

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
WETLAND IMPACT APPROVAL AND
MITIGATION AGREEMENT**

Prepared by: T. Andrew Zodrow, Esq.
Return to: Environmental Protection Commission
3629 Queen Palm Dr.
Tampa, Florida, 33619
Attn: Wetlands and Watershed Management Division

- For recording purposes only -

This agreement dated _____ (date signed by Executive Director) is made and entered into by the Executive Director of the Environmental Protection Commission of Hillsborough County (EPC) pursuant to Chapter 84-446, Laws of Florida, as amended, and the EPC Wetland Rule Chapter 1-11, and _____, (Owner/Applicant) owner of the property described in **attachment A** (location of mitigation area(s) and/or Conservation Easement; include legal description and sketch).

And in consideration of the Executive Director's authorization to develop or impact the wetland(s) or other surface water(s) located on the following described property: (location of area(s) to be developed or impacted; include folio, section, township, range):

as described in _____,
Owner/Applicant agrees to the following conditions: (project name)

- (a) Upon the commencement of wetland or other surface water impacts, perform or construct the wetland mitigation on the property identified in Attachment A according to the specifications of the approved plan (Plan), identified as _____ (plan name including the final revision date of the mitigation plans received by the EPC) and kept on file with the EPC;
- (b) Perform the monitoring as required and any corrections or modifications to the mitigation in order to achieve the success specifications agreed upon in the Plan;
- (c) Notify in writing the Director of the Wetlands Management Division of the exact start and completion dates for approved disturbances and for the construction of mitigation areas;
- (d) The owner of the mitigation area shall provide actual notice of this Mitigation Agreement and any Conservation Easement to any purchaser of the mitigation area and/or area of the Conservation Easement prior to any conveyance;
- (e) In the event of sale of the mitigation area, the owner of the mitigation area shall specifically retain the right to complete the terms of this Mitigation Agreement, or to otherwise provide for the satisfactory

completion of the terms of the Plan pursuant to this Mitigation Agreement, unless the agreement is assigned to and assumed by another party and specifically agreed to by written agreement acceptable to the Executive Director;

- (f) Provide public notice of the EPC's interest in the mitigation area at Applicant's own expense by (i) recording this Mitigation Agreement in the public records and by (ii) appropriate notation on the plat or plan. In addition, as provided by Sec. 1-11.08(6)(e)-(f), Rules of the EPC the fee simple property owner must execute and record an EPC approved Conservation Easement over any mitigation area(s) totaling 0.5 acres or greater and all upland areas utilized for the purpose of mitigation and;
- (g) Pursuant to Section 1-11.07, Rules of the EPC, owner agrees to provide prior to commencing the proposed impact of this project, an Irrevocable Standby Letter of Credit or equivalent financial security for the term of the Plan, in the amount of \$_____, to ensure compliance with this agreement and the Plan.
- (h) In addition, this Agreement hereby expressly incorporates, and the Owner/Applicant agrees to the conditions set forth in, the EPC's letter dated _____, conceptually approving the proposed impacts.
- (i) Owner/Applicant agrees to restore the impacted wetland or other surface water in the event the Owner/Applicant fails to construct the proposed project in substantial conformance with the approved construction plans on file with the EPC.
- (j) The EPC Executive Director may revoke this authorization if he finds that the Owner/Applicant or its agent:
 - (a) submitted false or inaccurate information in the application or reports, or
 - (b) has violated law, EPC orders, rules or permit conditions, or
 - (c) has refused lawful inspection.

In recognition that the proposed impact to the wetland or other surface water is necessary for the reasonable use of the Owner/Applicant's property, as provided in Chapter III of the adopted Basis of Review for Authorization of Activities Pursuant to Chapter 1-11- Wetlands, and in consideration of the agreement to complete the mitigation according to the specifications of the Plan and as agreed above, the Executive Director has determined that the proposed Plan would provide adequate protection of the environmental benefits, pursuant to Section 1-11.07, Rules of the EPC, and hereby gives authorization to the Applicant to impact the wetland or other surface water as proposed, conditioned upon the specifications of that proposal and this agreement.

