

**BEFORE THE ENVIRONMENTAL
PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**

RICHARD MEDERO and SUSAN MEDERO,

Appellants,

EPC Case No: 12-EPC-005

vs.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,**

Appellee.

FINAL ORDER

In accordance with Chapter 84-446, as amended, Laws of Florida (EPC Act) and Chapter 1-2, Rules of the EPC, an administrative hearing (a/k/a Section 9 Appeal) was conducted and the assigned Hearing Officer submitted her Recommended Order (RO) to the Environmental Protection Commission of Hillsborough County (EPC) on December 13, 2012. The Recommended Order is attached as **Exhibit 1**. The Appellee, EPC Executive Director, filed exceptions to the RO and the Appellants, Rick and Susan Medero, filed responses to the Executive Director's exceptions. On January 17, 2013, this matter came before the Commissioners of the EPC for final agency action.

BACKGROUND

1. Pursuant to the *Amended and Restated Interlocal agreement between the Tampa Port Authority (TPA) and the EPC dated June 23, 2009* (TPA Delegation Agreement) the EPC was delegated the TPA's authority to process dock permit applications in accordance with the Chapter 95-488 (TPA Enabling Act) and the TPA's Submerged Lands Management (SLM) Rules. On February 10, 2012, the EPC Executive Director denied the Appellants' application for a Minor Work Permit for the construction of a dock expansion on jurisdictional lands (submerged lands) adjacent to the Appellants' property at 1024 Sago Palm Way, Apollo Beach, Florida (Property). The denial was based on navigational safety concerns.

2. The Appellants then filed an appeal challenging the denial of the application. Vanessa Cohn was assigned as the Hearing Office to the case. A Joint Pre-Hearing Stipulation was filed by the

parties on October 15, 2012. An administrative hearing was held on October 30, 2012, in Tampa, Florida to formulate final agency action on the Appellants' application for marine construction activities in jurisdictional waters.

3. At the hearing, the Appellants' argued that the proposed 48' dock expansion perpendicular to the shoreline connected to their existing parallel dock would not be a navigational hazard. The EPC Executive Director argued that the TPA SLM Rules require the EPC to consider navigational safety, the length of existing structures (e.g. docks) in the vicinity, and how those docks are situated along the contour of the shoreline when determining whether site specific criteria require the proposed dock to be located within 25% of the width of the waterbody or whether it should be further reduced to be approximately the same length as other docks in the waterbody that collectively create a dock line along the shoreline.

4. After the hearing, a transcript was prepared and the parties both filed Proposed Recommended Orders. The Hearing Officer subsequently issued a Recommended Order on December 13, 2012.

5. In the RO, the Hearing Officer recommended that the Commission overturn the denial and enter a final order granting the Appellants authorization to construct the dock expansion.

STANDARDS OF REVIEW FOR RECOMMENDED ORDERS

6. Pursuant to sections 1-2.35(e) and (f), Rules of the EPC:

(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.

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 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. Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009).

8. An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. Public Employees Relations Commission v. Dade County Police Benevolent Association, 467 So. 2d 987 (Fla. 1985). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless clearly erroneous. Falk v. Beard, 614 So. 2d 1086 (Fla. 1993); Department of Environmental Regulation v. Goldring, 477 So.2d 532 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. Suddath Van Lines, Inc. v. Department of Environmental Protection, 668 So. 2d 209 (Fla. 1st DCA 1996).

FINDINGS OF FACT

9. The EPC Executive Director filed two exceptions to Findings of Fact (FF) found in Paragraph Nos. 22 and 30 in the RO. At the final order hearing, the EPC Executive Director’s counsel withdrew the arguments on those two exceptions and focused the EPC Executive Director’s arguments on the Conclusions of Law.

CONCLUSIONS OF LAW

10. The EPC Executive Director filed one exception to the Conclusions of Law (CL) in the RO, specifically taking exception to paragraph number 8. The Hearing Officer stated in this conclusion of law:

Whether a dock line needs to follow the contour of the land, or may meet and square off, depends on the site-specific circumstances including visibility, speed, existing structures, width, and other site-specific circumstances regarding navigational safety under Subsection V.A.3.a(3), SLM Rules.

