

-
**ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 WEDNESDAY, MARCH 22, 1995
 COMMISSIONERS BOARD ROOM
 10:00 A.M. - 12:00 NOON**

AGENDA

<u>ITEM</u>	<u>PAGE</u>
I. <u>ITEMS CONTINUED FROM FEBRUARY 22,1995 AGENDA</u>	
A. Approve Settlement and Authorize Execution of Documents in Case Filed by Church of Latter Day Saints Against E.P.C., Et Al (County Attorney's Office)	1
B. Consider Hearing Officer's Report and Recommendation in Appeal of Stephen Dibbs: Consider Exceptions	2
II. <u>SPECIAL PRESENTATION</u>	
A. Seagrass Recovery: Roger Johansen - City of Tampa	
III. <u>CONSENT AGENDA</u>	
A. Approval of Minutes: March 7, 1995	28
B. Report of the Executive Director:	
1. Acceptance of Monthly Activity Reports	29
2. Legal Department Monthly Report	46
3. Acceptance of Contributions to Pollution Recovery Fund	48
4. Analysis of Gardinier Settlement Fund	50
IV. <u>CITIZEN'S ADVISORY COMMITTEE</u>	
A. Discussion - Items of Interest	
V. <u>COMMISSIONER'S REQUESTS</u>	
A. Discussion of EPC Audit - Commissioner Chillura	51
VI. <u>EXECUTIVE DIRECTOR</u>	
A. Update of Issues Discussed During Goal Setting Workshop	

ITEM

PAGE

VII. LEGAL DEPARTMENT

A. Request Authority to Take Appropriate Legal Action Against:	
1. Ward Oil Company	52
2. M. Doganis Enterprises, Inc.	53
3. Balm Grocery: Nisa & Phanlobh Vichaikul	54
B. Update on Proposed Legislation	
1. Report on Petroleum Cleanup	
C. Request for Authority to Set Public Hearing , April 6, 1995, 6:30 PM to Amend Wetland Rule Part III on Cockroach Bay	55

VIII. CITIZENS WISHING TO APPEAR

Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

ENVIRONMENTAL PROTECTION COMMISSION
HILLSBOROUGH COUNTY, FLORIDA

AGENDA ITEM COVER SHEET

CONSENT

NON-CONTROVERSIAL

REGULAR

SUBJECT: CORP. OF THE PRES. OF THE CHURCH OF LATTER DAY SAINTS, ET AL.
v. ENVIRONMENTAL PROTECTION COMMISSION OF HC, ET AL.
TEAM: LEGAL SERVICES/ENV. PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
DEPT: Office of Chief Counsel of the ENVIRONMENTAL PROTECTION COMMISSION
Contact Person: SARA M. FOTOPULOS
Office of the COUNTY ATTORNEY Contact Person: ROBERT R. WARCHOLA

RECOMMENDATION: That the Environmental Protection Commission of Hillsborough County authorize the settlement the case of Corporation of the President of the Church of Latter-Day Saints, et al. v. Environmental Protection Commission of Hillsborough County, et al., Case No. 93-732-CIV-T-17C for Thirty-Five Thousand and no/100 (\$35,000.00) Dollars.

BACKGROUND: The Environmental Protection Commission, Roger Stewart, in his official capacity, and Roger Stewart, as an individual, were sued in Federal Court by the Corporation of the President of the Church of the Latter-Day Saints. The Church alleged that the named defendants violated its civil rights and as a result, are requesting damages in the amount of Seventy-Three Thousand, Two Hundred Twenty-Six and 76/100 (\$73,226.76) Dollars, plus interest. A prevailing party in civil rights litigation is also entitled to costs and attorney's fees. The Chief Counsel of the Environmental Protection Commission and the County Attorney's Office recommend that the Board authorize settlement of this lawsuit, without admission of liability, as being in the best interest of the Environmental Protection Commission of Hillsborough County.

Continued Cost \$ \$35,000.00 Index/Subobject Code _____

SIGN-OFF APPROVALS <u>DATE</u>		
DIRECTOR _____	<input type="checkbox"/> Affected parties notified	<input type="checkbox"/> Attachments
ACA 1st APPROVAL _____	<input checked="" type="checkbox"/> Not required	<input checked="" type="checkbox"/> None
BUDGET _____	<input type="checkbox"/> Public Entity Crime Sworn Statement	_____
CONTRACTS _____	<input type="checkbox"/> Advertised	_____
LEGAL _____	<input checked="" type="checkbox"/> Not Required	_____
ACA _____	Date: _____	_____
FISCAL ACA _____ (If Budget Amendment)	Paper: _____	_____
	_____	<input type="checkbox"/> Backup on file in County Administrator's Office

-- OCA STAFF ONLY --

BOARD ACTION:
 Approved Disapproved Continued/Deferred Until _____

OTHER/SPECIAL INSTRUCTIONS: _____

BY: _____

MEETING DATE: March 22, 1995 AGENDA CODE: _____
(Revised 6-12-91)

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON

EXECUTIVE DIRECTOR

ROGER P. STEWART



ADMINISTRATIVE OFFICES, LEGAL &
WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

MEMORANDUM

DATE: March 15, 1995

TO: EPC Members

FROM: Sara M. Fotopulos, Chief Counsel

SUBJECT: Appeal of Dibbs Commercial Center/Stephen J. Dibbs
EPC # LDIB94-157

Since my February 15, 1995 memo to you concerning this case, the Executive Director has requested and received a clarification of the recommendation. That clarification has been included in the backup along with the original Hearing Officer's recommendation and both parties' exceptions.

The Executive Director's Request For Clarification, Defendant's Response to Request For Clarification, Defendant's Motion For Official Recognition and the Executive Director's Response to Defendant's Motion for Official Recognition are available for your review in the EPC Chairman's office as part of the complete record.

xc: John Wilcox, Esquire

(cases\dibbs\epcmemb.mem)

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON



ADMINISTRATIVE OFFICES, LEGAL &
WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

EXECUTIVE DIRECTOR

ROGER P. STEWART

M E M O R A N D U M

DATE: February 15, 1995

TO: EPC Members

FROM: Sara M. Fotopulos, Chief Counsel *SMF*

SUBJECT: Administrative Appeal

This months EPC agenda includes an administrative appeal for your consideration and ruling on an appropriate Final Order.

Appellant Stephen Dibbs appealed the Director's denial of a plan to impact wetlands for the construction of certain commercial units and associated parking on property on north Dale Mabry. The matter was heard by Robert Fraser, a local attorney under contract with EPC to serve as Hearing Officer on a rotating basis with two other attorneys. After discovery and hearing, the Hearing Officer rendered a report and recommendation. Both the Director and Appellant have filed Exceptions to the Hearing Officer's report.

The Hearing Officer's Findings and Recommendation, and the parties' Exceptions are attached, and also will be in the agenda backup. **The complete transcript of the hearing, and the complete record, are in Chairman Chillura's office for your review.**

Please refer to the summary behind tab "Appeals" in your agenda backup notebook for an explanation of the administrative process, the standards, and the areas of your discretion in considering a Hearing Officer's report and in rendering a Final Order. On February 22, 1995, the parties may present argument to you regarding matters raised in the Exceptions. However, if testimony and additional facts not in the record are necessary for you to reach a decision, the matter should be referred back to the Hearing Officer as the finder of fact. If you have any questions regarding the process, please let me know and I will be available at your convenience to discuss them before the EPC meeting.

xc: John Wilcox, Esq.

BEFORE THE
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

APPEAL OF:

EPC # LDIB94-157

DIBBS COMMERCIAL CENTER/STEPHEN J. DIBBS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS
OF HEARING OFFICER**

THIS CAUSE came on for an evidentiary hearing on December 19 and December 20, 1994 before the undersigned hearing officer. Appellant STEPHEN J. DIBBS appealed from the denial of his application to utilize 2.014 acres of wetlands in Northeast Hillsborough County. Mr. Dibbs was represented by E. Gary Early, Esquire and Connie H. Elam, Esquire of Akerman, Senterfitt & Eidson, P.A. The Environmental Protection Commission staff was represented by Vernon R. Wagner, Esquire.

