

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

APPEAL OF:

EPC # LSTO01-028

SAM STONE.

FINAL ADMINISTRATIVE ORDER

THIS APPEAL, pursuant to Section 9 of Chapter 84-446, as amended, Laws of Florida and Section 1-2.20, Rules of the EPC, having come before the Environmental Protection Commission of Hillsborough County (Commission) upon the Findings of Fact, Conclusions of Law and Recommendation (Recommended Order) of the Hearing Officer appointed herein, Robert Fraser, Esquire, the Commission having considered said Recommended Order, a copy of which is attached hereto and made a part hereof, and the Commission having considered the Executive Director's Exceptions To Recommended Order pursuant to Section 1-2.35 Rules of the EPC, it is thereupon,

ORDERED, that the Recommended Order of the Hearing Officer be adopted with the following additional Finding Of Fact and Exception:

1. An additional Finding of Fact, stipulated to by the parties at the hearing, (Tr: 7-10) is hereby included, specifically, that the estoppel subject to this action expired on May 17, 2000 and any subsequent activities occurring in EPC jurisdictional wetlands are subject to the rules and regulation of the Environmental Protection Commission.


2. Paragraph 6 of the Conclusions of Law is stricken as an incorrect legal conclusion, not supported by Chapter 84-446, as amended, Laws of Florida, or the rules of the Commission.

3. All remaining portions of the Hearing Officer's Recommended Order are hereby adopted in their entirety.

NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of the order in accordance with 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, 1900 9th Ave., Tampa, FL 33605, 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 5 day of December, 2002.


Jan K. Platt, Chairman
Environmental Protection
Commission of Hillsborough
County

TO: T. Andrew Zodrow, Esquire
Environmental Protection
Commission
1900 9th Ave.
Tampa, FL 33605
(813) 272-5157 (fax no.)

R. Keith Allen, Esquire
4675 Ponce De Leon Blvd.
Suite 302
Coral Gables, FL 33146
(305) 662-2787 (fax no.)

Robert Fraser, Esquire
EPC Hearing Officer
213 Providence Road
Brandon, FL 33511

BEFORE THE ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY

APPEAL OF:

EPC# LSTO01-028

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

A final hearing was held in Tampa, Florida, on September 6, 2002 by Robert Fraser, Esquire, the assigned Hearing Officer for the Environmental Protection Commission of Hillsborough County (EPC), on the Request for Relief to Determine Estoppel filed by Appellant Sam Stone.

APPEARANCE

For Appellant: R. Keith Allen, Esquire
4675 Ponce De Leon Blvd.
Ste. 302
Coral Gables, FL 33146

For EPC: T. Andrew Zodrow, Esquire
Environmental Protection Commission
1900 9th Avenue
Tampa, FL 33605

STATEMENT OF THE ISSUE

Whether the Executive Director of EPC, pursuant to Part II, Rule 1-2.20, Rules of the EPC, is estopped from enforcing its wetland regulations for specific activities conducted by the Appellant based on previous actions of the EPC staff.

PRELIMINARY STATEMENT

1. Appellant stipulated that the property in question constitutes wetlands at the September 6, 2002 final hearing. As stipulated by the parties, the current wetland boundary is

defined as the green shaded area on EPC Exhibit 2. [Transcript Page No.: 6, hereinafter (Tr: 6)]
The parties stipulated that the issue of "disking" the property was not at issue in this proceeding
and any decision will not prejudice either party in future consideration. (Tr: 9)

WITNESSES AND EXPERTISE

EPC called Mr. Robert Owens, who was accepted as an expert in the areas of wetland
boundary determinations and the criteria in the EPC wetland rule ch.1-11 for compliance. (Tr:30)
Appellant appeared as his only witness. (Tr: 89)

EXHIBITS

EPC entered nine exhibits into evidence. The Appellant entered five exhibits into
evidence.

FINDINGS OF FACTS

1. The property at issue is located at 4614 Shepherd Road, Folio #80993.0600
(Property), Section 11, Township 28, Range 21, in Hillsborough County, Florida. (Tr: 31, EPC
Exhibits 4-8) Appellant owns the property and keeps cattle on it. (Tr: 31 & 89) The property
contains wetlands subject to the jurisdiction of the EPC pursuant to the statewide wetland
jurisdiction methodology provided in ch. 62-340, Florida Administrative Code, and adopted in
Section 1-11.04, Rules of the EPC. (Tr: 6)

2. As stipulated by the parties, the area highlighted in green on the EPC's Exhibit 2
is subject to EPC wetland jurisdiction. (Tr: 6)

3. On September 17, 1996, EPC issued Appellant Sam Stone Warning Notice
#18242 for dredging and filling in EPC jurisdictional wetlands on the property without
authorization of the EPC Executive Director. (EPC Exhibit 4)

4. On December 1, 1999 Mr. Owens provided notice of the wetlands limits to Appellant on the southern boundary of the property after the EPC received a complaint from an anonymous person. (Tr: 39, EPC Exhibit 5)

5. On February 24, 2000 the EPC issued Warning Notice #22331 to Appellant for possible filling in wetlands and failing to control potential erosion of materials into wetlands. (Tr: 42, EPC Exhibit 6) The warning involved fill dirt placed on the property. An EPC staff person could not determine whether the fill was located in jurisdictional wetlands without entering the property. (Tr: 41-42)

