

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HARBOR ESTATES ASSOCIATES, INC.)
)
Petitioner,)
)
vs.) CASE NO. 89-2741
)
E. BURKE AND STATE OF FLORIDA)
DEPARTMENT OF ENVIRONMENTAL)
REGULATION,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to written Notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Daniel Manry, held a formal hearing in the above-styled case on January 30, 1990, in Stuart, Florida.

APPEARANCES

For Petitioner: Patricia V. Bartell
Qualified Representative
615 Southeast St. Lucie Street
Stuart, Florida 34997

For Respondent J. A. Jurgens, Esquire
Edmund Burke: Jones, Foster, Johnson & Stubbs, P.A.
505 South Flagler Drive
West Palm Beach, Florida 33402

For Respondent, Patricia E. Comer, Attorney
Department of Department of Environmental Regulation
Environmental 2600 Blair Stone Road
Regulation: Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

This proceeding concerns an Intent to Issue a dredge and fill permit given by the Department of Environmental Regulation ("DER") to Respondent, Edmund Burke ("Burke"), for construction of a retaining wall and wooden pile-supported bridge crossing a portion of the South Fork of the St. Lucie River in Martin County, Florida. The ultimate issues for determination are whether Petitioner has standing to challenge the proposed DER action, and if so, whether the proposed agency action complies with the requirements of Sections 403.91 through 403.938, Florida Statutes, and applicable rules.

PRELIMINARY STATEMENT

The Intent to Issue given by DER to Respondent, Burke, was dated April 28, 1989. Petitioner filed a Petition for Formal Administrative Hearing on Intent

to Issue Permit on May 11, 1989 ("Petition"). The matter was transferred to the Division of Administrative Hearings for assignment of a hearing officer on May 23, 1989. The matter was set for formal hearing on January 30, 1990, by Notice of Hearing issued on October 31, 1989, and transferred to the undersigned on January 29, 1990. The formal hearing was conducted on January 30, 1990.

Respondent, Burke, presented the testimony of two expert witnesses. Charles Cangianelli, Consultant, Associated Marine Consultants, was accepted as an expert in marine contracting and DER dredge and fill permitting. Michael Goralski, Environmental Specialist, DER, was accepted as an expert in dredge and fill permitting, wetland resources, and DER wetland jurisdiction. Respondent, DER, also presented testimony by Mr. Goralski. Respondents introduced DER Exhibits 1, 2a, 3-5, 6B and 7 which were admitted into evidence.

Petitioner presented the testimony of five witnesses. In addition to the testimony of Mr. Cangianelli and Mr. Goralski, Petitioner presented the testimony of: Commissioner Mary Dawson, Martin County Commissioner; Bob Nicholas; and William Burr. Mr. Burr testified in his capacity as a representative of the Martin County Audubon Society.

Petitioner presented 26 exhibits to be admitted in evidence. Petitioner's Exhibits 1-19, 24 and 25 were admitted in evidence at the formal hearing. Ruling was reserved on Petitioner's Exhibits 20, 22, and 26 for disposition in this Recommended Order. Petitioner's Exhibit 21 was not admitted into evidence. Petitioner's Exhibit 23 was withdrawn. Petitioner was instructed to file a motion for leave to file a late-filed exhibit which was not identified by Petitioner at the formal hearing. The motion was not timely filed. Ruling on Respondent, Burke's, ore tenus Motion to Dismiss was reserved for disposition in this Recommended Order.

Several post-hearing documents were filed by the parties. Petitioner filed its Response to Request, concerning its unidentified late filed exhibit, on February 1, 1990. Respondent, Burke, filed a Motion to Strike Response to Request on February 6, 1990. Respondent, DER, filed its Motion to Strike Petitioner's Exhibit 26 concerning a proposed Martin County Comprehensive Plan on February 2, 1990. Respondent, Burke, filed its Motion for Attorneys Fees and Costs on February 22, 1990. The post-hearing documents filed by the parties are disposed of in this Recommended Order.