The staff initially denied Appellant's request to develop the 2.014 acres of wetlands for three reasons. First, the staff found that the site plan did not show minimization of wetlands impacts by a maximum use of upland areas. Second, incomplete contracts were submitted by Appellant to justify the project. Third, the staff wanted Appellant to reduce the number of parking spaces to the minimum required by the Hillsborough County code. (Appellant's 5)*. Formal denial of the project occurred on June 2, 1994. (Appellant's 9)

* References to the hearing transcript will be designated with a Tr. followed by a page number. Exhibits will be designated by the party offering it and its number, as in Appellant's 2. References to record documents, such as memoranda of law, will be cited at "R" followed by a page number.

Appellant introduced 13 exhibits into evidence while the staff introduced four exhibits. Appellant called Mr. Hung T. Mai as an expert in civil engineering, engineering of commercial developments and stormwater engineering (Appellant's 1); Mr. Timothy Louis Neldner as an expert in environmental permitting (Appellant's 10) and Mr. Frank R. Mudano, as an expert in commercial center design and development. (Appellant's 12). Mr. Dibbs also testified.

The staff called Mr. Charles Courtney, the director of the Ecosystems Management Division of the Environmental Protection Commission, as an expert in wetland resource analysis, permitting and mitigation. (EPC 4). It also provided the transcribed testimony of Mr. Michael A. McElveen, an expert in the valuation and evaluation of commercial real estate. (EPC 1,2)

The undersigned hearing officer also viewed the property on January 8, 1995. The view was conducted without the parties or counsel present in accordance with an agreement between Mr. Wagner and Mr. Early.

Based on the foregoing, the undersigned hearing officer makes these

FINDINGS OF FACT:

1. Appellant STEPHEN J. DIBBS owns 20.03 acres in northeast Hillsborough County bounded on the west by Zambito Road and Dale Mabry Highway and the north by Hoedt Road. Hoedt Road lies directly east across Dale Mabry Highway from Northdale Boulevard. (Appellant's 2).

2. Of the 20.03 acres, 8.762 acres fall within the wetlands jurisdiction of the EPC. (Appellant's 2). Appellant sought permission to utilize 2.014 acres of it. The staff denied the request on June 2, 1994. (Appellant's 9).

3. Appellant's site plan calls for four business establishments from north to south: Chick-Fil-A, Pier One Import, China Coast and Olive Garden. (Appellant's 2). At the time of the hearing, Appellant had entered into a contract only with Chick-Fil-A. (Tr. 146). Pier One Import remained a possible lessee. Appellant testified he was certain he could enter into leases with the General Mills Corporation, the operator of Olive Garden and China Coast Restaurants. (Tr. 147).

4. The minimum number of parking spaces required for Hillsborough County zoning purposes was 344. (Appellant's 2). Lessees generally require more parking than the Hillsborough County minimum and Mr. Dibbs testified that the 418 regular spaces and 12 handicapped spaces included on his site plan were required by lessees. (Tr. 147)

5. Some commercial establishments have lower parking requirements than restaurants. (Tr. 55)

6. The 86 additional spaces sought by Appellant represent .434 acre of wetlands sought to be developed. (Tr. 70). On Appellant's site plan, the additional parking spaces lie north of the EPC wetlands jurisdiction line between points "A" and "B." (Appellant's 2)

7. Without knowing the nature of the commercial establishments to be constructed on the site, the number of parking spaces required cannot be calculated. Since the parking spaces occupy a substantial amount of the wetlands impacted, the extent of wetlands impact likewise cannot be calculated.

8. On the other hand, refusing to permit Appellant's utilization of his property from point "A" to the northernmost EPC wetland jurisdiction line on the site plan, point "C," denies him the reasonable use of it for the following reasons:

a. It denies him the most valuable part of the property as the wetlands area sits within 150 feet of Dale Mabry Highway to the west, Hoedt Road to the north and their traffic controlled intersection. (Tr. 120). The staff opposes development of the two northern businesses and favors filling the wetlands only to the unspecified extent necessary to build a road from Hoedt Road to the two southern sites. (Tr. 201-202)

b. Access from Hoedt Road appears reasonable and necessary for development of the site for two or four establishments. Mr. McElveen, the staff's expert in commercial real estate, treated access from Hoedt Road as a given factor and did not dispute its necessity. (EPC 2, pgs. 729-730).

c. The staff's suggestion that customers, service vehicles, delivery trucks and other vehicles turn south off Hoedt Road and travel at the western edge of the wetlands denies reasonable access to any businesses established on the southern portion of the site plan. Given the configuration of the site,

constructing a curvilinear access road as suggested by the staff to skirt the wetlands is impractical. (Tr. 110).

d. Service and customer vehicles should not be required to use the same road. (Tr. 112, EPC 2, pg. 730). Mr. Dibbs' site plan avoids this problem. (Appellant's 2). The staff's solution did not provide for separating customer vehicles from garbage trucks, tractor trailer trucks or emergency vehicles.

e. Potential customers driving south on Dale Mabry Highway will be expected to turn east onto Hoedt Road, then south into the project. Refusing the use of the wetlands would mean that southbound drivers would not be visually alerted to the shopping center until adjacent to it. Completing a U-turn at Dale Mabry Highway and Bearss Avenue or proceeding east on Bearss Avenue and approaching the center on Zambito Road each poses unsatisfactory alternatives for the southbound driver who misses the turn at Hoedt Road. This factor does not carry as much weight as the others since Mr. Mudano testified that 80 to 90 percent of restaurant patrons are "destination customers," i.e. they have a predetermined target before leaving home. To some extent, then, they can be expected to know where a restaurant on the site would be located and how to reach it. (EPC 2, pgs. 683-684).

9. Given the environmental sensitive nature of the wetlands, Appellant can reasonably use his property without providing parking in excess of the minimum required by zoning. Accordingly, Appellant's request to utilize 2.014 acres of wetlands is unreasonable to the extent it intrudes north of the line between

points "A" and "B" on Appellant's site plan. (Appellant's 2). A reasonable use of his property would limit wetlands impact to the 1.58 acres west of the line between points "A" and "C" on Appellant's site plan. This is reasonable minimization. (Tr. 196).

10. The staff did not consider Appellant's rate of return or prepare any cost/benefit analysis of Appellant's uses of the property. (Tr. 197). Likewise, the parties' evidence addresses the reasonable use of Appellant's property in terms of his project, not profit, risk or any economic factor to any significant extent.

11. Mr. Dibbs testified that he could not feasibly develop the 5.12 acres of uplands on the northeast portion of the property due to the expense of roads, sewer and water and street lights. (Tr. 149-150). He attempted to extend an existing road ending in a cul-de-sac 50 feet north of his property line, but the property owners declined his invitation. (Tr. 150). Instead, Mr. Dibbs proposes using about 4.5 acres of the 5.12 acres of uplands for mitigation purposes. (Tr. 22, 95)

12. Mr. Neldner testified that the use of the 4.5 acres of uplands for mitigation purposes should be reduced if the wetlands development is reduced. (Tr. 95). The reduction of the area set aside for mitigation, though, calls into question whether the mitigation plan will completely offset the proposed adverse environmental impact caused by the project. (Tr. 90).

13. The staff did not reach a decision with respect to Appellant's mitigation plan. (Tr. 217, 222). Mr. Courtney found

the plan to be up to par in terms of its design. (Tr. 212). The staff denied Appellant's application only as to minimization of the impact on the wetlands, not the adequacy of his mitigation plan. Counsel agreed that the mitigation plan probably is adequate in terms of the staff's criteria, but the parties reached no stipulation with regard to its acceptability. (Tr. 227).

14. The existing wetlands form the headwaters of a creek and also constitute part of a large ecosystem which extends south and east. (Tr. 192-193; Appellant's 8). No reason appears in the record why the 4.5 acres of mitigation proposed by Appellant would not serve the ecosystem as well.

15. Appellant's mitigation plan calls for transplanting cypress trees and organic mulch. (Tr. 86-87). The mitigation wetlands could require five years to become functional in some respects and longer in others. (Tr. 97).

CONCLUSIONS OF LAW

The parties disagreed on the application of the facts contained in the record to the law in two essential respects. First, the staff argued that the "reasonable use" of Appellant's property should be judged in the light cast by the constitutional standard of taking property under the Fifth Amendment to the Constitution of the United States and Art. 10, §6, *Fla. Const.* (1968). Second, Appellant argued that the standards of the State Department of Environment Regulation (DER) limit the Hillsborough County Environmental Protection Commission. Each contention will be addressed separately.

