the parties, being otherwise duly advised, and in accordance with the vote of the Environmental Protection Commission of Hillsborough County on August 15, 2024, it is

**ORDERED** that:

- A. The Recommended Order (Exhibit 1) is adopted in its entirety and is incorporated by reference herein, except as revised by the corrections to scrivener's errors noted above; and
- B. The Recommended Order's "Recommendation" section is affirmed. The Permit is approved and expires five years from execution of this Final Order.

## JUDICIAL REVIEW

Any party to this order has the right to seek judicial review of this order in accordance with Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the Administrative Procedure Act, Chapter 120, part III, Florida Statutes, 1961. Judicial review shall be done within the time and manner prescribed by the Florida Appellate Rules. Pursuant to Fla. R. App. P. 9.110, jurisdiction of the court shall be invoked by filing a notice with the clerk of the Environmental Protection Commission of Hillsborough County

(EPC), EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing the notice accompanied by the applicable filing fee with the Second District Court of Appeal within 30 days from the date this order is filed with the clerk of the EPC.

**DONE and ORDERED** this 19th day of August 2024, in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY



Commissioner Gwendolyn "Gwen" W. Myers  
EPC Chair

FILED ON THIS DATE PURSUANT TO SECTION 9.020, FLORIDA RULES OF APPELLATE PROCEDURE WITH THE DESIGNATED AGENCY CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

  
\_\_\_\_\_  
AGENCY CLERK

August 19, 2024  
\_\_\_\_\_  
DATE

**CERTIFICATE OF SERVICE**

I CERTIFY that a true copy of the foregoing was sent via electronic mail to **Frank J. Greco** at [frgreco@verizon.net](mailto:frgreco@verizon.net), **Linda Parups** at [lparups@verizon.net](mailto:lparups@verizon.net), **Michael C. Addison** at [mca2175@hotmail.com](mailto:mca2175@hotmail.com), and **Henry Cramer** at [HCramer@Risk-Strategies.com](mailto:HCramer@Risk-Strategies.com) and [HankCramer71@gmail.com](mailto:HankCramer71@gmail.com) (Appellants); **Jeffrey Collier, Esq.** at [jcollier@stearnsweaver.com](mailto:jcollier@stearnsweaver.com) and **Jessica Icerman, Esq.** at [jicerman@stearnsweaver.com](mailto:jicerman@stearnsweaver.com) (Co-counsel for Appellee 6111 Rome LLC); and **Beth Le, Esq.** at [leb@epchc.org](mailto:leb@epchc.org) (Counsel for Appellee EPC) on this 19th day of August 2024.

ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY

*/s/Ricardo Muratti*

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EPC Legal Clerk ( [legalclerk@epchc.org](mailto:legalclerk@epchc.org) )

**BEFORE THE ASSIGNED HEARING OFFICER OF THE ENVIRONMENTAL  
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

**FRANK J. GRECO,**

**Appellant,**

vs.

**EPC Case No. 23-EPC-009**

**6111 ROME LLC and ENVIRONMENTAL  
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**LINDA PARUPS,**

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**HENRY CRAMER,**

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**EPC Case No. 23-EPC-016**

**6111 ROME LLC and ENVIRONMENTAL  
PROTECTION COMMISSION OF  
HILLSBOROUGH COUNTY,**

**Appellees.**

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**RECOMMENDED ORDER**  
**WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On May 13, 2024, a final evidentiary hearing in the above-captioned matter was held in Tampa, Florida, by Thomas A. Thanas, Esquire, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter “EPC”), on Appellant Frank Greco (“Appellant Greco”), Appellant Linda Parups (“Appellant Parups”), Appellant Michael Addison (“Appellant Addison”), and Appellant Henry Cramer’s (“Appellant Cramer”) (collectively, the “Appellants”) respective Notices of Appeal of the Wetland Impact with Mitigation Plan Authorization #77492, executed by the EPC Executive Director on November 3, 2023, authorizing the applicant 6111 Rome LLC to impact wetlands in Hillsborough County.

