

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARY ANN HOFFERT, ET AL.)	
)	
Petitioners,)	
vs.)	CASE NO. 89-5053
)	
ST. JOE PAPER COMPANY, ET AL.,)	
)	
Respondents.)	
)	
MARY AND IRV CORNWELL,)	
)	
Petitioners,)	
vs.)	CASE NO. 89-6381
)	
SOUTHWOOD PROPERTIES, INC., and)	
STATE OF FLORIDA, DEPARTMENT OF)	
ENVIRONMENTAL REGULATION,)	
)	
Respondents.)	
_____)	

RECOMMENDED ORDER

The final hearing in the above-styled matter was conducted pursuant to notice, by P. Michael Ruff, duly-assigned Hearing Officer of the Division of Administrative Hearings, on June 8 and 14, 1990, in Jacksonville, Florida.

APPEARANCES

FOR PETITIONERS:	Barbara Davis Winn, pro se
(Mary Ann Hoffert,	3448 State Road 13
Barbara D. Winn,	Jacksonville, FL 32259
Inez Stanton,	
Dorothy S. Holland,	
Ed and Lala Connell,	
Denver R. and Natalie	
H. Bennett)	

FOR PETITIONERS: Mary Cornwell, pro se
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FOR RESPONDENT: T. R. Hainline, Jr., Esq.
(St. Joe Paper ROGERS, TOWERS, ET AL.
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FOR RESPONDENT: William H. Congdon, Esq.
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Environmental Department of Environmental
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STATEMENT OF THE ISSUE

The issues in this proceeding involve whether the Respondent, St. Joe Paper Company ("St. Joe"), is entitled to a "dredge and fill permit" authorizing it to construct a marina for recreational boats, containing 84 boat slips, along the eastern shore of the St. Johns River in St. Johns County, Florida. Embodied within that general consideration are issues involving whether St. Joe, in the construction and operation of the marina, can comply with water-quality parameters embodied in Chapter 17- 3, Florida Administrative Code, for Class III waters of the State, Section 403.918(1), Florida Statutes, as well as the public interest standards of Section 403.918(2), Florida Statutes, and the standard concerning "cumulative impact" embodied in Section 403.919, Florida Statutes.

PRELIMINARY STATEMENT

This cause arose upon the filing of an application for a water-quality certification and permit ("dredge and fill permit") by St. Joe and its predecessor in interest. The applicant, a Respondent herein, seeks to construct an 84-slip marina along the eastern shore of the St. Johns River, a Class III water of the State. After conducting review of the permit application, with the assistance of its technical staff, the Respondent, Department of Environmental Regulation ("Department"), issued a "notice of intent to grant" the dredge and fill permit at issue. The Petitioners, Mary and Irv Cornwell ("Cornwell"), and Petitioners, Mary Ann Hoffert, Barbara Davis Winn, Inez Stanton, Dorothy S. Holland, Ed and Lala Connell, and Denver R. and Natalie H. Bennett ("Hoffert"), sought, by various timely filed petitions, a formal proceeding pursuant to Section 120.57, Florida Statutes, in order to contest the basis for the proposed grant of the permit. These petitions were subsequently consolidated and heard together on the hearing dates mentioned above.

The cause came on for hearing as noticed. During the course of the proceeding, the parties presented those witnesses and exhibits, and secured admission into evidence of those exhibits so referenced in the transcript of the proceeding, which was filed herein.

The proceeding concluded, and the parties requested a transcript thereof. Subsequent to the preparation and filing of the transcript, after stipulating to an extended briefing schedule, the applicant/Respondent, St. Joe, timely submitted its proposed recommended order, containing proposed findings of fact