**I. "Reasonable Use" In Rule 1-11.01,
Rules Of The Environmental Protection
Commission of Hillsborough County, Should Not
Be Interpreted On A Constitutional Level.**

The threshold legal controversy between the staff and Appellant arises out of the meaning placed on the following portion of Rule 1-11.01, Rules of the Environmental Protection Commission of Hillsborough County:

It is the intent of the Commission that development requiring mitigation be a last resort when reasonable use of the property is otherwise unavailable.

The staff argues that "reasonable use" should be read in a constitutional context arising under the "taking" cases involving the Fifth Amendment to the Constitution of the United States and Art. 10, §6, *Fla. Const.* (1968). I disagree.

The rules were adopted in accordance with ch. 84-446, Laws of Florida. The Declaration of Legislative Intent for the act found that the "reasonable control and regulation of activities which are causing or may reasonably be expected to cause pollution or contamination of air, water, soil, and property" may be necessary for the public health, safety and welfare. (Emphasis supplied). §2, ch. 84-446. "Water pollution" refers to, among other things, any "destruction or other alteration of any physical... feature or property of any waters of the county." §3(21), ch. 34-446. The act provided the Environmental Protection Commission with the power and responsibility to enforce its provisions. §5(1), ch. 84-446. Creating rules, such as Rule 1-11.01, represents one such power. §5(2), ch. 84-446.

Generally, statutes should be given a meaning reflecting the intention of the legislature. *Gracie v. Deming*, 213 So.2d 294 (Fla. 2d DCA 1968). Words of common usage in a statute should be construed in their plain and ordinary sense. *Citizens of State v. Public Service Commission*, 425 So.2d 534 (Fla. 1982). Nothing in the statute suggests that "reasonable control" should be given anything other than its usual meaning. Since "reasonable use" mirrors "reasonable control," it too should be given its plain meaning.

Generally, an agency's interpretation of its operable statutes and its own rules will be given "great deference" by a reviewing court. *Reedy Creek Improvement Dist. v. Dept. of Environmental Regulation*, 486 So.2d 642, 648 (Fla. 1st DCA 1986). An agency's interpretation of a statute must be consistent with legislative intent. *Id.* An agency's interpretation of its own rule must not contradict its unambiguous language. *Kearse v. Dept. of Health and Rehabilitative Services*, 474 So.2d 819, 820 (Fla. 1st DCA 1985).

Certainly, nothing in the statute or rule suggests that "reasonable use" be interpreted as a constitutional term of art. If the legislature intended such a meaning in drafting the statute or if the Commission intended such a meaning in drafting Rule 1-11.01, either could have said so. Neither did.

A substantial difference exists between "reasonable use" as a constitutional term of art and as words of plain meaning. In *Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson City*, 473 U.S. 172, 190, n. 11 (1985), the United States

Supreme Court observed that a taking has not occurred when property retains "any reasonable beneficial use." The Court also has held that a taking has occurred and compensation is required when restrictions on property render it "wholly useless." *Penn Central Transportation Company v. New York City*, 438 U.S. 104, 128 (1978). [citing] *Hudson Water Co. v. McCarter*, 209 U.S. 349, 355 (1908).

In the context of this case, the constitutional standard means that Mr. Dibbs should be denied the use of the wetlands. After all, he could construct stores or restaurants on the southern portion of the property fronting Zambito Road, thereby obtaining a "reasonable use."

As I interpret "reasonable use" in Rule 1-11.01, though, Mr. Dibbs should be permitted to utilize some of the wetlands in accordance with the Findings of Fact. "Reasonable use" has its genesis in the "reasonable control" limitation of ch. 84-446, not any constitutional provision. Denying him the use of the northwest corner of the property would be unreasonable given its valuable proximity to the controlled intersection of Hoedt Road and Dale Mabry Highway alone.

Accordingly, "reasonable use" should be considered as a term of ordinary meaning, not as a constitutional term of art. To interpret ch. 84-446 and Rule 1-11.01 as suggested by the staff, in short, contradicts their plain meaning and deprives the landowner of the uses permitted by the statute and rule.

**II. The Interpretation And Application
Of Statutes Pertaining To The Department of
Environmental Protection Do Not Control The**

**Hillsborough County Environmental Protection
Commission.**

Appellant asserts that the questions of a property owner's "reasonable use" of his land conflict with §373.414(1)(b), Fla. Stats. (1993). (R 54). Appellant argues that the statutes pertaining to the State Department of Environmental Regulation (DER) bear on the issues in this appeal. Actually, the legislature has made abundantly clear that the EPC is free to implement its own standards.

Counsel for the EPC correctly argues that §403.182(8) permits a local pollution control program to enforce its own rules, regulations or orders. (R 60). This same statute, §403.182(7) ~~permits a local pollution control program to maintain "a rule, regulation, or order of a stricter or more stringent nature..."~~ Therefore, the jurisdictions of DER and the EPC are co-extensive. Nothing prevents the EPC from imposing more stringent standards for developing wetlands than those of the DER.

Appellant complains that the staff's failure to evaluate his mitigation plan ignores the net environmental impact of his project. As a matter of policy, not statutory authority, Appellant makes a valid point. As the case stands, the mitigation plan has not been officially reviewed so it has not been approved or disapproved. The staff has indicated preliminarily that the mitigation plan passes muster, but no final decision has been made with respect to it. Counsel for the EPC declined to stipulate to the adequacy of the mitigation plan during the hearing. (Tr. 227).

As a result Appellant's plan arguably is not ripe for a decision through no fault of his.

No good reason exists for the staff to evaluate minimization of wetland impact, then a mitigation plan. The bifurcated procedure employed by the staff in this case makes the permitting and appellate processes unduly cumbersome, prolonged and tentative. Appellant correctly contends that minimization and mitigation should be evaluated together to determine the true environmental impact. However, statutes pertaining to the DER do not mandate this procedure.

RECOMMENDATIONS

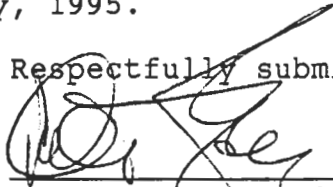
Based on the foregoing Findings of Fact and Conclusions of Law I recommend that Appellant Stephen J. Dibbs conditionally be permitted to develop a portion of the 2.014 acres of wetland located on his property. The conditional nature of this recommendation necessarily arises out of two unsettled factors:

(1) Mr. Dibbs does not have leases with three of the four tenants he has courted for the project. Without having leases he cannot determine the number of parking spaces necessary since they vary between restaurants and other commercial establishments. I recommend that he be permitted to develop the property for no more than three restaurants and another establishment similar to Pier One Imports in the interest of keeping the required number of parking spaces to a minimum. I further recommend that he not be permitted to provide any more parking spaces than absolutely required by the Hillsborough County code.

(2) The approval of Mr. Dibbs' mitigation plan also will be necessary. If approved, the plan contained in the record should be required without a *pro rata* reduction for the smaller impact than the one requested by Mr. Dibbs. The entire 4.5 acres should be used for mitigation purposes to insure mitigation. It will also compensate the environment for the five-year delay expected in developing the mitigation wetland.

Done this 6th day of February, 1995.

Respectfully submitted,



ROBERT FRASER, ESQUIRE
Hearing Officer
Cypress Point Office Park
Suite 112
10006 N. Dale Mabry Highway
Tampa, Florida 33618
(813) 264-4664
Florida Bar No.: 218529

cc: E. Gary Early, Esquire
Connie H. Elam, Esquire
Vernon R. Wagner, Esquire

EXHIBITS:

Appellants:

1. Curriculum vitae of Hung T. Mai.
2. Site plan.
3. 06/30/93 letter from EPC to Mr. Mai.
4. 01/06/94 letter from EPC to Mr. Mai.
5. 05/09/94 letter from EPC to Mr. Mai.
6. 05/12/94 letter with attachments from Mr. Mai to EPC.
7. Drainage analysis. 12/01/93 Mr. Mai to EPC.
8. Aerial photograph of Sec. 34, Township 27, Range 18.
9. Letter of 06/02/94 to Mr. Dibbs from Mr. Stewart.
10. Curriculum vitae of Timothy L. Neldner
11. 04/06/94 letter to Howard from Neldner & Godley.
12. Curriculum vitae of Frank Mudano.
13. Photos - three composite exhibit.

EPC:

1. Curriculum vitae of Michael A. McElveen
2. Transcript of Mr. McElveen's testimony before Deputy Hearing Officer.
3. Site plan submitted to SWFWMD.
4. Curriculum vitae of Charles Courtney.