**APPEARANCES**

For Appellants: Pro Se

For EPC Executive Director: Ruth “Beth” Le, Esq.  
T. Andrew Zodrow, Esq.  
Environmental Protection Commission of Hillsborough County  
3629 Queen Palm Dr.  
Tampa, FL 33619

For 6111 Rome LLC: Jeffrey Collier, Esq.  
Jessica Icerman, Esq.  
Nicholas Sanders, Esq.  
Stearns, Weaver, Miller

401 East Jackson Street, Ste. 2100  
Tampa, Florida, 33602

## **STATEMENT OF THE ISSUE**

The issues to be determined in this appeal are (1) whether the Wetland Impact with Mitigation Authorization #77492 was properly issued under Section 1-11.07 and Chapter III of the Basis of Review, Rules of the EPC, which permits impacts to wetlands “only if reasonable use of the land cannot be accomplished” without affecting the wetland; (2) whether the Impact Permit was properly issued under Section 1-11.09, Rules of the EPC, which requires “adequate protection of the environmental benefits” of the wetland through certain means, such as a mitigation plan as provided in Section 1-11.08, Rules of the EPC; and (3) whether the Impact Permit was properly issued under Section 1-11.09(2), which requires consideration of the “cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin.”

## **PRELIMINARY STATEMENT**

On July 5, 2023, Appellee 6111 Rome LLC (“6111 Rome” or “Applicant”) submitted to the EPC Executive Director an Application for a Wetland Impact and Mitigation (“Impact Application”) for the purpose of impacting 0.25 acres of wetlands on the property located at 6111 N. Rome Avenue, Tampa, Hillsborough County, Florida (the “Property”). The EPC reviewed the application under applicable sections of Chapter 1-11, Rules of the EPC (the “Wetlands Rule”) and Chapter III of the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands (“Basis of Review” or “BOR”) adopted within Section 1-11.06(2), Rules of the EPC. After the EPC issued a Request for Additional Information, the Impact Application was amended to reduce the proposed impacts for a total wetland impact of approximately 0.12 acres.

On November 3, 2023, the EPC Executive Director issued a Wetland Impact with Mitigation Authorization #77492 (“Impact Permit”), approving approximately 0.12 acres of wetland impact pursuant to Sections 1-11.07, 1-11.08, and 1-11.09, Rules of the EPC. The Impact Permit authorized the Applicant to impact approximately 0.12 acres of wetlands, identified as “Wetland 1,” and to mitigate for this impact by purchasing mitigation bank credits. A Notice of Appeal challenging the Impact Permit was submitted by the Appellant Greco on November 20, 2023. Amended Notices of Appeal challenging the Impact Permit were submitted by the Appellants Parups, Addison, and Cramer on December 19, 2023, December 20, 2023, and December 20, 2023, respectively.

By Order of the Hearing Officer, the parties were given ten (10) days from the date of filing of the transcript in which to file proposed recommended orders and argument. Transcript Page Number 209 [hereinafter (Tr. p 209)]. The transcript was provided and filed May 31, 2024. As such, the due date for proposed recommended orders was established as June 10, 2024. Appellees’ Joint Proposed Recommended Order was timely filed on June 10, 2024. On June 10, 2024, Appellant Parups submitted a five-paragraph email with comments in support of her challenge to the Impact Permit. On June 10, 2024, Appellant Cramer submitted an 11-page memorandum captioned “Proposed Recommended Orders” which summarized his position challenging the Impact Permit.

#### **WITNESSES AND EXPERTISE**

Appellee EPC called Abigail Bridges, who was accepted as an expert in the application of the EPC’s wetland regulations, and more specifically in Chapter 1-11 and the Basis of Review for the purposes of wetland impact permitting (Tr. p 36, lines 7-19). Appellee 6111 Rome called Dr. Dale Meryman as a fact witness (Tr. p. 191, lines 24-25). The Appellants all provided



statements on behalf of themselves as fact witnesses.