and conclusions of law, on August 22, 1990. The Department filed a post-hearing pleading indicating that it joined in the proposed recommended order submitted by the applicant and would not be submitting its own proposed recommended order. Barbara Davis Winn, representing Hoffert, timely filed a letter to the Hearing Officer, in lieu of a proposed recommended order, indicating that Hoffert would not be filing a proposed recommended order, but requesting the Hearing Officer, in rendering his Recommended Order, to take into account a number of considerations involving environmental and recreational concerns held by those Petitioners, and upon which they had presented evidence at hearing, in arriving at conditions for any grant of the permit recommended in the Recommended Order. Cornwell submitted a pleading entitled "Notice of Filing Petitioners' Recommended Findings and Clarifications of Respondents' Proposed Findings". This pleading was filed on September 7, 1990, over two weeks late. Additionally, the pleading seeks to clarify or respond to the proposed findings of fact and conclusions of law timely submitted by the Respondents. As explained by the Hearing Officer at the conclusion of the hearing, proposed recommended orders are not responsive pleadings, but must be simultaneously submitted by the deadline which was set and agreed upon by all of the parties. Further, much of Cornwell's "proposed findings" really involve a discussion and recitation of testimony or evidence, chiefly that submitted through Dr. Carol DeMort's deposition, instead of proposing specific findings of fact, which can be ruled upon in a coherent fashion by the Hearing Officer. Consequently, specific rulings on proposed findings of fact submitted by Cornwell cannot be made since none were actually submitted as such. However, in spite of this, and in spite of the non-timely filing of this pleading and its impermissible nature as a responsive pleading, the relevant issues and discussions raised in it have been considered and addressed by the Hearing Officer in this Recommended Order.

In consideration of the evidence and testimony adduced and admitted into evidence and the post-hearing pleadings and arguments of the parties, the following findings of fact are entered.

FINDINGS OF FACT

1. The applicant, St. Joe, seeks to construct and operate a recreational boat marina, consisting of a single, main pier, 12 feet wide and extending some 850 feet waterward in a westerly direction from the shoreline of the east bank of the St. Johns River in St. Johns County, Florida. The main pier will join a terminal pier extending approximately 575 feet in a general north/south direction parallel to the shoreline of the St. Johns River, perpendicular to and abutting the longer main pier. Extended in a landward or easterly direction from the terminal pier structure will be four (4) individual "finger piers" ranging from 119 to 305 feet in length. Located along the individual piers and along a portion of the main pier near the waterward end of it will be 84 slips for recreational-type boats. Additionally, a breakwater system will be suspended along the outer perimeter of the terminal pier and northernmost and southernmost individual piers in order to reduce wave action and its effect on boats in the interior of the marina. Additional details concerning the marina design and operation are contained in the findings of fact below.

The Site

2. The site of the proposed marina is on the eastern shore of the St. Johns River in St. Johns County, Florida. At that point, the St. Johns River is almost two miles wide, being approximately 10,000 feet from shoreline to shoreline. The proposed marina site encompasses approximately 1,100 linear feet of river bank frontage. All of the adjacent upland property is owned by St. Joe, and St. Joe owns extensive additional river frontage to the north and south of the marina site. The nearest properties not owned by St. Joe are located 3,500 feet to the north of the site and 1,500 feet to the south of the site. The site is located approximately two miles north of Hallows Cove, a relatively pristine, diverse and productive marine habitat.

3. The site is characterized, landward of the terminal end of the pier and waterward of the upland, by an unvegetated "near shore area or tidal zone" which extends approximately 50 feet from the mean high-water line of the river to the mean low-water line. Waterward of this zone and extending to a depth of approximately two feet is a system of grass beds, (*vallisnerida*), commonly known as "tape grass". The grass beds extend approximately 200 to 250 feet from the shoreline. Waterward of the grass beds is an unvegetated area with a gradual slope to a depth of approximately six feet. From the six-foot contour of the river bottom, a relatively precipitous slope begins, extending to depths which exceed 19 feet. In this zone, there are no grass beds. Further waterward and extending beyond the most waterward extent of the the marina site, the river bottom rises somewhat to depths of 13 feet, 12 feet and 11 feet, in the direction of the center of the river.

4. The river bottom substrate in the area of the marina is composed primarily of sand. This includes some shell and other coarse materials, with minor amounts of silt. In fact, organic silt is a very small portion of the bottom sediments, consisting, at a depth of four and one-half feet, of less than 1% silt and at a depth of 15 feet of less than 6% silt content. The present water quality prevailing at the marina site is good, and the benthic habitat in the general area is healthy and diverse.