The transcript of the hearing was filed on February 13, 1990. Proposed findings of facts and conclusions of law were timely filed by Petitioner on February 21, 1990. On the same date, Petitioner filed its Closing Statement, Proposed Recommended Order, Memorandum of Law Admissible Evidence, Memorandum of Law concerning Respondent, Burke's, Motion to Strike, Memorandum of Law regarding standing, and its Memorandum on Board of Trustees of the Internal Improvement Trust Fund of the State of FL v. Barnett (13 FLW 2590)(sic). Separate Proposed Recommended Orders were filed by Respondent, Burke, on February 22, 1990, and by Respondent, DER, on February 21, 1990. The parties' proposed findings of facts are addressed in the Appendix to this Recommended Order.

FINDINGS OF FACT

1. Respondent, Edmund Burke, on January 15, 1988, filed with the Department of Environmental Regulation ("DER") application number 431441608 for a permit to construct a permanent, pile supported, wooden bridge approximately 80 feet long and 10 feet wide connecting the mainland with an island in the

South Fork of the St. Lucie River in Martin County, Florida. The bridge was to span a 50 foot canal or creek ("channel") in the River. One of two retaining walls was to be located on the mainland peninsula. The other retaining wall was to be located on the island (the "initial project").

2. Between January 15, 1988, and April 28, 1989, the initial project was modified by Respondent, Burke, to satisfy DER concerns over potential impacts, including secondary impacts, relevant to the application. The width of the bridge was reduced from 10 feet to 6 feet. The retaining wall initially planned at the point where the bridge intersects the island was eliminated. The retaining wall on the mainland side of the bridge was relocated above mean high water. Sixty feet of the proposed bridge runs from mean high water to mean high water. An additional 10 feet on each end of the bridge is located above mean high water. The project remained a permanent, pile supported, wooden bridge (the "modified project").

3. The Intent to Issue, dated April 28, 1989, indicated that the modifications required by DER had been made, that the modifications satisfied DER concerns relevant to the initial project, and that DER intended to issue a permit for construction of the modified project. The elimination of the retaining wall obviated any necessity for backfill on the island. The reduction in the width of the bridge virtually eliminated the secondary impacts on the surrounding habitat, resulted in less shading of the water, and precluded vehicular traffic over the bridge.

4. The final modification that was "necessary in order for [DER] to approve this application" was the reduction in the width of the bridge from 10 feet to 6 feet. Petitioner's Exhibit 17. DER's requirement for this final modification was communicated to Mr. Cangianelli in a telephone conversation on April 6, 1989 (Petitioner's Exhibit 18), and memorialized in a letter to Respondent, Burke, on April 14, 1989 (Petitioner's Exhibit 17). The final modification was made, and the Intent to Issue was written on April 28, 1989.

Petitioner's Case.

5. Property commonly known as Harbor Estates is adjacent to the site of the modified project. A constructed harbor and contiguous park are located within the boundaries of Harbor Estates. Both are used by residents of Harbor Estates and both are proximate to the site of the modified project. The harbor entrance and site of the modified project are located on opposite sides of a peninsula approximately 40 feet wide and approximately 125 feet long.

6. Boats operated by residents of Harbor Estates that can navigate under the modified project need only travel the length of the peninsula, a distance of approximately 125 feet through the channel, in order to reach the harbor entrance. Boats operated by residents of Harbor Estates that cannot navigate under the proposed bridge must travel around the island, a distance of approximately 1800 feet in the main body of the St. Lucie River, in order to reach the harbor entrance. However, Petitioner presented no evidence that prior to the construction of the bridge the channel was navigable by boats not capable of passing under the bridge after the bridge was completed.

7. Petitioner, Harbor Estates Associates, Inc., submitted no evidence to show facts necessary to sustain the pleadings in the Petition concerning the inadequacy of modifications required by DER. Of Petitioner's 26 exhibits, Exhibits 1-19, 24 and 25 were relevant to the initial project but were not material to claims in the Petition concerning the inadequacy of the

modifications required by DER. Petitioner's Exhibit 20 was cumulative of DER's Exhibit 6B. Petitioner's Exhibits 22 and 26, respectively, concern a 1980 bridge permit and a Proposed Comprehensive Growth Management Plan for Martin County, Florida.

8. Petitioner offered no expert testimony in support of the pleadings in the Petition including assertions that: the modified project will have a direct adverse impact upon water quality and the welfare or property of others; the channel is navigable by deep-draft motor vessels; the modified project will result in shoaling that will have to be corrected at the expense of Harbor Estates; the modified project will result in prohibited destruction of mangroves; or that the modified project will cause any of the other specific adverse effects described in the Petition.