Based on navigational safety considerations that are addressed in Section 25 of the TPA Enabling Act and the section V.A.3.a.(3) of SLM Rules, the conclusion that it may be appropriate to “square off” dock lines when considering existing structures is not a reasonable interpretation of the TPA Enabling Act and the SLM Rules as they apply to safety issues regarding the maneuverability of boats, especially when turning corners as found by the Hearing Officer in FF Paragraph No. 21 (“a vessel typically cannot be turned at a 90 degree angle”). Therefore CL Paragraph No. 8 is rejected in its entirety. The new Conclusion of Law Paragraph No. 8 shall be as follows:

The dock line shall follow the contour of the shoreline where the dock line is used as a site specific circumstance to further restrict the distance that proposed structures may extend into Jurisdictional Lands, as provided in Subsection V.A.3.a.(3) of the Submerged Lands Management Rules of the Tampa Port Authority.

11. Paragraph No. 14 of the RO's Conclusions of Law makes a broad statement that the proposed dock complies with the TPA Enabling Act and the SLM Rules. As the proposed dock expansion is not within the existing dock line, but extends substantially beyond the dock line thus making it more difficult to navigate the canal, CL Paragraph No. 14 is also erroneous. In the RO's Finding of Fact Paragraph No. 17, the Hearing Officer found that the proposed dock "is not within the dock line if the line is made to follow the curvature of the land." Thus, when that finding is read in conjunction with new CL Paragraph No. 8, the conclusion of law in Paragraph No. 14 is inaccurate. An exception to Conclusions of Law Paragraph No. 14 was not originally raised in the Executive Director's written exceptions but it was raised in their oral argument, and it is appropriate to approve this exception and reject the RO's conclusion of law. Even when exceptions are not filed, the agency head (Commission) reviewing an RO is free to modify or reject any erroneous conclusion of law over which the agency has substantive jurisdiction. See Barfield v. Department of Health, 805 So.2d 1008 (Fla. 1st DCA 2001); Florida Public Employee Council 79, AFSCME v. Daniels, 646 So. 2d 813 (Fla. 1st DCA 1994). Therefore Paragraph No. 14 of the Conclusions of Law is rejected.

12. As the Hearing Officer found that the dock expansion would extend beyond the dock line if using the curvature of the land (FF No.17) and that dock lines that follow the curvature of the shoreline are easier to navigate (FF No. 25) and the Commission reasoned that the dock line created by mapping existing dock structures that follow the contours of the shoreline was an appropriate tool in section V.A.3.a.(3) of SLM Rules to further restrict the proposed structure, Conclusions of Law Paragraph No. 17 is rejected and replaced with the following paragraph:

Notwithstanding paragraphs 13 through 16 in the Conclusions of Law, based on the Paragraph 17 Finding of Fact, the proposed structure shall not be permitted in its present configuration pursuant to Subsection V.A.3.a.(3) of the Submerged Lands Management Rules of the Tampa Port Authority.

ORDERED that:

A. The Recommended Order Findings of Fact and Conclusions of Law are adopted in their entirety but for the deletions and modifications to RO Conclusions of Law Paragraph Nos. 8, 14, and 17, noted above.

B. The Recommended Order's "Recommendation" section is REVERSED and the Appellants Minor Work Permit application for a dock expansion in the proposed configuration is DENIED.

NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of this Final Order in accordance with Section 9 of the EPC Act and the Administrative Procedure Act, Chapter 120, part III, Florida Statutes, 1961 by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal. The notice of appeal must be filed within 30 days from the date this order is filed with the Agency Clerk.

DONE and ORDERED this 28 day of January, 2013, in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY



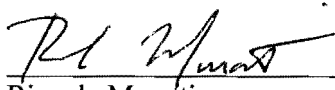
Kevin Beckner, Chairman

cc: T. Andrew Zodrow, Esq.
Richard and Susan Medero

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Final Order has been furnished to Richard and Susan Medero by e-mail and regular U.S. Mail at 1024 Sago Palm Way, Apollo Beach, Florida 33572, and by e-mail and hand delivery to Andy Zodrow, Esq. on this 31st day of January 2013.

ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY



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

RICHARD MEDERO and SUSAN MEDERO,

Appellants,

EPC Case No: 12-EPC-005

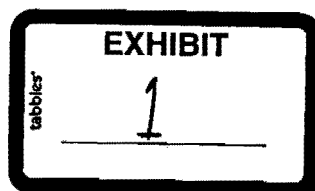
vs.