## **EXHIBITS**

Joint Exhibits 1 through 6, including all subparts, were accepted into evidence at the beginning of the proceeding (Tr. p. 12-16). Joint Exhibit 1 included fourteen (14) judicial notice documents, comprised of the Hillsborough County Environmental Protection Act, Chapter 84-466, Laws of Florida; Rules of the EPC Chapter 1-2, Administrative Procedures; Rules of the EPC Chapter 1-11, Wetlands; the Basis of Review for Authorization of Activities Pursuant to Chapter 1-11; and a number of EPC Final Orders (Tr. p. 12-13). Joint Exhibits 2 through 6 contained the subject Impact Application; EPC Site Inspection Report #77492, dated August 18, 2023; an EPC Request for Additional Information (“RAI”), dated August 2, 2023; Appellee 6111 Rome’s RAI Response, including correspondence and emails; and the subject Impact Permit (Tr. p 14).

The Appellants collectively entered thirteen (13) exhibits into evidence. Specifically, Appellants entered exhibits identified in the Joint Prehearing Stipulations as follows: one portion of Appellants’ Exhibits 5 (Stearns Weaver Miller Share File RFP 1-6) (Tr. p. 117); Appellants’ Exhibits 20 through 25 (Videos Created by Appellant Linda Parups) (Tr. p. 153-154); Appellants’ Exhibit 27 (Southwest Florida Water Management District Map of Property) (Tr. p. 154); Appellants’ Exhibit 28 (alpha Surveying ALTA/NPSP Survey for 6111 N Rome Avenue) (Tr. p. 144-145); Appellants’ Exhibit 29 (Alpha Surveying Boundary, Topography, & Tree Survey for 6111 N Rome Avenue) (Tr. p. 144-145); and Appellants’ Exhibit 30 (Country Walk Subdivision (Wesley Chapel, FL) Aerials (2 aerials)) (Tr. p. 142-143). Additionally, Appellants entered two new exhibits not previously identified in the Joint Prehearing Stipulation: Appellants’ Exhibit 32 (University of South Florida PowerPoint: Community-Based Design

Using Nature-Based Solutions) (Tr. p. 179); and Appellants' Exhibit 33 (Compilation of Exhibits with Commentary by Appellant Frank Greco) (Tr. p. 195).

## **FINDINGS OF FACT**

1. Appellee EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida ("EPC Act"), and the rules promulgated thereunder, including specifically the EPC Wetland Rule Chapter 1-11, in Hillsborough County Florida. (Joint Pre-hearing Stipulation of the parties dated April 17, 2024, hereinafter "JPHS" page 18).

2. 6111 Rome owns the subject property, identified as Folio #103439-0000, with a physical address of 6111 N Rome Avenue, Tampa, FL and consists of 4.66 acres ("Property"). (JPHS, page 15).

3. The Property is located at the intersection of W Hanna Avenue and N Rome Avenue and to the west of the Hillsborough River. (JPHS, page 15).

4. On July 5, 2023, Appellee 6111 Rome submitted a Wetland Impact with Mitigation Application ("Impact Application") to EPC proposing 0.25 acre of wetland impacts. (JPHS, page 15).

5. EPC staff Abigail Bridges conducted a site inspection of the Property on August 18, 2023, accompanied solely by C.J. Greene (formerly employed by Meryman Environmental, Inc.). (JPHS, page 16).

6. On August 2, 2023, Ms. Bridges issued a Request for Additional Information ("RAI"). (JPHS, page 16).

7. On August 28, 2023, 6111 Rome provided an RAI response to EPC. (JPHS, page 16).

8. After the RAI, the Impact Application was amended and reduced proposed impacts for a total wetland impact of approximately 0.12 acres. (JPHS, page 16).

9. EPC Executive Director issued the Wetland Impact with Mitigation Authorization #77492 on November 3, 2023. (JPHS, page 16).

10. According to the Southwest Florida Water Management District (SWFWMD) wetland boundary determination, there are two wetlands within the boundary of the Property: Wetland 1 and Wetland 2. (JPHS, page 16).

11. According to the SWFWMD wetland boundary determination, Wetland 1 is located near the center of the Property. (JPHS, page 16).