9. The testimony of fact witnesses called by Petitioner was not material to Petitioner's claims that modifications required by DER were inadequate. The testimony of Bob Nicholas was relevant to allegations of prior violations but was not dispositive of any issue concerning the adequacy of modifications required by DER. The testimony of William Burr was admitted as rebuttal testimony relevant to precedents in the general area of the modified project but failed to address the adequacy of modifications required by DER.

10. Petitioner consistently demonstrated a lack of knowledge of the applicable law, the proper scope of the formal hearing, and the distinction between argument and evidence. Petitioner repeatedly attempted to establish violations of laws not relevant to the proceeding including local laws and other environmental laws. Petitioner attempted to establish issues by arguing with witnesses during direct and cross examination, and by repeatedly making unsworn ore tenus representations of fact.

11. There was a complete absence of a justiciable issue of either law or fact in this proceeding because Petitioner failed to show facts necessary to sustain the pleadings. Petitioner presented no evidence refuting Respondent, Burke's, showing that the modifications required by DER were adequate to assure water quality and the public health, safety, or welfare, or the property of others. Evidence presented by Petitioner was not material to the issue of whether the modifications required by DER were adequate for the purposes of the law applicable to this proceeding. Therefore, Petitioner participated in this proceeding for a frivolous purpose, primarily to cause unnecessary delay, or to needlessly increase the cost of licensing or approval of the proposed activity.

Respondents' Case.

12. The island to be accessed by the modified project is approximately 2.5 acres in area and contains mostly wetland. The island is approximately 900 feet long. The portion of the island that is beyond DER permit jurisdiction is less than 200 feet long and less than 50 feet wide.

13. The site of the modified project is located in Class III waters. Respondent, Burke, provided adequate assurances that portions of the modified project not extending over open water will be constructed upon property owned by him. The single retaining wall to be constructed at the southeastern terminus of the modified project will be constructed landward of DER jurisdiction.

14. The modified project permits neither the installation of water or electrical conduits to the island nor any excavation, filling, or construction

on the island. Respondent, Burke, must provide notification to DER before any such activity is begun.

15. The bridge will accommodate no vehicular traffic larger or heavier than a golf cart. Golf cart access is necessary in order to accommodate a physical disability of Respondent, Burke.

16. The modified project employs adequate methods to control turbidity, limit mangrove alteration on the island, and limit potential collisions with manatees. Vegetation, including mangroves, will not be removed. Incidental, selective trimming of vegetation will be allowed to create access to the island. The single retaining wall to be constructed on the mainland will be located landward of mangroves. Turbidity curtains will be used during construction to minimize short term water quality impacts. The modified project requires turbidity screens to be installed if there is any indication of sedimentation. No mechanical equipment will be located on the island during construction. No boats will be moored at the site of the modified project.

17. The modified project will cause no significant downstream shoaling or silting. The site of the modified project is located approximately 15 feet from an existing fishing platform. No significant shoaling has been associated with that platform. The impacts associated with the modified project are similar to the impacts associated with single family docks in the area. No significant shoaling has been associated with such docks.

18. The modified project is not a navigational hazard. The elevation is sufficient to accommodate small boats, canoes, and row boats. Reflective devices are required to alert night boat traffic of its presence. There is adequate clearance under the bridge to prevent obstruction.

19. DER reviewed all applicable rules and criteria in considering the modified project. The modified project will have no adverse effect upon public health, safety or welfare, or the property of others. The modified project will not adversely impact the conservation of fish, wildlife, or their habitats. The modified project will not adversely affect navigation, the flow of water, or cause harmful erosion or shoaling. The modified project will not adversely impact fishing value or marine productivity in the area. The modified project will have no adverse impact upon recreational values in the vicinity.

20. The modified project was reviewed in a manner that is customary for similar projects reviewed by DER. It is common practice for DER employees, as they did in this case, to rely upon opinions of other DER professionals in formulating an intent to issue. Other projects within DER jurisdiction in the general geographic area of the modified project and within the same region were considered in DER's review process. Other docks and marinas have been constructed and are proposed for construction within the South Fork of the St. Lucie River. Bridges including pedestrian bridges have been and are proposed to be constructed in Martin County. DER did not require a hydrographic study because the modified project was considered a minor project.