It is agreed that **THIS AUTHORIZATION WILL EXPIRE ON** _____; however, if, pursuant to this authorization, any impact to the wetland or other surface water approved by this agreement has occurred prior to that time, the wetland mitigation referenced in the Plan shall be implemented in its entirety. Extensions of time for this authorization may be granted where a written request is provided. Such request shall be considered at the sole discretion of the Executive Director or authorized agent. Failure to comply with the terms of this agreement or to implement the Plan according to its specifications shall be a violation of Chapter 84-446, Laws of Florida and is enforceable accordingly, as well as by action on the contract. This Agreement shall take effect upon the date of execution by the Executive Director and shall constitute final agency action by the EPC. The terms and conditions set forth in this Agreement may be enforced in a court of competent jurisdiction under Section 18(5) of Chapter 84-446, Laws of Florida, as amended, as a final order of the agency.

The Owner/Applicant shall allow all authorized representatives of the EPC access on the property at

reasonable times for purposes of determining compliance with this Agreement and the rules of the EPC.

Entry into this Agreement does not relieve the Owner/Applicant of the need to comply with any applicable federal, state, and local laws, regulations, and ordinances. The entry of this Agreement does not abrogate the rights of aggrieved persons who are not parties to this Agreement. Although not required by law, it is recommended that the Owner/Applicant publish at its own expense the following notice of this agency action in a newspaper of general circulation as identified in Section 1-2.051(4), Rules of the EPC in Hillsborough County, Florida so as to provide constructive notice to potentially aggrieved parties and to limit the time period for filing an administrative appeal. Failure to publish this notice may result in third parties being able to challenge this Agreement in the future. It is also recommended that no wetland or other surface water impacts occur until twenty days after publication of this notice.

ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY
NOTICE OF MITIGATION AGREEMENT

The Environmental Protection Commission of Hillsborough County gives notice of agency action of entering into a Mitigation Agreement with _____ pursuant to Chapter 84-446, Laws of Florida, as amended. The Mitigation Agreement addresses approval for wetland impacts located at [describe location of the development or property] _____. The Mitigation Agreement is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Environmental Protection Commission, 3629 Queen Palm Dr., Tampa, Florida 33619. Pursuant to Section 9, Chapter 84-446, Laws of Florida, and Rule 1-2.30, Rules of the EPC, any person whose interests protected by Chapter 84-446, Laws of Florida, are adversely affected by this action or are otherwise aggrieved by this action, has the right to appeal this agreement in accordance with Part IV of Rule 1-2, Rules of the EPC. Written notice of appeal must be received by the Chairperson of the EPC, at 601 East Kennedy Blvd., Tampa, Florida 33602, within 20 days of the date of this publication.

No modifications of the terms of this Agreement shall be effective until reduced to writing and executed by both the Owner/Applicant and the EPC. The parties to the Agreement have read the foregoing, understand its terms and agree to be bound thereto. The provisions of this Agreement shall apply to and be binding upon the parties, and their successors and assigns. It is the intention of the Owner/Applicant that this agreement shall touch and concern both the impact area and the mitigation areas described above, run with the land and with the title to the properties, and shall apply to and be binding upon and inure to the benefit of the successors and assigns of the Owner/Applicant, and to EPC, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the properties or any part thereof. The Owner/Applicant waive[s] its right to a hearing, judicial review, or appeal of the terms of this Agreement, except to the extent of proving compliance with this Agreement.

DATE

Signature: _____

Print: _____

Applicant /Agent Signature & Title
(If by agent, Power of Attorney required)

Mailing Address

(Corporate Seal)

If signing on behalf of yourself please notarize below, however, if signing on behalf of a corporation please sign and notarize on the next page.

STATE OF _____
COUNTY OF _____

Before me this _____ day of _____, 20____, appeared _____ who is personally known to me or who produced _____ as identification and who acknowledged to me under oath to be the person who signed the foregoing Agreement.