12. According to the SWFWMD wetland boundary determination, Wetland 2 is located on the eastern border of the Property along the Hillsborough River. (JPHS, page 16).

13. The wetland boundary determination established by the Southwest Florida Water Management District identifying two separate wetlands on the Property is binding on the EPC pursuant to section 373.421, F.S. (Tr. p. 41, lines 3-12).

14. Expert witness Abigail Bridges did not identify a spring located on the wetland proposed for impact, but testified that a spring is a type of wetland that is afforded no special protections beyond those that apply to other types of wetlands. (Tr. p. 42-43).

15. The vegetation in Wetland 1 identified by EPC staff Ms. Bridges includes but is not limited to *Casuarina equisetifolia*, *Cinnamomum camphora*, *Wedelia trilobata*, *Schinus terebinthifolia*, and *Leucaena leucocephala*. (JPHS, page 16).

16. Based on the plant communities observed on site, the wetland proposed for impact is a forested freshwater system. (T. p 42, lines 1-11).

17. An applicant for a wetland impact permit need not meet every “reasonable use” factor contained within the Basis of Review. (Tr. p. 44, lines 1-13).

18. The Applicant provided justification for reasonable use factors 3.2.1(a), (j), and (k), regarding the consideration of zoning, safety, and any other special circumstances affecting the development of a parcel . (Tr. p. 44, lines 17-22, p. 48, lines 10-14).

19. With respect to reasonable use factor 3.2.1(a), expert witness Abigail Bridges testified that the current zoning allows for a high density residential development. (Tr. p. 45, lines 4-11).

20. With respect to reasonable use factor 3.2.1(j), expert witness Abigail Bridges testified that the wetland impact would be necessary to allow for a “turnaround” for emergency vehicle ingress and egress. (Tr. p. 46-47).

21. The adjacent public lift station blocks the ability to construct secondary ingress/egress to access the northern townhome units for emergency vehicles. The Fire Marshall requires an ingress/egress or a turnaround area. (Joint Exhibit 2.a., page 7).

22. With respect to reasonable use factor 3.2.1(j), expert witness Abigail Bridges testified that reducing the wetland impact to just the portion required for the turnaround would hydrologically choke off the remainder of the wetland and would be a secondary impact the Applicant would have to mitigate for. (Tr. p. 46-47).

23. With respect to reasonable use factor 3.2.1(k), expert witness Abigail Bridges testified that special circumstances included the type of soils present on the Property (upland soils) and that the wetland system was previously a stormwater ditch that has since been rerouted. (Tr. p. 47-48).

24. 6111 Rome acquired the required credits for mitigation of the wetland impact from the Fox Branch Mitigation Bank. (JPHS, page 17).

25. Fox Branch Mitigation Bank is located predominantly within Polk County, Florida. (Tr. p 56, lines 17-19).

26. Fox Branch Mitigation Bank is within the same drainage basin as the proposed wetland impact. (Tr. p 56, lines 17-19).

27. Reasonable attempts to locate mitigation within Hillsborough County include credit availability, credit type and amount, and cost of the credit. (Tr. p. 57, lines 14-21).

28. 6111 Rome demonstrated reasonable attempts to mitigate in Hillsborough County, but due to mitigation credit availability and cost, mitigation credits were purchased from a mitigation bank outside of Hillsborough County (Tr. p 192-193).

29. 6111 Rome acquired freshwater forested mitigation bank credits. (Tr. p. 52, lines 19-21).

30. Secondary impacts are those indirect impacts to adjacent wetlands and other surface waters that are identified for the purposes of mitigation. (Tr. p. 53-4).

31. No secondary impacts are anticipated to the Wetland 2 on the Property or the adjacent wetland offsite (City of Tampa property) because the wetland offsite and Wetland 2 still maintain a connection to the Hillsborough River. (Tr. p. 55, lines 16-18; p. 78, lines 1-2).

32. 6111 Rome's RAI response describes that secondary impacts are not anticipated to the adjacent wetland on City of Tampa property. (Tr. p. 55 lines 7-15; Joint Exhibit 5C).