21. DER review took into account the intended future use of the island property and DER's past experience with Respondent, Burke. As part of its review, DER reviewed a conceptual bridge to a single family residence on the island which would not require any fill or construction of retaining walls. In addition, DER considered previous violations on the island under Florida Administrative Code Rules 17-4.070, 17-4.160, and 17-4.530 in connection with an earlier permit that expired before the initial project was begun.

22. Respondent, Burke, provided reasonable assurances that he is the owner of the site of the proposed project. Respondent, Burke, signed DER's property ownership affidavit and submitted a survey. DER's Intent to Issue does not authorize any construction in any area within the jurisdiction of DER other than the modified project.

23. The Intent to Issue constitutes compliance with state water quality standards. DER has not received any requests for a jurisdictional determination in the general geographic area of the modified project. No enforcement action has been initiated by DER or at the request of a third party against Respondent, Burke, for alleged violations of DER rules.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over this proceeding. The parties were duly noticed for the formal hearing.

25. Respondent, Burke's, ore tenus motion to dismiss for lack of standing, which was made at the conclusion of the formal hearing, is denied. The issue of Petitioner's standing was initially established in paragraphs one and five of the Petition as an issue for determination in the formal hearing. However, paragraphs 6(g) and (h) of the Order entered on October 27, 1989, in this proceeding required the parties to file a prehearing statement containing a concise statement of those issues of fact and law which remained to be litigated. Neither the Prehearing Stipulation filed by Petitioner nor the Joint Prehearing Stipulation filed by Respondents included in the issues of fact and law to be determined at the formal hearing any factual or legal issues concerning standing. Respondent, Burke, then attempted to resurrect the issue of standing at the conclusion of the formal hearing. Respondent, Burke's, assertion of lack of standing "comes too late." *City of Destin v. Department of Transportation*, 541 So.2d 123, 127 (Fla. 1st DCA 1989); *Yachting Arcade, Inc. v. Riverwalk Condominium Assoc. Inc.*, 500 So.2d 202 (Fla. 1st DCA 1986).

26. The burden of proving entitlement to a permit is on Respondent, Burke. *J.W.C. Inc. v. Department of Transportation*, 396 So.2d 778 (Fla. 1st DCA 1981).

27. Respondent, Burke, has provided reasonable assurances that the modified project will not violate water quality standards or criteria related to Class III waters within the meaning of Section 403.918(1), Florida Statutes, and Florida Administrative Code Rule 17-312.080(1). Turbidity controls will be required during construction, and the narrow width of the bridge precludes vehicular runoff.

28. Respondent, Burke, has provided reasonable assurances that the modified project is not contrary to the public interest within the meaning of Section 403.918(2), Florida Statutes, and Florida Administrative Code Rule 17-312.080(2).

29. Petitioner's concerns related to other laws and local government requirements are not relevant to this proceeding. DER's determination in this proceeding does not insulate the applicant from jurisdictional and permitting requirements of other state or local agencies. *Grove Isle, Ltd. v. Bayshore Homeowners' Association, Inc.*, 418 So.2d 1046, 1048 (Fla. 1st DCA 1982); *Peterson v. Department of Community Affairs*, 386 So.2d 879 (Fla. 1st DCA 1980).

30. DER's Motion to Strike Petitioner's Exhibit 26 concerning a proposed Martin County Comprehensive Plan is granted. DER is neither required, nor authorized, to obtain assurances that the modified project will comply with county ordinances or local zoning. Board of Trustees of the Internal Improvement Trust Fund v. Barnett, 533 So 2d 1202 (Fla. 3d DCA 1988); Council for the Lower Keys v. Charley Toppino & Sons, Inc., 429 So 2d 67 (Fla. 3d DCA 1983).

31. Petitioner is not entitled to petition DER for a Jurisdictional Declaratory Statement pursuant to Section 403.914, Florida Statutes, or Florida Administrative Code Rule 17-312.040, solely on the grounds that Petitioner is an adjacent property owner. Based on the evidence of record, DER is not required to issue a Jurisdictional Declaratory Statement to Petitioner pursuant to Section 403.914 or Florida Administrative Code Rule 17-312.040.

32. Failure to require a hydrographic study in this proceeding did not violate DER rules. Florida Administrative Code Rule 17-312.060(5)(a) provides that additional information including hydrographic study or hydrological evaluation may be requested of an applicant pursuant to Section 403.0876, Florida Statutes. The applicable rule, however, does not mandate such a study or evaluation.