BEFORE THE
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

APPEAL OF:

EPC # LDIB94-157

DIBBS COMMERCIAL CENTER/STEPHEN J. DIBBS
_____ /

**THE ENVIRONMENTAL PROTECTION COMMISSION, EXECUTIVE DIRECTOR'S
EXCEPTIONS TO HEARING OFFICER'S REPORT**

The Director of the Environmental Protection Commission of Hillsborough County, by and through the undersigned attorney, hereby submits his exceptions to the Hearing Officer's Report in the above matter.

The Director takes exception to the Hearing Officer's Conclusion of Law with regard to his interpretation of "reasonable use" as found in EPC's Wetland Rule (1-11.01, Rules of the Commission). The Director's position is that the Commission is bound by, and in adopting Chapter 1-11, intended to be bound by constitutional constraints on prohibiting uses of land through regulation. The Commission did not intend to establish a new standard of "reasonable use".

Under EPC's rule, Mr. Dibbs' asserted entitlement to impact protected wetlands is "a last resort" which can be authorized only when he otherwise has no available "reasonable use" of his land. In such an instance, denial of authorization to impact wetlands would constitute a "taking". The appropriate "reasonable use" inquiry then involves a review of: 1) the extent of the economic impact of the regulation, specifically whether the regulation precludes all economically beneficial use of the land; and, 2) the owner's reasonable and distinct investment backed expectations. If EPC's regulation, as applied, allows Mr. Dibbs an available reasonable

use of the property as a whole, then the decision of the EPC's Executive Director to deny the wetland impact does not constitute a compensable taking, and must be upheld under EPC's Wetland Rule. The legal basis of this position is more fully discussed in [EPC's] Memorandum of Law Pertaining to Relevant "Reasonable Use" Standards (R. 8, et seq. of the Hearing Officer's file).

The Hearing Officer's recommendation attempts to tie the interpretation of "reasonable use" to the legislative mandate of EPC's enabling act, 84-446, Laws of Florida, that the Commission adopt regulations to provide "reasonable control" of activities that cause pollution. The Hearing Officer's reasoning implicitly concludes that applying the constitutional meaning of "reasonable use" results in the Wetland Rule being an unreasonable, ultra vires, regulation. This reasoning fails, in that, it argues that a regulation, appropriately designed to be bound by a dynamic constitutional constraint, is nevertheless unreasonable.

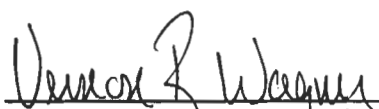
The interpretation of this agency's rules and the policies followed are matters for the Commission. The Hearing Officer does not have the authority to change or misapply the law as adopted by the Commission simply because he does not agree.

Therefore, the Hearing Officer's Conclusion of Law should be rejected. Likewise, Findings of Fact numbered 8 and 9, which apply that erroneous legal conclusion and are, in fact, mixed factual findings and legal conclusions should be rejected. If the remaining Findings of Fact are insufficient to support a decision by the Commission, the matter should be remanded to the Hearing Officer for additional Findings of Fact based on the existing record and applying "reasonable use" in its constitutional context, and consistent with the his statement on page 10 of the Recommendation that:

In the context of this case, the constitutional standard means that Mr. Dibbs should be denied the use of the wetlands. After all, he could construct stores or restaurants on the southern portion of the property fronting Zambito Road, thereby obtaining a "reasonable use".

Further, on remand, the Commission may direct the Hearing Officer to enter Findings of Fact which specifically address the applicant's reasonable investment backed expectations taking into account the power of the state to regulate in the public interest.

In the alternative, if the Commission considers the above quoted statement from page 10 of the Hearing Officer's recommendation as a Finding of Fact, an order adopting the Director's denial of authorization for the requested wetland impacts could be appropriately entered by the Commission without remanding this matter back to the Hearing Officer for additional findings and recommendations.

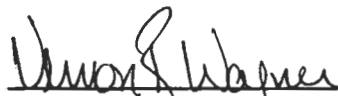


Vernon R. Wagner, Esquire

ENVIRONMENTAL PROTECTION COMMISSION
of Hillsborough County
1900 Ninth Avenue
Tampa, Florida 33605
(813) 272-5960
Florida Bar # 0826261

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was mailed by first class mail to Gary Early, Esquire, Akerman Senterfitt & Eidson, 216 South Monroe St., Suite 200, Tallahassee, Florida 32301-1859, and to John W. Wilcox, Esquire, Akerman Senterfitt & Eidson, Post Office Box 3273, Tampa, Florida 33601-3273, and transmitted by telecopier to each of these parties this 15th day of February, 1995.



Vernon R. Wagner, Esquire

(I:\hoexcept)

ROBERT FRASER

ATTORNEY AT LAW

PLEASE REPLY TO: TAMPA ADDRESS
FACSIMILE (813) 960-2739

PERSONAL INJURY & WRONGFUL DEATH
CRIMINAL LAW
FAMILY LAW

**OF COUNSEL
SAWYER & FILKA, P.A.

OFFICES
10006 NORTH DALE MABRY HIGHWAY
CYPRUS POINT OFFICE PARK
SUITE 112
TAMPA, FLORIDA 33618
TELEPHONE (813) 264-4664
FACSIMILE 960-2739

**213 PROVIDENCE ROAD
BRANDON, FLORIDA 33511
TELEPHONE (813) 653-3800

**740 FLORIDA AVENUE
LAKELAND, FLORIDA 33801
TELEPHONE (813) 687-0780
BY FACSIMILE
TRANSMISSION

March 6, 1995

John W. Wilcox, Esquire
AKERMAN, SENTERFITT & EIDSON, P.A.
100 S. Ashley Street, Suite 1500
Tampa, Florida 33602-5311
Fax No.: 223-2837

and

Vernon R. Wagner, Esquire
ENVIRONMENTAL PROTECTION COMMISSION
1900 Ninth Avenue
Tampa, Florida 33605
Fax No.: 272-5157

Re: Appeal of: Dibbs Commercial Center/Stephen J. Dibbs
EPC# LD1B94-157

Gentlemen:

A Request for Clarification of the Findings, Conclusions and Recommendations dated February 6, 1995 in the above-referenced case has been made by Mr. Wagner. Based on the site plan submitted by Mr. Dibbs, I recommend that Mr. Dibbs be permitted to develop 1.58 acres, not the entire 2.014 acres.

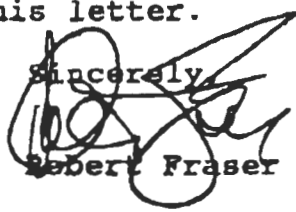
I apologize for any ambiguity in the recommendation. However, a precise recommendation cannot be made without knowing the nature of the businesses on the eventual site plan tendered by Mr. Dibbs. For that reason, the recommendation limits the development to three restaurants and another retail establishment similar to Pier One Imports. If Mr. Dibbs eventually reduces the number of restaurants, the amount of parking will be reduced as well as I understood the testimony during the hearing. In that event, I would recommend permitting development of less than 1.58 acres if the county's parking requirements were met.

I hope this letter clarifies the recommendation. If not, please feel free to schedule a telephone conference or another

hearing. My schedule is particularly flexible during the week of March 6 due to the contiuance of a trial.

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Robert Fraser', written over the word 'Sincerely,'.

Robert Fraser

RF/cdr

BEFORE THE
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

APPEAL OF:

EPC # LDIB94-157

DIBBS COMMERCIAL CENTER/STEPHEN J. DIBBS

EXCEPTIONS TO RECOMMENDATION OF HEARING OFFICER

Appellant, Stephen J. Dibbs, pursuant to EPC Rule 1-2.06, hereby files the following exceptions to the Hearing Officer's Recommendation entered in the above-styled case, and as grounds states:

EXCEPTION NUMBER I

1. The recommendation of the Hearing Officer recommends a conditional approval for site development consisting of four stand-alone commercial establishments. As indicated in the transcript of this proceeding, Mr. Dibbs' relationship with his proposed tenants is somewhat tenuous due to the delays caused by the permitting process (T 146-147). Although Mr. Dibbs expressed his belief that he would be able to successfully complete his arrangements with the proposed tenants, his ability to utilize the property should not be contingent upon the length of time and difficulty involved in the permitting process itself. In that regard, Mr. Dibbs submits that the final authorization from the EPC should allow him the flexibility to conduct the permitted activities as described in his permit application, with the exception of the area described in paragraph 6 of the Findings of Fact, upon receipt of EPC approval. In addition, Mr. Dibbs should be allowed to vary the design of the project (i.e. consolidating the square footage of the buildings or reconfiguring the structures on the property) so long as the impact of the project

remains unchanged. Finally, the recommendation should be clarified to indicate that once the nature of the commercial establishments has been finalized as indicated in paragraph 7 of the Findings of Fact, Mr. Dibbs may utilize up to the requested 2.014 acres depending on the size and configuration of the tenants' buildings and the number of parking spaces required by tenant contract exceeds the county minimum standards established by Hillsborough County Code.