5. The most landward boat slips proposed at the marina will be located at a distance of approximately 275 feet from the most waterward extent of the grass beds. These most landward slips will be located in depths of approximately eight feet.

6. Access to the marina will be from the north and south in defined channels marked on the west by the end of the individual piers and on the east by channel markers located at the depth contour of minus six feet. That is, the six-foot depth will be the most shallow portion of the channel marked by the channel markers, so that boats will not be permitted to navigate the shallower portion landward of the channel markers insofar as the marina's enforcement program can insure that. The approximate width of the northern channel is 75 feet, and the

width of the southern channel is 50 feet. Due to the precipitous drop in depth beyond the contour of minus six feet, the average depth of the channels is 10 to 12 feet.

7. The majority of the boat slips, as well as the basin of the marina, will be located in depths of between 10 and 18 feet. The consultant and expert witness who designed the marina, Erik Olsen, established that the length of the main pier and the location of the most landward of the boat slips and the location of the channel markers are all part of a design and plan intended to insure that marina and boat activity within the marina occur well beyond the extant grass beds and waterward of depths of six feet, to insure that no damage to the grass bed habitat area is occasioned by propeller scouring, "prop-wash", or grounding of boats.

8. Other design measures are also intended to preclude boaters from entering the shallow depths and grass bed areas. Two tiers of signs will be located between the marina basin and the most waterward extent of the grass beds. First, regulatory buoys and signs are proposed to be located at the contour of minus four feet and will establish a "manatee protection zone" landward of that contour. The evidence reveals, however, that a safer contour for the manatee protection zone boundary to be established by the applicant would dictate placing the regulatory warning signs concerning the manatee protection zone at the same contour, minus six feet of water, where the channel markers will be located. This is because the marina will serve boats of up to 4.5 feet in draught. Secondly, a tier of signs will be located approximately ten feet waterward of the most waterward extent of the grass beds warning boaters that aquatic grass beds exist landward of the signs and that prop dredging and boat operation is prohibited. Such warnings at the locations found above should be mandatory conditions to any grant of the permit. A specific, agreed-upon condition is already in the draft permit issued by the Department prescribing the size and lettering of these signs and other design details. A railing will extend, as proposed by the applicant, along the main pier between the slips and the shoreline to discourage boaters from mooring along the main pier, landward of the slips. The evidence establishes that in order to more adequately insure protection of the manatee habitat area and the grass beds, a mandatory condition in boat-slip rental leases should be inserted to absolutely prohibit boaters from mooring along the main pier, landward of the boat slips.

9. Because of the currents and significant water depth prevailing at the marina site, the marina construction will require no dredging nor will operation and maintenance of the marina require any dredging on a continuing basis. Additionally, in the interest of protecting water quality, no fueling facilities or boat fueling will be permitted at the marina at all; and the grant of a permit should be mandatorily conditioned on this basis.

10. Neither will any boat maintenance or repair be permitted at the marina, including no hauling of boats or scraping or painting of boat bottoms. This condition should be clearly pointed out to users of the marina by appropriate warning signs regarding the prohibition against boat maintenance and repair, including warnings concerning the proper methods of disposal of used oil and other petroleum products.

11. The marina will feature pump-out facilities for boat heads and bilges. The pump-out facilities will consist of a central pumping system in which waste is removed from the boats, transported by pipeline to an upland, central waste water collection and treatment system. No holding tanks or other storage of wastes will be located at the piers. The pump-out facility will serve not only the boat heads but also boat bilges in order to prevent contaminants, such as oil and boat fuel from entering the State waters involved.

12. The piers will feature trash collection containers of appropriate number, size and location on the piers so as to provide convenient trash disposal for each boat slip. The piers will also feature plastic modular dock boxes to preclude boaters from randomly storing materials and equipment on the piers. No fish cleaning will be permitted on the piers at all, but rather must be accomplished on the uplands, with disposal of related wastes in the upland collection system.

13. A "no wake" zone will be established in an area extending 500 feet north and 500 feet south of the marina. The "no wake" zone will be marked pursuant to requirements of the Florida Marine Patrol. The marked "no wake" zone should also extend waterward of the farthest waterward extent of the marina, as well as 500 feet north and south of it.