33. Consideration of cumulative impacts are consideration of the combined effect of wetland impacts in the same area. (Tr. p. 29, lines 20-24).

34. The consideration of cumulative impacts does not require an extensive review of all the wetlands impact projects in the surrounding area. (Tr. p. 59-60).

35. Mitigation within the same drainage basin is a consideration that can “offset” cumulative impacts. (Tr. p. 61, lines 6-20).

36. EPC does not establish the mitigation drainage basins. (Tr. p. 58, lines 11-13).

37. Drainage basins are established by the State. (Tr. p. 58, lines 11-13).

38. The proposed wetland impacts on site were minimized from 0.25 acres to 0.12 acres. (JPHS p. 15 and 16).

39. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the applicant reduced the wetland impact to the minimum amount necessary under the Basis of Review. (Tr. p. 109, lines 13-19).

40. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the EPC Wetland Rule Ch 1-11, including the Basis of Review. (Tr. p 62, lines 16-23).

41. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the EPC Wetland Rule Ch 1-11, specifically 1-11.07 as it relates to the whether “reasonable use of the land cannot be accomplished without affecting the wetland.” (Tr. p 61-62).

42. In the expert witness Abigail Bridges’ opinion and to a reasonable degree of certainty, the subject Impact Permit along with the conditions contained therein, provide reasonable assurance that the proposed wetland impact application with mitigation meets the

EPC Wetland Rule Ch 1-11, specifically 1-11.09 as it relates to whether the environmental benefits provided by the effected wetland are adequately protected. (Tr. p 62, lines 5-14).

### **CONCLUSIONS OF LAW**

1. The assigned Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 9 of the EPC enabling act, Chapter 84-446, Laws of Florida (the “EPC Act”). The Hearing Officer’s scope of review is to “determine all factual disputes relating to compliance with this act and rules and regulations promulgated pursuant to this act” under Section 6 of the EPC Act.

2. Pursuant to Section 9 of the EPC Act, any person aggrieved by an action of the Executive Director has the right to appeal that decision to the Commission, which consists of the duly elected members of the Hillsborough County Board of County Commissioners. In addition, Section 1-2.30, Rules of the EPC, states that any person who has received a written decision of the Executive Director pursuant to the EPC Act, and any person whose protected interests are adversely affected by an action or decision of the Executive Director, may obtain administrative review of the basis for the action or decision by appealing to the Commission.

3. Pursuant to Section 1-2.33(d), Rules of the EPC, this administrative hearing is conducted as a *de novo* proceeding.

4. Pursuant to Section 1-2.33(d), Rules of the EPC, “[f]act issues not raised by the Notice of Appeal shall be accepted as undisputed.”

5. The burden of proof and burden-shifting standard in such a proceeding is properly set forth in EPC Final Order in the case Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011):

If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal

administrative hearing of going forward with the presentation of a prima facie case of the applicant's entitlement to a permit. Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit. Unless the objector presents 'contrary evidence of equivalent quality' to that presented by the applicant and agency, the permit must be approved. EPC Rules, Section 1-2.33(d); Florida Dept. of Transp. V. J.W.C. Co. Inc., 396 So. 2d at 789-790 (Fla. 1<sup>st</sup> DCA 1981).

6. The applicant's burden is "one of reasonable assurances, not absolute guarantees." Manasota-88, Inc., v. Agrico Chemical, 12 F.A.L.R. 1319, 1325 (DER 1990). The reasonable assurances must deal with reasonably foreseeable contingencies. A permit applicant is not required by Florida law to provide an "absolute guarantee" that a proposed project will not have any adverse impacts. Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011).

7. Once the applicant meets its initial burden, the burden shifts to the objecting party "to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit." Romano v. City of Tampa and EPC, (EPC Final Order, Feb. 3, 2011). This contrary evidence must be of "equivalent quality" to that presented by the applicant in its prima facie case. Florida Dept. of Transp. v. J.W.C. Co., 396 So. 2d 778, 780 (Fla. 1st DCA 1981). The challenger of such a permit has the ultimate burden of persuasion. *See* Section 120.569(2)(p), Florida Statutes.