EXCEPTION NUMBER II

2. The recommendation of the Hearing Officer recommends that the entire 4.5 acre mitigation area be utilized for mitigation. The recommendation fails to recognize that Hillsborough County Rule 1-11.08(2)(a) requires only "acre for acre" wetland replacement. Therefore, the mitigation required of Mr. Dibbs should be no more stringent than that required by EPC rule. In any event, the only testimony regarding mitigation concerned a 2.25:1 ratio of mitigation to impact. If Mr. Dibbs reduces the impact of his project, the mitigation area should be reduced accordingly. Furthermore, the Hearing Officer failed to acknowledge Appellant's expert's unrefuted testimony that the mitigation would provide immediate impact and that the benefits from the enhanced stormwater treatment would greatly improve conditions on the site. Therefore, Appellant's project creates a net improvement to environmental conditions on the site.

EXCEPTION NUMBER III

3. The Hearing Officer in his Recommended Order concluded that the EPC has authority pursuant to Section 403.185, F.S. to adopt and implement regulations regarding such activities that are more stringent than those of the Department of Environmental Protection. The conclusion of the Hearing Officer fails to recognize that the EPC enabling legislation is limited by 403.182. Chapter 84-446, Laws of Florida, was enacted later in time and is of a more specific

nature than Section 403.182. While Section 403.182, Florida Statutes specifically provides that a general local program may adopt rules that are more stringent than those promulgated by the Department of Environmental Protection (formerly Department of Environmental Regulation), that authority should not apply to Hillsborough County because Chapter 84-446, Laws of Florida, is a more narrowly drawn statute which proscribes the specific authorization granted to the Hillsborough County EPC. It was enacted subsequent to the more general statute governing local programs, and the statutes must be read so as to limit Hillsborough County to the explicit provisions of Chapter 84-446, Laws of Florida, including the provisions of Section 21 which limits Hillsborough County's authority to establish wetland permitting requirements more stringent than the Department of Environmental Protection.

4. Section 403.182, F.S. was initially adopted as part of Chapter 67-436, Laws of Florida. It has been amended once since 1979 and that amendment, contained in Chapter 89-143, did not serve to change the nature of the authority granted to local programs that would serve to amend the specific provisions of Chapter 84-446.

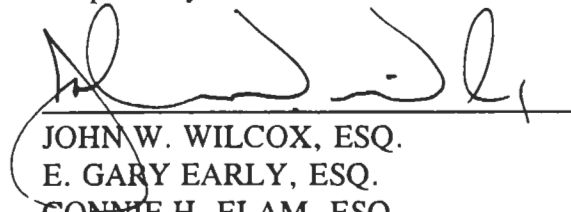
5. Chapter 84-446 both creates and empowers the Hillsborough County Environmental Protection Commission to promulgate a regulatory program for environmental issues in Hillsborough County. Section 21 of that Chapter specifically provides that:

The provisions of this act are not intended and shall not be construed as superseding or conflicting with any statutory provisions relating to or rules and regulations promulgated by the Department of Health and Rehabilitative Services and the Department of Environmental regulation, but shall be construed as implementing and assisting the enforcement thereof.

It is an accepted precept of statutory construction that the last expression of legislative intent prevails. Mikos v. Ringling Brothers-Barnum Bailey Combined Shows, Inc., 475 So.2d 292 (Fla. 2nd DCA 1985); Hamilton County Board of County Commissioners v. State Department of Environmental Regulation et al, 587 So.2d 1378, 1386 (Fla. 1st DCA 1991). It is equally accepted that a more specific statute covering a particular subject controls over a general statute covering the same subject. See, Moore International Trucks, Inc. v. Foothill Capital Corporation, 560 So.2d 1301, 1303 (Fla. 2nd DCA 1990); Hamilton County, *supra* at 1386. Accordingly, Chapter 84-446 does not authorize EPC to adopt regulations more stringent than the Department of Environmental Protection.

WHEREFORE, for the reasons stated herein, Appellant Stephen J. Dibbs requests that the Environmental Protection Commission enter an order approving the Findings of Fact, Conclusions of Law and Recommendation of Hearing Officer entered by Robert Fraser, Esquire on February 6, 1995, with the clarification as set forth in Appellant's Exceptions, and authorize Appellant Stephen J. Dibbs to conduct the proposed development as described in his request for authorization and the Recommended Order.

Respectfully submitted,



JOHN W. WILCOX, ESQ.

E. GARY EARLY, ESQ.

CONNIE H. ELAM, ESQ.

AKERMAN, SENTERFITT & EIDSON, P.A.

P.O. Box 3273

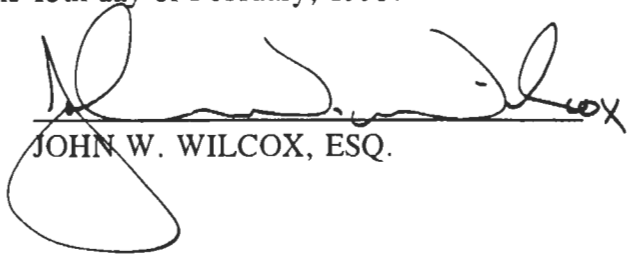
Tampa, FL 33601

813/223-7333

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Vernon R. Wagner, Esq., Environmental Protection Commission of Hillsborough County, 1900 Ninth Ave., Tampa, FL 33605 this 15th day of February, 1995.


JOHN W. WILCOX, ESQ.

W:\CLIENT\DIBBS\EPC\EXCEPT.215

MARCH 7, 1995 - ENV. PROTECTION COMM. - DRAFT MINUTES

The Hillsborough County Environmental Protection Commission (EPC) met in Special Meeting, on Tuesday, March 7, 1995, at 9:10 a.m., in the Board Room, County Center, Tampa, Florida.

The following members were present: Chairman Joe Chillura and Commissioners Dottie Berger, Chris Hart, Jim Norman, and Sandra Wilson. The following members were absent: Commissioners Phyllis Busansky (family illness) and Ed Turanchik.

Chairman Chillura called the meeting to order at 9:10 a.m. and stated the purpose of the meeting was a request that had been made by Commissioner Turanchik to establish a public hearing date for the Cockroach Bay Aquatic Preserve Management Advisory Team's (CAPMAT) recommendation regarding the restriction of motorized boat traffic in Cockroach Bay. The suggested date was March 22, 1995. Commissioner Norman moved to set the hearing date, seconded by Commissioner Hart and carried five to zero. (Commissioners Busansky and Turanchik were absent.)

There being no further business, the meeting was adjourned at 9:15 a.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

pgs

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON



ADMINISTRATIVE OFFICES, LEGAL &
WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

EXECUTIVE DIRECTOR

ROGER P. STEWART

**EPC PUBLIC EDUCATION REPORT
February 1995**

	Ad.	Air	Eco.	Waste	Water	Legal	Total
Media contact	2	1	0	1	2	1	7
News releases	15	0	0	0	0	0	15
Lit. dist. *	1112	63	130	381	50	279	2015
Talks given	1	1	4	5	4	1	16
Displays/demos	1	1	2	2	1	0	7

*Includes rules/regulations/newsletter/EPC wrap-up/master cal./sr.staff

From January 1, 1995 to Date

Media contact	8	2	0	1	3	1	15
News releases	42	0	6	0	0	0	48
Lit. dist.	1820	142	209	480	80	341	2442
Talks given	2	1	12	11	8	3	37
Displays/demos	1	2	3	2	3	0	11

ACCOMPLISHMENTS

1. Conducted EPC goal setting session with Commissioners.
2. Scheduled speakers for SERVE program.
3. Sent information packets to public upon request.
4. Published & distributed first agency-wide annual report.
5. Conducted Public Education Committee meeting.
6. Published EPC wrap-up.
7. Participated in USF EXPO 95.
8. Distributed Senior Staff summaries to staff each week.
9. Distributed agency Master Calendar.