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY,

Appellee.

RECOMMENDED ORDER
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 30, 2012, upon due notice, a final hearing in the above-captioned matter was held in Tampa, Florida before Vanessa N. Cohn, Esquire, assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (hereinafter "EPC"), on Appellants', RICHARD MEDERO and SUSAN MEDERO (together, "Appellants") Notice of Appeal of the EPC Executive Director's Notice of Change of Agency Action, in which the Appellants were denied an application for a minor work permit for modifications to an existing dock on jurisdictional surface waters (hereinafter "Jurisdictional Lands") located in Hillsborough County, Florida. In their Notice of Appeal, the Appellants assert that the EPC Executive Director erred in denying the minor work permit to add a walkway and a 48 foot dock to an existing dock at Appellants' property located at 1024 Sago Palm Way, Apollo Beach, Florida (hereinafter "the Property"). Each party contends that the applicable standards of the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, (hereinafter "TPA Enabling Act") and the Tampa Port Authority Submerged Lands Management Rules (hereinafter "SLM Rules"), adopted thereunder, support their respective positions.



APPEARANCES

For Appellants: Richard and Susan Medero
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For EPC Executive Director: T. Andrew Zodrow, Esq.
Florida Bar No. 80055
Environmental Protection
Commission of Hillsborough County
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STATEMENT OF THE ISSUE

The issue in this case is whether the Appellants have demonstrated reasonable assurance that the proposed dock structure complies with the TPA Enabling Act and the SLM Rules. More specifically, does the proposed dock structure comply with Rule Subsection V.A.3.a. (3), SLM Rules, wherein maximum structure extensions of a dock can be restricted based upon site specific circumstances regarding navigational safety and existing structures? In addition, whether the application should be denied based on a consideration of the intent and purpose of the SLM Rules to ensure the maximum benefit and use of Jurisdictional Lands for all citizens and to manage, protect, and enhance Jurisdictional Lands so that the public may continue to enjoy traditional uses, including, but not limited to, navigation, fishing and swimming; and to minimize conflicts between these uses. Subsection I.A. (3) and (4) of the SLM Rules. Finally, whether the proposed dock structure complies with Section 25(f) of the TPA Enabling Act, which provides that “no permit shall be issued for the proposed work unless it is found there is no impediment to navigation, there are no adverse effects on the rights of riparian owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.”

PRELIMINARY STATEMENT

On September 7, 2011, pursuant to the Amended and Restated Interlocal Agreement between the Tampa Port Authority ('TPA') and the Environmental Protection Commission of Hillsborough County ('EPC') dated June 23, 2009 (hereinafter "TPA Delegation Agreement"), the Appellants submitted to the EPC Executive Director an application for a Minor Work Permit for modifications to a dock on Jurisdictional Lands adjacent to the Property (the "Application"). The Application was initially approved by the EPC on November 7, 2011, and a permit was issued (the "Permit"). After the Permit was issued, two area residents (the "Area Residents") timely submitted administrative appeals, or formal Requests for Extension of Time to file administrative appeals, challenging the Permit. Subsequently, on February 10, 2012, prior to the Permit becoming a final agency action, the EPC Executive Director revoked the Permit and denied the Application. The Appellants then filed this appeal challenging the revocation of the Permit and denial of the Application. As a result, an administrative hearing was held on October 30, 2012, in Tampa, Florida, to formulate final agency action on the Appellants' application for marine construction activities in jurisdictional waters under the TPA Enabling Act and the SLM Rules.

The parties ordered a transcript of the final hearing and the parties were given fifteen (15) days from the date of filing of the transcript in which to file proposed recommended orders and argument. Transcript Page Numbers 130 and 131, Lines 15-4, hereinafter cited as (Tr. pgs. XX, lines XX). The transcript was filed on November 9, 2012 and, by agreement of the parties, the due date for proposed recommended orders was established as November 26, 2012. The EPC Executive Director's Proposed Recommended Order and the Appellant's Proposed Recommended Order were timely filed on November 26, 2012.