8. The EPC's Wetland Rule, section 1-11.05 requires written authorization from the Executive Director to impact jurisdictional wetlands in Hillsborough County.

9. Development in wetlands is defined as "any manmade change to real property, including but not limited to dredging, filling, grading, paving, excavating, *clearing*, timbering, ditching or draining." (emphasis added) Section 1-11.01(2)(b), Rules of the EPC.



10. The proposed impact to wetlands is considered “development” as defined by Section 1-11.02(2)(b), Rules of the EPC.

11. Section 1-11.01, Rules of EPC, does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

12. Section 1-11.05, Rules of the EPC, does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

13. Section 1-11.10, including subsection 1-11.10(3)(b), Rules of the EPC, pertains solely to the limited types of wetland impact activities that qualify for a Miscellaneous Activities in Wetlands (MAIW) authorization under that specific section because MAIW are of nominal consequence to wetlands and other surface waters and the section does not warrant reversal to the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

14. Section 1-11.11, including subsection 1-11.11(2)(c), Rules of the EPC, pertains solely to the qualifying exempt activities under that specific section and the section does not warrant reversal of the Wetland Impact Permit with Mitigation Plan Authorization #77492. *Order Granting MSRO in Part*, May 4, 2024.

15. Section 1-11.06(1), Rules of the EPC states “[u]pon request to the Executive Director or authorized agent to review a proposed development within wetlands or other surface water, an applicant must demonstrate reasonable assurance that the activity will comply with the adopted rules of the [EPC].”

16. Section 1-11.06(2), Rules of the EPC states “[t]he Executive Director will review any application for wetland and other surface water impacts based on the standards in this rule

and those provided in the currently adopted Basis of Review for Authorization of Activities Pursuant to Chapter 1-11 – Wetlands [Basis of Review].”

17. Pursuant to Section 1-11.07, Rules of the EPC, wetland impacts will be authorized when the impact is necessary for reasonable use of the property *and* only if the environmental benefits provided by the affected wetland are adequately protected by specified conditions and time limitations which would be imposed upon approval of the development.

18. Section 3.2.1 of the Basis of Review further addresses the criteria that may be considered to determine whether “reasonable use” of the land can be made without affecting the wetland pursuant to section 1-11.07.

19. An applicant for a wetland impact permit need not meet every “reasonable use” factor contained within the Basis of Review.

20. Section 3.2.1(a) of the Basis of Review states that consideration may be made as to “[t]he current zoning of the parcel of property, at the time of submittal of the application, on which the wetland or other surface water is located” to determine whether “reasonable use” can be made of the property without affecting the wetland.

21. Section 3.2.1(j) of the Basis of Review states that consideration may be made as to “[w]hether the impact is necessary for the protection of public health and safety” to determine whether “reasonable use” can be made of the property without affecting the wetland.

22. Section 3.2.1(k) of the Basis of Review states that consideration may be made of “[a]ny other pertinent information or special circumstances affecting the development of the parcel of property, including but not limited to, any unusual topography and fill requirements, or unique engineering requirements,” to determine whether “reasonable use” can be made of the property without affecting the wetland.

23. Springs are a subset of wetlands and are afforded no special protection with specific criteria under EPC Chapter 1-11 or the Basis of Review.

24. Expert witness Abigail Bridges testified that the Applicant met reasonable use factors 3.2.1(a), (j), and (k) demonstrating that reasonable use of the land could not be accomplished without affecting the wetland based on justification related to zoning, safety, and other special circumstances such as the historical nature of the wetland system being a stormwater ditch and located in upland soils.

25. Appellees have provided competent, substantial evidence through the expert testimony of EPC staff Abigail Bridges, that reasonable use could not be made of the subject property without impacting the wetland, looking to Sections 3.2.1(a), (k), and (j) of the Basis of Review.

26. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by Appellees' expert witness. Appellants did not provide any contrary expert testimony addressing the reasonable use factors that supported the determination by EPC that the applicant provided reasonable assurance that reasonable use of the land could not be accomplished without affecting the wetland. Specifically, Appellants' presentation of evidence regarding "reasonable use" was limited to their own lay testimony.