CURRENT PROJECTS

1. Working with SERVE in providing speakers for schools.
3. Updating agency photographs for display and publication purposes.
4. Ordering educational supplies for agency use.
5. Preparing Neighborhood Bill of Rights notification process.
6. Formatting guidelines for agency speakers.
7. Developing public and in-house communication channels.
8. Working on EPC Quarterly.

**LEGAL DEPARTMENT MONTHLY REPORT
MARCH 22, 1995**

A. ADMINISTRATIVE APPEALS

NEW CASES [0]

EXISTING CASES [6]

Marks: Appealed Citation for wetland destruction; settlement negotiations have reached impasse. (see Marks - litigation cases).

EPC v. DEP: (Lake Kathleen Transmission line) EPC appealed DEP certification that Florida Power's post-certification submittals meet all state requirements. DEP combined EPC appeal with County petition; we are still waiting for a decision on Florida Power's Motion to Dismiss. Corp of Engineers has suspended Florida Power's 404 Permit pending reconsideration of "need" by Florida Public Service Commission.

IMC-Agrico Co.: Appeal of Director's decision to deny permission for Petitioner to mine a wetland tributary of Mizelle Creek. Agreement reached as to extent of impact to be authorized. Appeal to be dismissed by IMC upon entry of a Mitigation Agreement.

Stephen J. Dibbs: Appeal of denial for authorization for wetland impacts. EPC's Final Hearing held mid December. Exceptions to the Hearing Officer's Recommended Order has been filed and set for hearing before the EPC, March 22, 1995.

Long, Bobby & Marilyn: Appealed Citation for underground storage tank violation. Since the Appeal, the USTs have been removed and an assessment completed. Report due before the end of March.

Devoe & Reynolds: Appealed Air permitting decision, extension granted to negotiate resolutions.

CASES RESOLVED [1]

International Petroleum Corp.: Appealed air permit condition for operation of used oil furnace. Settled and corrected permit noticed.

B. LITIGATION CASES

NEW CASES [0]

EXISTING CASES [10]

DOT v. EPC: DOT appealed circuit court ruling that DOT is subject to EPC Act and regulations. All papers have been filed; awaiting decision of appellate court.

Oakview Estates: Received authority 7/31/91, (violations at the waste water treatment plant). County is maintaining facility as receiver; plant still not in compliance. Staff is negotiating Consent Order with County. Awaiting word from Plant City as to possibility and effect of annexation.

Hughes Hard Chrome, Inc.: Authority granted 1/27/93 to pursue compliance with Consent Order regarding water violations. EPC and DEP staff are evaluating current environmental concerns.

Qasem: Authority granted 8/93 to require Underground Storage Tank equipment to meet regulatory standards. Suit filed against owner and current operator. Temporary Injunction entered on 9/7/94.

Carey: Authority granted 8/93 to enforce wetland mitigation agreement. Preparing suit for breach of contract.

Hilaga: Authority granted 3/23/94 to recover penalties and costs for closure of abandoned tanks. Tanks were finally removed. Defendant' Motion to Dismiss; denied March 14, 1995. Defendants have 15 days to answer Complaint.

Miller, Larry & Alice: A & L Tropicals: Authority granted 5/25/94 to enforce Final Administrative Order to correct wetland violation and recover costs and penalties. Complaint filed; preparing motion for summary judgment. Case Management Hearing scheduled for March 23, 1995.

Holley, Raymond, et al: Received authority on 8/94 to proceed against owners for improperly abandoning Underground Storage Tank (UST) and compel proper closure, assessment of contamination, remediation, civil penalties and costs. Default entered, Defendants have filed Bankruptcy.

Johnson v Holmes/BOCC: Suit for damages in County car accident. County Attorney handling case.

Marks: Received authority January 1995, to proceed in circuit court in effort to obtain a Judgment for penalties and costs as well as an order requiring the restoration of wetlands disturbed by the Mark's activities.

RESOLVED CASES [1]

Olen Construction/Passport Samples: Received authority 9/94 to proceed against property owner and contractor for penalties for asbestos NESHAP violations, corrections performed. EPA has issued a Notice of Violation. Consent Order entered March 9 requiring payment of penalties and reimbursement of EPC costs.

(agenda\mar.95)

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON



ADMINISTRATIVE OFFICES, LEGAL &
WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

EXECUTIVE DIRECTOR

ROGER P. STEWART

March 16, 1995

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
POLLUTION RECOVERY TRUST FUND
AS OF MARCH 16, 1995

Fund Balance March 16, 1995 717,540.83

Encumbrances Against Fund Balance:

Carmichael Dump	30,000.00
Wetland Surveys	1,771.00
Lake Chapman Sea.	2,487.00
Seagrass Study	228,016.00
HCC/USF	13,687.00
Art. Reef	40,816.00
Misc.	50,000.00

Total of Encumbrances 366,777.00

Fund Balance Available March 16, 1995 \$350,763.83

ENVIRONMENTAL PROTECTION COMMISSION
 OF HILLSBOROUGH COUNTY
 CONTRIBUTIONS TO THE POLLUTION RECOVERY FUND
 FISCAL YEAR 94/95

MONTH	AIR MGMT DIV	ECOSYSTEMS DIV	WASTE MGMT DIV	WATER DIV	TOTAL
OCTOBER	12,635.00	0.00	29.69	21,591.90	34,256.59
NOVEMBER	2,135.00	100.00	2,557.38	23,708.47	28,500.85
DECEMBER	4,785.00	655.00	188.66	5,992.60	11,621.26
JANUARY	4,710.00	0.00	100.00	7,225.00	12,035.00
FEBRUARY	8,035.00	1,000.00	600.00	125.00	9,760.00
MARCH					0.00
APRIL					0.00
MAY					0.00
JUNE					0.00
JULY					0.00
AUGUST					0.00
SEPTEMBER					0.00
TOTAL	32,300.00	1,755.00	3,475.73	58,642.97	96,173.70

ENFORCEMENT COST RECOVERY

OCTOBER	1,666.90	0.00	911.45	645.33	3,223.68
NOVEMBER	677.11	817.84	1,472.53	2,131.04	5,098.52
DECEMBER	1,707.30	1,124.58	786.69	1,107.90	4,726.47
JANUARY	0.00	927.18	0.00	1,547.90	2,475.08
FEBRUARY	1,700.84	543.72	175.00	0.00	2,419.56
MARCH					0.00
APRIL					0.00
MAY					0.00
JUNE					0.00
JULY					0.00
AUGUST					0.00
SEPTEMBER					0.00
TOTAL	5,752.15	3,413.32	3,345.67	5,432.17	17,943.31

350,763.83

Current available balance in Pollution Recovery Fund as of 03-16-95 = \$

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON



ADMINISTRATIVE OFFICES, LEGAL &
WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

EXECUTIVE DIRECTOR

ROGER P. STEWART

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
ANALYSIS OF GARDINIER SETTLEMENT TRUST FUND*
AS OF MARCH 16, 1995

Fund Balance (Principal) 11/30/92	\$1,408,989.11
Interest Accrued To Date	135,441.00
	<hr/>
Fund Balance	1,544,430.11

Encumbrances Against Fund Balance:

Alafia River, Add. (SWIM/DEP)	300,000.00
McKay Bay Restoration (COT)	50,000.00
Cockroach Bay Exotic Con. (HCC)	85,084.00
Delany Creek Enhance. (H.C. Stormwater)	150,000.00
Bloomington Nature Trail	12,700.00
Oyster Reef/Williams Park	9,500.00

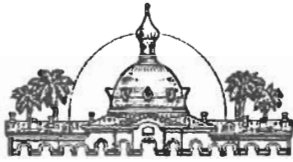
Total of Encumbrances	607,284.00
	<hr/>

Fund Balance Available March 16, 1995	\$937,146.11
	<hr/> <hr/>

Note:

Encumbrances are expenditures which have been approved by the EPC Board but the funds have not actually been removed from the Gardinier Settlement Trust Fund.

* Does not include funds held by DEP as encumbered prior to fund transfer to Hillsborough County 11/30/92.



Hillsborough
County

Board of County
Commissioners

JOE CHILLURA, JR.
COUNTYWIDE
COMMISSIONER

COUNTY CENTER
601 E. KENNEDY BOULEVARD
TAMPA, FLORIDA 33602

PHONE: (813) 272-5735
FAX: (813) 272-7054

MEMORANDUM

DATE: March 7, 1995

TO: Roger Stewart, Executive Director, EPC

FROM: Joe Chillura, County Commissioner 

SUBJECT: EPC Audit

.....
Roger,

Please put the EPC Audit on the agenda for the March 22, 1995, EPC meeting.