WITNESSES AND EXPERTISE

The EPC Executive Director called the following witnesses: Kelly Holland, who was accepted as an expert witness in the “application of the Tampa Port Authority’s Submerged Lands Management Rules and the Port’s Enabling Act, Chapter 95-488, Laws of Florida.” (Tr. Pg. 17, lines 10-15; Tr. Pg. 18, lines 20-22); Scott Emery, who was accepted as an expert witness in the “application of the Tampa Port Authority Submerged Lands Management Rules and the Enabling Act.” (Tr. Pg. 70-71, lines 22-7); and Henry Atkins, who was accepted as an expert witness in “navigation of a 40-foot sailboat and vessel navigation.” (Tr. Pg. 88, lines 15-18; Tr. Pg. 90, lines 4-7). Mr. Atkins is also one of the Area Residents who felt that his rights were affected by the Permit. (Tr. Pg. 88, lines 19-23; Tr. Pg. 99, lines 18) and who filed an administrative appeal challenging the Permit. Appellant Richard Medero testified on behalf of the Appellants during the evidentiary hearing.

EXHIBITS

There were two joint exhibits entered into evidence, the Permit Application File and the Executive Director’s Notice of Change of Agency Action. The EPC Executive Director entered five exhibits into evidence. The Appellants entered one exhibit into evidence.

FINDINGS OF FACT

1. The Appellee EPC is a local environmental regulatory agency authorized to enforce the Hillsborough County Environmental Protection Act, Chapter 84-446, Laws of Florida, as amended by Chapter 87-495 (the “EPC Act”), and the rules promulgated thereunder (the “EPC Rules”). (Page 8 of the Joint Pre-hearing Stipulation of the parties dated October 15, 2012, hereinafter “JPHS”, pg. 8)

2. Appellants own and reside at the Property (JPHS, pg. 8; Tr. Pg. 21, lines 10-13).
3. The Property is an upland riparian property adjacent to a canal under marine construction regulatory authority identified as “Jurisdictional Lands” of the Tampa Port Authority. (Tr. Pg. 21, Lines 18-22).
4. The Appellants have standing in this proceeding. (JPHS, pg. 8).
5. The EPC initially issued the Permit to the Appellants on November 7, 2011, for modifications to an existing dock located at the Property which modification consisted of the additions of a walkway and a 48 foot dock. (JPHS, pg. 8; Tr. Pg. 22, lines 21-24).
6. The Area Residents, then, timely filed challenges to the Permit in the form of a Notice of Appeal and a Request for Extension of Time to challenge the agency decision. (Joint Exhibit 1; EPC Exhibit 4, Keenan’s appeal; Tr. Pg. 30, line 2-20; Tr. Pgs. 101-102, lines 25-2) and asserted potential adverse impacts on navigation and on the rights of riparian owners in the area. (JPHS, pgs. 8-9; Tr. Pg. 30, lines 5-8; Exhibit 4).
7. Prior to the Permit becoming a final agency action, the Executive Director, on February 10, 2012, gave notice of his intent to change the Agency's action with respect to the Permit. (JPHS, pg. 9; Joint Exhibit 2).
8. A dock currently exists at the Property. (JPHS, pg. 9).
9. The dock, with the modifications as proposed in the Application, would extend out 48 feet from the Appellants’ shoreline. (JPHS, pg. 9; Tr. Pg. 24, lines 6-8; Joint Exhibit 1).
10. The Property is located in a T-shaped canal consisting of Valley Canal, the major canal, and Liga Canal, a dead-end canal. (Tr. Pg. 81, line 12-18; EPC Ex. 3).
11. On the south and west side sides of the Property corners, Valley Canal and Liga Canal are an estimated at 100 feet in width. (JPHS, pg. 9; EPC Ex. 5).

12. The Property is located on a corner of the canal and the proposed structure would not extend out beyond twenty-five percent of the navigable width of the affected water body. Subsection V.A.3.a. (3), SLM Rules, provides that the structure may not extend out beyond twenty-five percent of the navigable width of the affected water body. The proposed dock meets this twenty-five percent of the navigable width of the affected body requirement. (JPHS, pg. 9).

13. A dock line is a line that seeks to average the location of docks in an area and used as a measure of the navigation conditions that can reasonably be expected in a given body of water. (Tr. Pg. 38, line 25; Tr. Pg. 39, line 1).

14. There are no specific regulations on how to draw a dock line. (Tr. Pg. 58, line 14).

15. It generally depends on who is drawing the dock line and on site specific conditions. (Tr. Pg. 42, line 14-15; Tr. Pg. 57, lines 6-9).