6. On February 29, 2000, Appellant gave the staff person, Ms. Jennifer Stout, permission to enter the site. Ms. Stout determined that the area containing the fill was not EPC jurisdictional wetlands. A potential for erosion of the material into the adjacent wetland existed, though. (Tr: 42-43) Appellant stabilized the fill. (Tr: 44) On March 28, 2000, Ms. Stout inspected and found that the corrective actions had been completed. (Tr: 44, EPC Exhibit 7)

7. During her visit on February 29, 2000, Ms. Stout walked at least a portion of Appellant's fence line on the east and west boundaries. (EPC Exhibit 3, at 30) Mr. Stone recalled that Ms. Stout told him that at least a portion of his fence lines did not lie in wetlands so he could bolster them with fill. (Tr: 100) On April 18, 2000, Ms. Stout sent a closure letter to Appellant stating that "it was determined that the subject area is not EPC jurisdictional wetlands" and the matter was closed. (Appellant's Exhibit 1)

8. On May 17, 2000, in response to a citizen complaint, EPC staff again inspected the property and observed EPC jurisdictional wetlands in a different area were filled without the authorization of the Executive Director. EPC issued Warning Notice #22405 to Appellant on-

site for this violation. (Tr: 49, EPC Exhibit 8) During the visit on May 17, 2000, Appellant was again informed of the southern wetland boundary by Mr. Owens. (Tr: 52, Exhibit 8)

9. The warning notice gave rise to this Appeal and involves fill placed in the fence lines on the east and west boundaries of the property. (Tr: 17)

10. Appellant knew his property contained wetlands. EPC staff, however, never provided a binding wetland delineation. (Tr: 49) Mr. Owens provided the only informal or "violation" delineation during visits to the property on December 1, 1999 and May 17, 2000. Mr. Owens delineated only the southern boundary. (Tr: 38-39; EPC Exhibit 5) The evidence contained no indication that the EPC staff provided delineations of the wetlands portion of Appellant's property on the east or west boundaries.

11. In addition, every complaint, report, conversation record, warning notice or inspection report pertaining to the property referred to it only generally and did not inform Appellant of any alleged violation's location. Therefore, Appellant knew his property contained wetlands, but the staff failed to delineate them with any precision, particularly those on the east and west boundaries.

12. The evidence establishes that Appellant cooperated with the EPC staff and followed their directions in every instance except for the requirement that he remove fill from the east and west fence lines in accordance with the warning notice at issue in this Appeal. (EPC Exhibit 8)

13. Under these circumstances, Appellant reasonably relied in good faith on Ms. Stout's letter and her statements during the February 29, 2000 visit in filling portions of the fence

lines on the east and west boundaries of the property.

CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction over the parties to and the subject matter of this proceeding pursuant to EPC's enabling act, Section 9, ch. 84-446, Laws of Florida, as amended, (EPC Act) and Section 1-2.20, Rules of the EPC.

2. The applicant has the burden of establishing the estoppel criteria referenced in paragraph 3 below. Section 1-2.20(4), Rules of the EPC.

3. Pursuant to Section 1-2.20, Rules of the EPC, a request for relief for estoppel rights requires the following criteria:

- (a) There was a valid, unexpired act of the EPC Commission, EPC staff, or the Executive Director, upon which the applicant reasonably relied in good faith; and that
- (b) The applicant made a substantial change in position or incurred extensive obligations or expenses in reliance upon that valid, unexpired act; and that;
- (c) Denying the applicant a permit or approval under the rules adopted pursuant to ch. 84-446, or issuing a permit or approval consistent with the criteria and standards of said rules, would destroy his rights and be inequitable, unjust or fundamentally unfair.

4. The EPC stipulated that the only controversy in this appeal regards the existence of a valid, unexpired act of the EPC staff upon which the applicant reasonably relied in good faith as required by 1-2.20 (a). The EPC stipulated that Mr. Stone's case satisfied the requirements of 1-2.20 (b) and (c). (Tr: 23)

5. As discussed in the Findings of Fact, Appellant established by a preponderance or greater weight of the evidence a valid act of the EPC staff upon which he reasonably relied in good faith, Ms. Stout's letter in light of her visit on February 29, 2000. (Appellant's Exhibit 1)

6. Ultimate responsibility for delineating wetlands never moves from the EPC staff

to the property owner. Likewise, the EPC bears responsibility for communicating delineations to the property owner in clear terms. *See* Section 14, ch. 84-446, Laws of Florida.

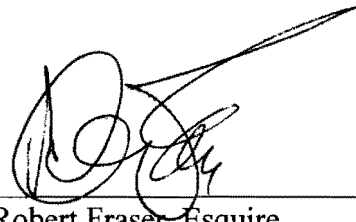
7. Mr. Stone reasonably relied on Ms. Stout's letter in filling the east and west boundaries under the impression created by her that they did not lie in jurisdictional wetlands.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, the undersigned Hearing Officer RECOMMENDS that the EPC enter a Final Order upholding Appellant's claim of estoppel and dismissing the violation.

Respectfully submitted,

Dated: 10-23-02



Robert Fraser, Esquire
Hearing Officer for
Environmental Protection Commission of
Hillsborough County
213 Providence Road
Brandon, Florida 33511

cc: T. Andrew Zodrow, Esquire
R. Keith Allen, Esquire