JC/mlc

REC'D

MAR 13 1995

ENV. PROT. COMM.
OF H.C.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY**

AGENDA: REQUEST FOR AUTHORITY

FROM: Waste Management Division; Michael Newman, Env. Enf. Spec. I

ENFORCEMENT CASE: Ward Oil Company, Inc., and James and Demetria Ward

RECOMMENDATION: Staff recommends that the EPC grant authority to take appropriate legal action, as necessary

Background and Nature of violations:

James and Demetria Ward own property located at 2701 E. Louisiana Ave., upon which Ward Oil Co. owns and operates a 12 tank aboveground petroleum distribution business regulated under Chapters 62-762 (formerly 17-761, and 17-61), Florida Administrative Code, and 1-12, Rules of the Commission.

Chapter 17-61 required that Ward Oil's three vehicular tank systems be upgraded with impervious secondary containment or be properly closed. Commission staff issued Ward Oil Non-Compliance letters on August 30, 1990, and September 18, 1990, for failure to place the tank systems within impervious containment.

On August 6, 1991, Commission staff issued Ward Oil and Mr. Ward Warning Notice #9903 for discharging oil onto the ground. Likewise, staff issued Warning Notice #9903 to Ward Oil on August 19, 1992 for disposing of petroleum products onto the ground, and failing to place three tank systems within impervious containment.

Since October 1991, Commission staff has attempted to negotiate a settlement agreement with Ward Oil. However, Ward Oil has repeatedly swapped environmental consultants and has delayed any substantive improvements to the facility.

At Present, facility violations include:

Discharges and contaminated soil must be contained, removed, and abated in accordance with Chapter 62-770, F.A.C.;

Three tank systems require upgrade or closure;

Leaking loading rack dispensers, piping, valves, and pumps require correction;

A stationary tanker truck requires registration, and;

Monthly visual inspections are required for each tank system, and must be documented and available upon request.

ACTION TAKEN BY THE COMMISSION

MEETING DATE _____

Approved Disapproved Deferred Until _____

SPECIAL INSTRUCTIONS: _____

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

AGENDA: REQUEST FOR AUTHORITY

FROM: Sheila A. Luce, Enforcement Coordinator, Waste Management Division, EPC

ENFORCEMENT CASE: M. Doganis Enterprises, Inc. #94-11579; DEP FAC #298508998

RECOMMENDATION: Staff recommends that the EPC grant authority to take appropriate legal action, as necessary

BACKGROUND and NATURE OF VIOLATION:

There are three abandoned bare steel underground storage tanks located at 17897 Boy Scout Road, Odessa. These tanks have been out-of-service since November 1992. The Commission staff has attempted to work with M. Doganis Enterprises, Inc. but has received no response. A non-compliance letter was issued on January 18, 1994. A warning notice was issued on February 16, 1994. A Notice of Intent to Initiate Enforcement was issued on July 8, 1994, and a Citation to Cease and Order to Correct violation was issued on November 9, 1994.

Improperly closed underground storage tanks are a potential pollution source which may contaminate the groundwater. Chapter 62-761, Florida Administrative Code and Chapter 1-12, Rules of the Commission require the proper closure of abandoned underground storage tanks.

DIAGRAM of SITE (if appropriate):

ACTION TAKEN BY THE COMMISSION

MEETING Date _____

Approved Disapproved Deferred Until _____

SPECIAL INSTRUCTIONS: _____

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

AGENDA: REQUEST FOR AUTHORITY

FROM: Sheila A. Luce, Enforcement Coordinator, Waste Management Division

ENFORCEMENT CASE: Balm Grocery; Nisa & Phanlobh Vichaiikul; Case #93-10012

RECOMMENDATION: Staff recommends that the EPC grant authority to take appropriate legal action, as necessary

BACKGROUND and NATURE OF VIOLATION:

The facility is located at 14934 Andrews Road, Balm, Florida. Commission staff has been working with the owners/operators since 1990. Non-compliance letter, warning notice, notice of intent to initiate enforcement, and citation have been issued but only minor problems have been corrected. There are 3 issues of concern: 1) Contamination of soils and groundwater were confirmed in August 1990. A contamination assessment has not been initiated. 2) There are 2 improperly abandoned tanks on site. They were improperly filled in place and a closure assessment was not completed. These tanks are also not registered. 3) The 3 active tank systems are not being monitored correctly. There are incomplete, incorrect, or no inventory records available. Monitoring well records are not always completed or available. Owners/operators have not demonstrated financial responsibility nor provided proof of third party liability insurance. The above are violations of Chapter 62-761, FAC, and Chapter 1-12, Rules of the Commission.

DIAGRAM of SITE (if appropriate):

ACTION TAKEN BY THE COMMISSION

MEETING Date _____

Approved Disapproved Deferred Until _____

SPECIAL INSTRUCTIONS: _____

COMMISSION

DOTTIE BERGER
PHYLLIS BUSANSKY
JOE CHILLURA
CHRIS HART
JIM NORMAN
ED TURANCHIK
SANDRA WILSON

EXECUTIVE DIRECTOR

ROGER P. STEWART



WATER MANAGEMENT DIVISION
1900 - 9TH AVENUE
TAMPA, FLORIDA 33605
TELEPHONE (813)272-5960
FAX (813)272-5157

AIR MANAGEMENT DIVISION
TELEPHONE (813)272-5530

WASTE MANAGEMENT DIVISION
TELEPHONE (813)272-5788

ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813)272-7104

MEMORANDUM

DATE: March 8, 1995

TO: EPC Chairman Joe Chillura

FROM: Sara M. Fotopulos, Chief Counsel *SMF*

SUBJECT: Amendment to Wetland Rule: Cockroach Bay

Pursuant to my understanding of the Commission's emergency vote on March 7, I prepared the following attached documents:

1. A Notice establishing March 22 as a Public Hearing to amend the Wetland Rule;
2. A draft copy of the rule amendment, prepared to reflect CAPMAT recommendations as best I can. Because I was not party to the discussions of CAPMAT, and because participating EPC staff are on vacation and unavailable to provide me with guidance this week, I am relying on CAPMAT feedback and comment.

As instructed, I arranged with the Tribune for publication of the Notice. However, today Commissioner Turanchik's office advised that the Public Hearing could not be held on March 22 afterall and asked that I cancel publication. I was able to do so. I understand that there may be additional discussion on the issue tomorrow, although I do not know of any scheduled EPC meeting.

ljh

enclosures

xc: EPC Members
Roger P. Stewart
Chuck Courtney

(RULES\1-11\1995.MEM)

**NOTICE OF PUBLIC HEARING
ENVIRONMENTAL PROTECTION COMMISSION of HILLSBOROUGH COUNTY**

CHAPTER 1 - 11, Wetland Rule

PURPOSE: To consider adoption of amendments to Parts II and III of Chapter 1-11, Rules of the Environmental Protection Commission of Hillsborough County, to provide further restrictions in the Cockroach Bay Aquatic Preserve for a temporary 5 year period pursuant to recommendations of the Cockroach Bay Aquatic Preserve Management Advisory Team.

SUMMARY: The proposed rule amendments would change the boundary of the designated recovery areas of Cockroach Bay and restrict access of all boats operating with internal combustion engines (with the exception of approved enforcement and research vessels): boats with engines up and not running, as well as boats poling or operated with electric motors would not be restricted; canoes would be allowed if operated with electric motors or paddles; air boats would be prohibited. The rule would also continue the monitoring of seagrass conditions and damage; institute a seagrass propcut restoration program; provide for additional boat traffic when restoration has been shown to have successfully restored at least 75% of the current damage; and provide for severability and an effective date.

SPECIFIC LEGAL AUTHORITY UNDER WHICH THE ADOPTION IS AUTHORIZED AND THE LAW BEING IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: Chapter 84-446, Laws of Florida, as amended.

NOTE: Any person who might want to appeal any decision made by the Environmental Protection Commission respecting any matter considered at the forthcoming public hearing is hereby advised that he will need a record of the proceedings and for such purposes he may need to insure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be based.