14. Only private, recreational boats will be moored at the marina. All commercial boats will be prohibited. The marina will serve a Yacht Club to be developed by St. Joe in conjunction with the marina. Only members of the Yacht Club and their guests will be permitted to use the marina. This will assist with enforcement of the various conditions on marina operation and maintenance by the owners as to the boat-slip lessees and their guests. This and all other conditions should be enforced by mandatory restrictions in the boat-slip leases. Likewise, the applicant has agreed to permit no "liveaboard" boats at the marina in order to avoid the possibility of sewage or other contaminants entering the State waters from liveaboard boats. The upland facilities will include restrooms, and signs should be appropriately placed on the piers to advise boaters and boat owners and operators of the availability of restroom facilities. The marina will not feature fueling facilities; however, St. Joe will maintain pollution containment supplies and equipment at the marina sufficient to contain any potential fuel or other petroleum spills from catastrophic events, such as the rupture of a boat fuel tank. Expert witnesses for St. Joe established that a "management and operational plan" designed to

enforce the provisions enumerated above will be enacted by the applicant. The management and operational plan includes three mechanisms of enforcement:

A. Warning signs.

B. Boat-slip lease agreements which must incorporate all restrictions found to be necessary herein. These will contain an enforcement provision providing for mandatory eviction from use and lease of the marina facilities for any breach of those conditions by lessees or their guests.

C. Management personnel will be employed on the marina property to enforce all restrictions and conditions designed to insure environmentally-safe operation and maintenance of the marina, and such personnel should be employed during all operating hours of the marina, not just during daylight hours, as proposed by the applicant.

15. Signs will be posted at conspicuous locations at the marina and at the upland facilities of the Yacht Club informing boaters of the marina rules and prohibitions. The signage will be visible to Yacht Club members and their guests using the marina, and members' guests will be required, upon mooring at the marina, to register and to review the rules and prohibitions. Boat-slip lease agreements at the marina will incorporate these marina rules and prohibitions. Under the lease agreements, a violation of the marina rules or prohibitions by a member or guest will be considered a breach of the lease and will result in revocation of the lease and removal of the member's boat from the marina.

16. A dock master will be employed at the marina to supervise the operation and maintenance of the marina and will be assisted by dock hands and other personnel in order to see that the conditions and restrictions referenced herein are enforced. The applicant has proposed such personnel being employed during daylight hours. However, in order to insure that the standards for operation and maintenance of the marina and boats using it will be enforced so as to avoid water-quality violations and violations of the public interest parameters delineated below, the permit grant should be conditioned upon such personnel being employed during all operating hours of the marina, whether daylight hours or not. If this is accomplished, the enforcement mechanisms outlined in the management and operational plan will reasonably insure enforcement of the marina's rules, prohibitions and conditions on any grant of the permit and likewise reasonably insure that water-quality and public interest standards are not violated.

Upland Facilities

17. The upland and Yacht Club facilities to be developed in conjunction with the marina will be located on approximately seven acres adjacent to the marina site. The Yacht Club and related facilities will include a clubhouse, parking, and a storm water treatment system which will serve the upland facilities. St. Joe has obtained a conceptual permit for the management and storage of surface waters for the proposed upland improvements, including the Yacht Club. It will also seek a permit for the storm water treatment system, itself. St. Joe, through its consultants, has investigated and opined that the installation of the proposed upland facilities are feasible and can comply with applicable regulatory criteria and is pursuing the necessary permits and approvals from local governments and state agencies. It will insure that all such is accomplished prior to initiation of construction of the Yacht Club facilities. The precise configuration and design of all upland facilities will be dictated by applicable local ordinances and the requirements of State regulatory agencies.