33. DER did not violate its rules by giving Petitioner an Intent to Issue if Respondent, Burke, had previously violated the requirements in Florida Administrative Code Rules 17-4.070, 17-4.160, and 17-4.530 in connection with an earlier permit. Allegations of illegal activity are not relevant to a permitting procedure. Board of Trustees of the Internal Improvement Trust Fund v. Barnett, 533 So 2d 1202 (Fla. 3d DCA 1988); Council for the Lower Keys v. Charley Toppino & Sons, Inc., 429 So 2d 67 (Fla. 3d DCA 1983). Respondent, Burke's, Motion to Strike is granted. Petitioner's Exhibit 22 is not admitted in evidence.

34. DER has obtained adequate information and has proposed adequate conditions to address possible secondary impacts associated with the modified project. DER is not required to have actual applications submitted for all possible activities to evaluate secondary and cumulative impacts. DER can issue a permit for a portion of a total activity.

35. The undersigned has no jurisdiction to determine property rights between private parties in this proceeding. Dwynal & Iona Pettingill v. State, Department of Environmental Regulation, No. 82-294, 4 FALR1912-A, 1915-A (Final Order; September 6, 1982). Petitioner's Exhibit 20, consisting of a map depicting Petitioner's alleged easement, is not admitted in evidence.

36. Respondent, Burke's, Motion for Attorneys Fees is granted. Section 120.59(6), Florida Statutes, provides in relevant part that a prevailing party may recover reasonable attorneys fees from a nonprevailing adverse party who has participated in any proceeding pursuant to Section 120.57(1) for an improper purpose.

37. Subsection 120.59(6)(e) in relevant part defines both a "nonprevailing adverse party" and an "improper purpose." Petitioner is a nonprevailing adverse party because it failed to substantially change the outcome of the proposed or final agency action which is the subject of this proceeding. Participation in a proceeding is for an improper purpose if it is primarily either for a frivolous

purpose, to cause unnecessary delay, or to needlessly increase the cost of licensing or securing the approval of an activity.

38. Participation in a proceeding is frivolous whenever a finding is made that there is a complete absence of a justiciable issue of either law or fact. *Whitten v. Progressive Casualty Insurance, Co.*, 410 So.2d 501, 505 (Fla. 1982); *Allen v. Estate of Dutton*, 384 So.2d 171 (Fla. 5th DCA 1980). The Florida Supreme Court stated in *Whitten* that the purpose of awarding attorney's fees is to:

...discourage baseless claims, stonewall defenses and sham appeals...by placing a price tag through attorney's fees awards on losing parties who engage in these activities. Such frivolous litigation constitutes a reckless waste of judicial resources as well as the time and money of prevailing litigants.

39. In determining whether a claim is baseless, courts look to the evidence presented by the nonprevailing adverse party and that party's conduct during the proceeding. When the nonprevailing adverse party fails to call witnesses in that party's own behalf, nominally attempts to create an issue by cross-examining witnesses for the opposing party, or otherwise fails to show facts needed to sustain the pleadings, courts have found the purpose to be baseless and frivolous. *Hernandez v. Leiva*, 391 So.2d 292 (Fla. 3d DCA 1980); *Kisling v. Woolridge*, 397 So.2d 747, 748 (Fla. 5th DCA 1981); *White v. The Montebello Corporation*, 397 So.2d 326 (Fla. 5th DCA 1981).

40. When the foregoing standard is applied to this proceeding, it is concluded that Petitioner participated in this proceeding for an improper purpose within the meaning of Section 120.69(6). Petitioner participated in this proceeding primarily for a frivolous purpose because there was a complete absence of a justiciable issue of law or fact. Petitioner failed to show facts necessary to sustain the pleadings in this proceeding. Although Petitioner called witnesses in its own behalf, the testimony of those witnesses was not material to Petitioner's pleadings concerning the alleged inadequacy of the modifications required by DER. Further, Petitioner participated in this proceeding primarily to cause unnecessary delay and to increase the cost of securing approval of the modified project.