A public hearing will be held:

TIME: 6:30 P.M.
DATE: April 6, 1995
PLACE: County Commission Board Room
2nd Floor, County Center
601 East Kennedy Blvd
Tampa, Florida 33602

Joe Chillura, Chairperson
Environmental Protection Commission
of Hillsborough County

ATTEST:
RICHARD AKE
CLERK

By: _____
Deputy Clerk

A RULE

AMENDING PART III OF CHAPTER 1-11, WETLAND RULE, TO CHANGE THE BOUNDARY OF THE DESIGNATED RECOVERY AREAS OF THE COCKROACH BAY AQUATIC PRESERVE; RESTRICTING ACCESS OF ALL BOATS OPERATING WITH INTERNAL COMBUSTION ENGINES, EXCEPT FOR APPROVED ENFORCEMENT AND RESEARCH VESSELS AND SPECIFIED CHANNEL AREAS; CONTINUING SEAGRASS MONITORING; DEVELOPING AND IMPLEMENTING A SEAGRASS PROPCUT RESTORATION PROGRAM; PROVIDING FOR ADDITIONAL BOAT TRAFFIC WHEN 75% RESTORATION HAS BEEN SUCCESSFUL; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Environmental Protection Commission of Hillsborough County is empowered by Chapter 84-446, Laws of Florida to adopt and amend from time to time rules to protect the waters of the county, and

WHEREAS, the County's Cockroach Bay Aquatic Preserve Management Advisory Team (CAPMAT), upon review of the scientific monitoring results under the existing management plan for seagrass protections in Cockroach Bay, and upon hearing public comment regarding the program, recommends additional measures to protect and restore the seagrasses, and

WHEREAS, the Commission determines that it is reasonably necessary for the effective implementation of Chapter 84-446, Laws of Florida to amend its rule and management plan for protecting Cockroach Bay, and

WHEREAS, the Commission published due notice of its intent to consider adoption of amendments to its Wetland Rule, Chapter 1-11, in Hillsborough County,

NOW, THEREFORE, the Environmental Protection Commission of Hillsborough County, in regular public meeting this ___ day of _____, 1995, enacts the following:

1 **Section 1.** Section 1-11.30 of Chapter 1-11 of the Rules of the Commission is amended to read as
2 follows:

3 **1-11.30 INTENT REGARDING COCKROACH BAY RECOVERY AREAS**

4 It is the Commission's intent to temporarily restrict and regulate boating activities within the
5 Cockroach Bay area so that the marine wetlands and seagrasses have an opportunity to recover and restore
6 themselves as a significant public resource. The designation of restricted recovery areas made in this part
7 is limited to five ~~three~~ years and shall expire at the end of said time without further action of the Commission,
8 unless shortened or lengthened by subsequent act of the Commission. At such time as the propcut

1 restoration plan achieves restoration of at least 75% of the damage existing on April 6, 1995, as determined
2 by the Commission, additional boating access will be permitted.

3 **Section 2.** Section 1-11.31 of Chapter 1-11 of the Rules of the Commission is amended to read as
4 follows:

5 **1-11.31 DESIGNATION OF COCKROACH BAY RECOVERY AREAS**

6 1. With the exception of the marked portions of Cockroach Channel to the boat ramp, the
7 marked channel to Snake Key, and the marked channel to Hole-in-the-Wall Pass, the portion of the
8 Cockroach Bay Aquatic Preserve extending from the Hillsborough-Manatee county line northward to Sand
9 Key at the mouth of the Little Manatee River, is designated as the Cockroach Bay Recovery Area.

10 ~~1. Recovery Area #1 includes the area of shallow depths extending from the southern point~~
11 ~~of Camp Key to Cockroach Channel and around Paradise Key, excluding Cockroach Channel.~~

12 ~~2. Recovery Area #2 includes the broad area within Cockroach Bay of interconnected~~
13 ~~mangrove islands, shallow depths exposed at lowest tides (e.g., South Stop and the area between Big~~
14 ~~Cockroach Pass and Hole in the Wall Pass), and numerous constricted passes (e.g., Buoy Pass, Beacon~~
15 ~~Pass).~~

16 ~~3. Recovery Areas #3 and #4 include the shallow depths on both the north and south sides~~
17 ~~of Hole in the Wall Pass in Cockroach Bay, excluding a 20 foot wide channel through the pass.~~

18 4.2. The boundaries of the above designated Recovery Areas will be depicted on maps of the
19 Cockroach Bay area, made available at the Commission offices and posted at various boat ramps, public
20 docks and mooring facilities; and will be further identified by channel markers and tide markers located at
21 the appropriate sites.

22 **Section 3.** Section 1-11.32 of Chapter 1-11 of the Rules of the Commission is amended to read as
23 follows:

24 **1-11.32 PROHIBITIONS**

25 1. Except for authorized research and law enforcement vessels, all watercraft operating with
26 internal combustion engines are prohibited in the designated Cockroach Bay Recovery Areas ~~#1, #3 and~~
27 ~~#4~~. The marked navigation channels to of Hole-in-the-Wall Pass, the portion of Cockroach Channel to the
28 boat ramp, and the channel to Snake Key are not included in this prohibition. Boats with engines up and
29 not running, as well as boats poling or operating with electric motors, and canoes if operated with electric
30 motors or paddles, are not restricted. Airboats are prohibited. All watercraft with internal combustion
31 engines, except for authorized research and law enforcement vessels, are prohibited in designated area #2.

1 2. Any vessel found within the a designated Cockroach Bay Recovery Area at any time, must
2 identify itself, its home address, and the vessel registration number upon demand by a law enforcement
3 officer, the preserve manager or Commission staff. Failure to provide the appropriate information shall be
4 in violation of this rule and subject to enforcement.

5 **Section 4.** Section 1-11.33 of Chapter 1-11 of the Rules of the Commission is amended to read as
6 follows:

7 **1-11.33 MANAGEMENT PLAN FOR COCKROACH BAY RECOVERY AREAS; MONITORING**

8 1. Public education programs identified in the final Task Force Report and 1994 Annual Status
9 Report, including signage, pamphlets, and notices, shall be implemented in coordination with other agencies,
10 specific to Cockroach Bay and its associated ecological functions.

11 ~~2. Hole in the Wall Pass will be marked so that vessels will be able to identify and remain within~~
12 ~~its boundaries.~~

13 ~~2. 3-~~ Tide markers will be designed and installed at the perimeters of the Cockroach Bay
14 Recovery Areas to alert boaters of the restrictions and aid in navigating unrestricted channels.

15 ~~3. 4-~~ Marine Deputies and an Aquatic Preserve Manager shall work together to assure a maximum
16 reasonable regulatory presence in the designated recovery areas, day and night. In the course of their
17 responsibilities, they will make available to the public educational materials regarding the importance of
18 marine ecosystems and seagrasses.

19 ~~4. 5-~~ The aerial photographic surveillance A monitoring plan which was shall be developed to
20 determine and demonstrate the effectiveness of prohibiting boat traffic in the Cockroach Bay Recovery Areas
21 shall be continued. ~~The Task Force Report and 1994 Annual Status Report identify aerial photography,~~
22 ~~identification of reference sites, and regular monitoring of specific parameters for comparative purposes.~~
23 Commission staff and/or an authorized contractor shall implement the monitoring plan and make
24 appropriate reports to the Commission.

25 ~~5. 6-~~ On site monitors shall concentrate on evaluating the success of restoration experiments for
26 propeller scars in formerly designated recovery areas 1-4. ~~Appropriate parameters and technical criteria~~
27 ~~regarding vegetative cover, species diversity, and biomass will be developed and monitored to determine~~
28 ~~the recovery success of the four designated recovery areas.~~

29 6. A restoration plan shall be developed and implemented to encourage the recovery of the
30 existing seagrass damage in formerly designated recovery areas, as identified by annual monitoring reports
31 referenced in paragraph 4.

32 7. Periodically, or at least annually at about the anniversary date of the designation of

DRAFT amended 3/16/95

1 Cockroach Bay Recovery Areas, the Commission shall consider at a regular meeting, the effectiveness of
2 the management plan in assisting recovery of seagrasses, and make such changes to the plan as necessary.

3 **Section 5.** It is declared to be the intent of the Environmental Protection Commission that the
4 provisions of this rule be severable. If one or more of the sections, subsection, sentences, clauses or
5 provisions are held invalid, for whatever reason, the remaining portions shall not be affected.

6 **Section 6.** This rule shall be effective upon approval in accordance with law.

[rules\1-11\1995.amd]