27. Section 1-11.07, Rules of EPC, as interpreted in conformity with the Basis of Review, does not warrant reversal of the Impact Permit.

28. Section 1-11.09(1)(b), Rules of the EPC provides the following:

Only development under the following circumstances shall be determined to provide adequate protection of the environmental benefits: ... (b) Where an acceptable and appropriate mitigation plan, pursuant to section 1-11.08, will adequately protect the environmental benefits provided by the affected wetland;

29. Section 1-11.08, Rules of the EPC, expands on the requirements of an appropriate mitigation plan. Specifically, subsection (7) permits an applicant for wetland impacts to purchase “mitigation credits from a fully permitted wetland mitigation bank or through the use of an offside regional mitigation area.” Subsection (7) also provides that “reasonable attempts shall be made to locate this mitigation effort within the geographic boundaries of Hillsborough County.”

30. 6111 Rome has provided adequate protection of environmental benefits through the purchase of freshwater forested mitigation bank credits at Fox Branch Mitigation Bank, which serves the Hillsborough River Basin Service Area.

31. Chapter 373.4135(2), Florida Statutes, prohibits local governments from denying the use of a mitigation bank due to its location outside of that local government’s own jurisdiction.

32. 6111 Rome demonstrated reasonable attempts to mitigate in Hillsborough County, but due to mitigation credit availability and cost, mitigation credits were purchased from a mitigation bank outside of Hillsborough County.

33. Appellees have presented competent substantial evidence, through the introduction of the Impact Application, Impact Permit, expert testimony by Abigail Bridges and testimony of Dale Meryman, that an acceptable and appropriate mitigation plan will provide “adequate protection to the environmental benefits” of the wetland in accordance with Section 1-11.09(1), Rules of EPC.

34. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees’ expert witness Abigail Bridges and testimony by Dale Meryman. Specifically, Appellants did not provide any contrary expert testimony, regarding “adequate protection” relating to the mitigation plan pursuant to section 1-11.08. Appellants’ presentation of evidence was limited to their own lay testimony that the

mitigation credits *should* be located in Hillsborough County when EPC rules and state law do not make that requirement.

35. Section 1-11.09(1), Rules of the EPC, does not warrant reversal of the Impact Permit because the applicant provided reasonable assurance the environmental benefits are adequately protected by an acceptable and appropriate mitigation plan that requires the purchase of mitigation bank credits which offset the functional loss of the impacted wetland.

36. Section 1-11.09(2), Rules of the EPC requires that consideration “shall be made of cumulative impacts of proposed development to the wetland system in combination with other developments which have been or may be proposed in the same drainage basin.” This consideration does not require an extensive review of each and every wetland in the surrounding area. Further, the purchase of mitigation bank credits located within the same drainage basin as the wetland impact can offset cumulative impacts to the drainage basin.

37. Consideration of cumulative impacts pursuant to section 1-11.09(2) does not require an extensive review of each and every wetland in the surrounding area.

38. The use of mitigation banking within the same basin as the wetland impact may be taken into consideration to offset or reduce any potential cumulative impacts.

39. Appellees have presented competent substantial evidence, through the expert testimony of EPC staff Abigail Bridges, and the entry of the parties’ Joint Exhibits into evidence, that consideration was made of cumulative impacts pursuant to Section 1-11.09(2), Rules of EPC.

40. Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees’ expert witness regarding “adequate protection” related to cumulative impacts. Specifically, expert witness Abigail Bridges testified

that consideration of cumulative impacts was made. Appellants' presentation of evidence was limited to their own lay testimony and did not contradict Appellees' expert witness testimony.

41. If a regulatory agency gives notice of intent to grant a permit application, the applicant has the initial burden at a formal administrative hearing of going forward with the presentation of a prima facie case of the applicant's entitlement to a permit. Once a prima facie case is made, the burden of going forward shifts to the party objecting to the action to present competent substantial evidence, consistent with the allegations of the petition, that the applicant is not entitled to the permit. Unless the objector presents "contrary evidence of equivalent quality" to that presented by the applicant and agency, the permit must be approved. Rules 1-2.33(d), Rules of the EPC; Florida Dept. of Transp. V. J.W.C. Co. Inc., 396 So. 2d 778, 789-790 (Fla. 1st DCA 1981).