NOTARY PUBLIC:
Signature _____
Print _____
My Commission Expires: _____

AFFIDAVIT

I, undersigned (name) _____, (title) _____ of _____ (name of corporation), and doing business at (address) _____, being first sworn, do affirm that I am duly authorized under the articles of incorporation and by-laws of the corporation to bind it by my signature to this Mitigation Agreement and that it is my signature which first appears above on behalf of the Applicant.

Affiant's signature: _____

Affiant's printed name: _____

STATE OF _____
COUNTY OF _____

The signature on the foregoing instrument was acknowledged before me this _____ (date) by _____ (name and title of officer or agent), of _____ (name of corporation), a corporation authorized to conduct business in the State of Florida, on behalf of the corporation. He/she is personally known to me or produced _____ (type of ID) as identification, and who did _____ take an oath.

Notary Public _____

(Notary's Signature)
(Notary's Name - typed, printed or stamped)
(Title or rank) **(Notary Seal)**
(Serial number, if any)
(Date Commission Expires)

*****If the owner of the property described in Attachment A (Mitigation Area) is different than the Applicant then owner of the Mitigation Area must also sign below:**

IN WITNESS WHEREOF, the Owner has executed this Wetland Impact Approval and Mitigation Agreement on the ____ day of _____.

Signed, sealed and delivered
in our presence as witnesses:

(OWNER OF MITIGATION AREA)

Print Witness Name: _____
Date: _____

By: _____
Print Name: _____
Title: _____

Print Witness Name: _____
Date: _____

DATED

RICHARD D. GARRITY, Ph.D., Executive Director
Environmental Protection Commission
of Hillsborough County
3629 Queen Palm Dr.
Tampa, Florida 33619

Note – this page does not need to be recorded in the public records

NOTICE OF RIGHTS

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act) and Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough County (EPC), any person whose interests are protected by Chapter 84-446, Laws of Florida and who is adversely affected or otherwise aggrieved by this action has the right to appeal this action. **Written Notice of Appeal for a Section 9 Administrative Hearing must be received by the Chairperson of the EPC, at 601 East Kennedy Blvd., Tampa, Florida 33602, within twenty (20) days of receipt of this notice** and pursuant to Section 1-2.30(c), Rules of the EPC, must include the following information:

- (1) The name, address, and telephone number of the Appellant; the name, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by this Mitigation Agreement (agency decision);
- (2) A statement of when and how the Appellant received notice of the agency decision;
- (3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;
- (4) The specific facts the Appellant contends warrant reversal or modification of the agency decision;
- (5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the agency decision; and
- (6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the agency decision.

A copy of the Notice of Appeal for a Section 9 Administrative Hearing must also be sent to the EPC's Legal Department, Environmental Protection Commission of Hillsborough County, 3629 Queen Palm Dr., Tampa, Florida 33619, facsimile (813) 627-2602, phone (813) 627-2600. Pursuant to Section 1-2.31, Rules of the EPC, you may request additional time to file a Notice of Appeal by filing a Request for Extension of Time to file a Notice of Appeal. The Request for Extension of Time must be sent to and received by the EPC Legal Department at the address above within twenty (20) days of receipt of this notice.

This Mitigation Agreement (Order) is final unless the party timely files, pursuant to Chapter 1-2, Part IV, Rules of the EPC, a Notice of Appeal or files a Request for Extension of Time to file a Notice of Appeal for a formal hearing. Pursuant to Section 1-2.31(e), Rules of the EPC, failure to request an administrative hearing by filing a Notice of Appeal within 20 days after receipt of this Order shall constitute a waiver of one's right to have an appeal heard, and this unappealed Order shall automatically become a final and enforceable Order of the Commission.

Copies of EPC rules referenced in this Mitigation Agreement may be examined at any EPC office, be found on the internet site for the agency at <http://www.epchc.org> or may be obtained by written request to the EPC Legal Department at 3629 Queen Palm Dr., Tampa, Florida 33619.