16. The dock line advocated by the EPC follows the curvature of the land. (Tr. Pg.27, lines18-19; EPC Ex. 3).

17. The proposed dock structure is not within the dock line if the line is made to follow the curvature of the land. (Tr. page 38 line 9 & 25; page 42, line 15).

18. The dock line advocated by the Appellants continues on a straight line, as opposed to the curvature of the land, and is allowed to intersect and square off. (Tr. Pg. 53, lines 20-25; App. Ex. 1).

19. The proposed dock structure is inside the dock line advocated by the Appellants. (TR. Pg. 55, lines 5-8; App Ex.1).

20. The dock line advocated by the Appellants is the line originally, directly or indirectly, used by the EPC in its initial analysis leading to the issuance of the Permit (Tr. Pg. 28).

line 19-25; Tr. Pg. 29, line 8; Page 57, lines 16-23; Tr. Pg. 65, lines 19-25; Tr. Pg. 65, line 1; Tr. Pg. 71, line 25-25).

21. A vessel typically cannot be turned at a 90 degree angle while under speed and boaters under speed often follow the arc of the shoreline. (Tr. Pg. 72, Lines 1-9; Tr. Pgs 105-107, lines 16-6).

22. The speed in the area of the proposed dock is a low speed or wake zone (Tr. Pg. 54, line 14).

23. The speed restrictions, as well as the dimensions of the canals, limit the recreational activities suitable for the area of the proposed dock. (Tr. Pg. 74, lines 6-20; Tr. Page 76, lines 15-20).

24. Given the width of the Valley Canal and Liga Canal on the south and west side sides of the Property, and the distance of the existing docks along the shorelines on the Valley Canal and Liga Canal, vessels traveling on the Valley Canal and Liga Canal would typically travel on a straight line in the center of the canal. (Tr. Pg. 56, line 9-17; Tr. Pg. 53, line 15-25; Tr. Pg. 54, line 1-2. App Ex. 3).

25. Generally, without considering site specific factors such a speed and width, a dock-line that follows the curvature of the shoreline is easier to navigate than a dock-line with a turn at a 90 degree angle (Tr. Pgs. 17-18, lines 25-4; Tr. Pg. 20, lines 3-12).

26. The dock-line used should consider the likelihood of a vessel being “surprised” by a dock extending out beyond the distance of the existing docks along the shoreline. (Tr. Pg. 53, lines 7-14).

27. Given the width of the canals, the location of existing docks, applicable speed restrictions, and other site specific factors, vessels traveling in the area should not be surprised by the proposed dock. (Tr. Page 56, lines 13-17).

28. Given the location of docks in the canals, width of the water body surrounding the proposed dock, and speed restrictions in the surrounding areas, the proposed dock would not materially narrow the width of navigable waterways in the area, or present an impediment to navigation. (Tr. Pg. 72, lines 3-5; EPC. Ex. 3).

29. Given the existing speed restrictions, as well as the uses of the canals, the proposed dock would not adversely affect the rights of riparian owners by materially restricting the use of the riparian waterways adjacent and surrounding the dock, or interfere with the use and navigation of adjacent property owners' boats. (Tr. Pg. 55, lines 11-25; Tr. Pg 56, lines 1-17).

30. The proposed dock would not adversely affect visibility around the corner of the canals and related berthing area. (EPC Exhibit 4, Keenan's appeal pg. 3).

31. The proposed 48 foot dock in its proposed configuration is not contrary to the public interest. (Tr. Pg. 46, lines 14-20; Tr. Pg. 49, lines 1-5; Tr. Pg. 51, lines 4-11; Tr. Pg. 107, lines 14-25).

32. The proposed dock would not materially interfere with the public's ability to continue enjoying traditional uses, such as navigation, in the canal. (Tr. Pgs. 47-48, lines 10-3).

33. The total shoreline of the Appellants is 149.77 in length. Based on Section V.A.3.b(1), SLM Rules, for private single family docking facilities, the Appellants' structure or total preempted area may not exceed 1,498 square feet. The proposed dock also meets this rule requirement. (JPFS, pg. 9).

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, as amended (hereinafter “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. The Appellee is a local regulatory agency authorized to enforce the EPC Act and the Rules promulgated thereunder in Hillsborough County, Florida.