42. The applicant's burden is "one of reasonable assurances, not absolute guarantees." Manasota-88, Inc., v. Agrico Chemical, 12 F.A.L.R. 1319, 1325 (DER 1990). The reasonable assurances must deal with reasonably foreseeable contingencies. A permit applicant is not required by Florida law to provide an "absolute guarantee" that a proposed project will not have any adverse impacts. Ginnie Spring, Inc. et al. v. Craig Watson, et al., 1999 Fla. Div. Adm. Hear. LEXIS 5830 (DEP 1999); Save our Suwannee, Inc. v. Robert Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1472 (Fla. DEP 1996); Powell v. U.S. Navy and Dept. of Env. Protection, 15 F.A.L.R. 3386, 3394 (Fla. DEP 1993). The necessary reasonable assurance in a particular case that a proposed project will comply with applicable rules is a mixed question of fact and law that must be made, in the final analysis, by the EPC. See, e.g., Sierra Club, et al v. Department of Env. Protection, et al, 18 F.A.L.R. 2257, 2260 (Fla. DEP 1996); Save Our Suwannee, Inc. vs. Piechocki and Dept. of Env. Protection, 18 F.A.L.R. 1467, 1471 (Fla. DEP

1996); VQH Development, Inc. v. Dept. of Environmental Protection, et al, 15 F.A.L.R. 3407, 3438 (Fla. DEP 1993); Barringer, et al v. E. Speer and Associates, Inc., and Department of Environmental Regulation, 14 F.A.L.R. 3660, 3667 n. 8 (Fla. DER 1992).

43. 6111 Rome and EPC presented reasonable assurances that the Wetland Impact Approval complied with Chapter 1-11, Rules of the EPC, in that they presented competent, substantial evidence, through expert witness testimony, that the proposed wetland impact satisfies the applicable rules for authorization. Therefore, the burden shifted to the Appellant to present “contrary evidence of equivalent quality” that the Impact Permit did not comply with EPC’s rules. Florida Dept. of Transp. v. J.W.C. Co., Inc., 396 So.2d at 789.

44. No third party, merely by filing a petition seeking an administrative hearing after an agency has indicated its intent to issue permit, should be permitted to require applicant to “completely prove anew” all items in application down to last detail. *Id.* Instead, that third party “must identify the areas of controversy and allege a **factual basis** for the contention that the facts relied upon by the applicant fall short of carrying the ‘reasonable assurances’ burden cast upon the applicant.” *Id.* (emphasis added).

45. The Appellants failed to meet their burden of providing contrary evidence of equivalent quality to that presented by the Appellees. The preponderance of the evidence in this matter supports the conclusion that the Impact Permit complies with Chapter 1-11, Rules of the EPC and the Basis of Review.

46. Appellant Parups email dated June 10, 2024, and the “Proposed Recommended Orders” submitted by Appellant Cramer do not meet the requirements for a recommended order as set forth in Section 1-2.34 of the Rules of the Environmental Protection Commission of

Hillsborough County. Section 1-2.34 requires the Hearing Officer to submit a Recommended Final Order that is comprised of the following:

The recommended order to be considered by the Commission shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law (separately numbered and stated), and a recommendation for final agency action based upon the evidence submitted to the Hearing Officer and based upon applicable laws and rules.

Neither proposal from the Appellants met the form or substance of the order that the Hearing Officer is required to submit to the members of the Environmental Protection Commission of Hillsborough County. Therefore, neither proposal could be considered by the Hearing Officer as a suitable recommendation for a final order to be submitted by the Commission.

### **RECOMMENDATION**

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the November 3, 2023, Wetland Impact Permit with Mitigation Plan Authorization #77492.

**Respectfully submitted,**

**Dated: June 19, 2024**

*Thomas A. Thanas*

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