41. In reaching this conclusion, the undersigned has considered the evidence presented by Petitioner, Petitioner's conduct during the formal hearing, and applicable findings of fact in this Recommended Order including:

- a. the immateriality of evidence presented by Petitioner relevant to the issues of law and fact in this proceeding;
- b. Petitioner's demonstrated unfamiliarity with relevant law and the proper scope of this proceeding;
- c. Petitioner's repeated attempts to establish violations of laws not relevant to this proceeding including local laws and other environmental laws;
- d. Petitioner's demonstrated inability to distinguish between evidence and argument;
- e. Petitioner's failure to call material witnesses

in its own behalf;
f. Petitioner's repeated attempts to establish issues either by unsworn representations of facts or by arguing with witnesses during direct and cross examination; and
g. Petitioner's failure to otherwise show facts necessary to sustain the pleadings.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Environmental Regulation enter a Final Order on the merits issuing the requested permit and awarding reasonable attorney's fees and costs in accordance with this Recommended Order.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 4th day of April, 1990.

DANIEL MANRY
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of April, 1990.

APPENDIX

Petitioner has submitted proposed findings of fact. It has been noted below which proposed findings of fact have been generally accepted and the paragraph number(s) in the Recommended Order where they have been accepted, if any. Those proposed findings of fact which have been rejected and the reason for their rejection have also been noted. Although most of Petitioner's proposed findings were cast in the form of "fact", they were in substance argument and rejected accordingly.

The Petitioner's Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in Recommended Order of Acceptance or Reason for Rejection
1	Included in part in Finding 1 Findings as to ownership are rejected as beyond the jurisdiction of the undersigned. Finding as to the late filed exhibit is rejected as irrelevant.
2-4, 10-12,	Rejected as either irrelevant

16,	or not supported by the record.
5 and 6, 37, 40	Rejected as unsupported by
42	the record.
7, 8, 15	Rejected as irrelevant
17, 21-29	and immaterial
9, 13, 14, 18-20	Rejected as immaterial
30-33, 35 and 36	
37(a), 38, 39, 41, 48	
20(A)	Rejected as irrelevant and
	immaterial except the last
	sentence is included in Finding 13
34	Included in Finding 12
46	Rejected as not supported by the
	record, hypothetical and immaterial.
47	Rejected as not established by clear
	and convincing evidence.

Respondent, Burke, has submitted proposed findings of fact. It has been noted below which proposed findings of fact have been generally accepted and the paragraph number(s) in the Recommended Order where they have been accepted, if any. Those proposed findings of fact which have been rejected and the reason for their rejection have also been noted.

Respondent. Burke's, Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in Recommended Order of Acceptance or Reason for Rejection
15 and 16	Included in Finding 1
17, 26, 27	Included in Finding 2
18, 48	Included in Findings 15 and 16
19, 30, 31, 42	Included in Finding 13
20, 21, 44	Included in Findings 4 and 14
22, 23, 25, 32	Included in Finding 17
24	Included in Finding 16
25, 36-38	Included in Finding 17
28	Included in Finding 18
29	Included in Finding 3
33	Included in Finding 10
34	Included in Finding 19
35, 39, 43	Included in Finding 20
40, 41	Included in Finding 11
45-47 and 49	Included in Finding 16
51 and 52	Included in Findings 6-8
54	Included in Finding 5 and 8
50 and 53	Rejected as irrelevant and immaterial

Respondent, DER, has submitted proposed findings of fact. It has been noted below which proposed findings of fact have been generally accepted and the paragraph number(s) in the Recommended Order where they have been accepted, if any. Those proposed findings of fact which have been rejected and the reason for their rejection have also been noted.

The Petitioner's Proposed Findings of Fact

Proposed Finding of Fact Number	Paragraph Number in Recommended Order of Acceptance or Reason for Rejection
1 and 2	Included in Findings 1 and 2
3	Included in Finding 10
4 and 5	Included in Finding 16
6, 9	Included in Finding 2
7 and 8	Included in Findings 9 and 11
10	Included in Finding 13
11	Included in Finding 15
12	Included in Finding 17
13 and 14	Included in Finding 16

COPIES FURNISHED:

Dale H. Twachtmann, Secretary
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Daniel H. Thompson
General Counsel
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400
Patricia E. Comer
Assistant General Counsel
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Patricia V. Bartell
Qualified Representative
615 S.W. St. Lucie Street
Stuart, FL 34997

J. A. Jurgens
Jones, Foster, Johnson & Stubbs, P.A.
505 South Flagler Drive
West Palm Beach, FL 33402