3. The EPC has jurisdiction over the Tampa Port Authority Enabling Act, Chapter 95-488, Laws of Florida, and the Tampa Port Authority Submerged Lands Management Rules (hereinafter “SLM Rules”) pursuant to the Amended and Restated Interlocal Agreement between the Tampa Port Authority (‘TPA’) and the Environmental Protection Commission of Hillsborough County (‘EPC’) dated June 23, 2009 (hereinafter “TPA Delegation Agreement”).

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

5. Pursuant to Section 1-2.33(d), Rules of the EPC, “[t]he burden of proof shall be on the Appellant to establish entitlement to a permit, order, authorization or exception allowed by the rules. Fact issues not raised by the Notice of Appeal shall be accepted as undisputed.”

6. Subsection V.A.3.a. (3), SLM Rules, provide that maximum structure extensions of a dock, which are typically “twenty-five percent of the navigable width of the affected water body,” can be further restricted “based upon site specific circumstances regarding navigational safety and existing structures.” (JPHS, pg. 9 and 11).

7. Although the proposed dock meets the 25 percent of the navigable width of the affected water body requirement, the EPC should consider the existing dock lines of the docks previously constructed within the area when considering the site specific circumstances regarding navigational safety and existing structures under Subsection V.A.3.a.(3), SLM Rules.

8. Whether a dock line needs to follow the contour of the land, or may meet and square off, depends on site-specific circumstances including visibility, speed, existing structures, width and other site-specific circumstances regarding navigational safety under Subsection V.A.3.a.(3), SLM Rules.

9. The dock line of existing docks along the shoreline, shape of the canal, speed zone, and nature of the canals are appropriate site-specific circumstances regarding navigational safety and existing structures that should be considered under Subsection V.A.3.a.(3), SLM Rules, when evaluating the distance docks may extend out into a water body.

10. Pursuant to Subsection I.A. (3) and (4) of the SLM Rules, the intent and purpose of the Rules is to “insure [the] maximum benefit and use of Sovereignty Lands for all citizens” and “to manage, protect, and enhance Sovereignty Lands so that the public may continue to enjoy traditional uses, including, but not limited to, navigation, fishing and swimming; and to minimize conflicts between these uses.” (sic)

11. Pursuant to Subsection I.A. (3) and (4) of the SLM Rules, a dock structure may not materially affect the rights of riparian owners by restricting the riparian waterways adjacent and surrounding the dock; thereby, interfering with the use and navigation of adjacent property owners’ boats.

12. Section 25(f), Chapter 95-488, Tampa Port Authority Enabling Act, further states that no permit shall be issued for the proposed work, unless it is found there is no impediment to

navigation, there are no adverse effects on the rights of riparian owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.

13. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure does not materially impede navigation, adversely affect the rights of riparian owners, nor is it contrary to the public interest as identified in the Findings of Facts.

14. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure complies with the TPA Enabling Act and the SLM Rules.

15. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure will not create a navigation hazard based upon site specific circumstances regarding navigational safety and existing structures, specifically the location of the property in a T-shaped canal and the existing dock line.

16. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure would not be inconsistent with the intent and purpose of SLM Rules, which is “to manage, protect, and enhance Sovereignty Lands so that the public may continue to enjoy traditional uses” such as “navigation, fishing and swimming; and to minimize conflicts between these uses.” Subsection I.A. (3) and (4) of the SLM Rules.

17. The preponderance of the evidence as identified in the Findings of Facts supports the conclusion that the proposed structure would not be contrary to Section 25(f) of the TPA Enabling Act, which provides that no permit shall be issued for the proposed work, unless it is found there is no impediment to navigation, there are no adverse effects on the rights of riparian

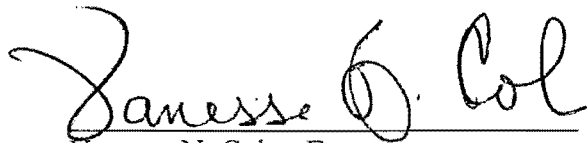
owners in the area, and there is no adverse effect on public safety to the extent as to be contrary to the public interest.

RECOMMENDATION

Based upon the foregoing findings of facts and conclusions of law it is RECOMMENDED that the EPC enter a Final Order upholding the Permit for the construction of a 48 foot dock on Jurisdictional Lands adjacent to Appellant's property, reflected in Permit issued on November 7, 2011

Respectfully submitted,

Dated: Dec 13, 2012



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