Marina Impacts

18. The applicant/Respondent and the Petitioners are in essential agreement, through the testimony of their witnesses, regarding the general potential impacts which may be posed by marinas in a general sense, when located in proximity to environmentally-sensitive areas. Concerning anticipated impacts of this marina at the subject site, however, St. Joe presented the testimony of three expert witnesses, as well as a hydrographic study. It was thus established that violations of the pertinent water-quality statute and rules and the public interest standards contained in the statute referenced herein will not be violated. The Petitioners, although presenting both lay and expert testimony regarding the water quality and habitat type and quality in the general area of the site and the general impacts that can be caused by marinas in such areas, presented no expert testimony or studies regarding the anticipated impacts of this particular marina, as designed and configured by the applicant, on the subject site and aquatic habitat.

Water Quality Considerations

19. Marinas are potential sources of pollutants which may adversely impact water quality. Different sources at a marina may generate different pollutants; and in this case, testimony addressed these potential pollutant impacts. The totality of the expert testimony taken at hearing establishes that the marina will not likely cause a violation of applicable water-quality standards. One witness for the Petitioners, Bill Watkins, was accepted as an expert in water quality. In describing potential impacts of the marina, however, he only opined that there "could be some effect on water quality"; however, he did not specifically establish adverse effects on water quality which could be anticipated or reasonably expected regarding violations of applicable standards. Mr. Watkins

acknowledged: "As to whether or not that degree of pollution, and that's what we're talking about, degree of impact, would be something that would be, have a significant degradation effect, I could not answer without further site specific studies." Mr. Watkins further described the type of site specific information which would be required for him to make a proper assessment of water-quality impacts, including hydrographics and the nature of the sediments existing at the site. Other witnesses for the Petitioners similarly declined to opine regarding violations of the water-quality standards because site specific information was not available to them. Dr. DeMort, for example, explicitly declined to offer an opinion regarding water-quality violations.

20. The opinions and testimony of the expert witnesses on water quality presented on behalf of St. Joe, as well as by the Department, are accepted in establishing that no water-quality violations by the construction and operation of the marina are anticipated.

21. The reasonable assurance that water-quality violations will not occur through the construction and operation of the marina is illustrated by the unrefuted evidence concerning the hydrographics by which the site is characterized. A knowledge of site hydrographics is necessary to accurately determine potential water-quality impacts. A hydrographic study was prepared by St. Joe through the auspices of its consultant, Olsen Associates Incorporated. The experts who prepared that study testified on behalf of St. Joe at hearing, and a Department witness who reviewed the study testified by deposition. None of the Petitioners' expert witnesses addressed the subject of site hydrographics other than to note that they were an important consideration.

22. Mr. Buckingham was accepted as an expert witness in the area of marine engineering with emphasis on hydrographics. He testified regarding the hydrographic study prepared and submitted by St. Joe. The study involved the collection of data at the site, including the gauging of water surface elevations over a two-day period in December of 1988; the comparison of those elevations to predicted elevations based upon historical data; a measurement of current velocities at the site; a dye study to assess the flow regime at the site; and the gathering of depth soundings and sediment samples to confirm the bathymetry and nature of bottom sediments at the site. The hydrographic study also involved the analysis of the data collected at the site.

23. Hydrographics at the site are composed of two components, the transport of a pollutant by advective currents and the dispersion or diffusion of a pollutant within the water column. The physical transport by advective currents dominates the hydrographic circumstance prevailing at the marina site. A pollutant introduced at the site is more likely to be physically transported away from the site, in addition to being merely dispersed through the water column at the site. This is because of the relatively high current velocities prevailing. Both the transport and dispersion components were analyzed in the study to

determine the time and distance necessary to reduce an initial concentration of a hypothetical pollutant to 10% of its initial concentration. A pollutant introduced at the site would be reduced to 10% of its initial concentration in less than seven minutes and within 400 feet of the site on the ebb tide and within 300 feet of the site on the flood tide. Moreover, the "plume" of this hypothetical pollutant would occur in a longshore direction parallel to the shore, as opposed to a direction toward the shore and would be of comparatively narrow width (approximately 30 feet). The hydrographics of this site are such that a complete water exchange will occur in 20 to 30 minutes at any point during the tidal cycle. The evidence thus demonstrated that the site is extremely well flushed by tidal currents.

24. In his deposition, Ken Echternacht, of the Department, testified that data in the hydrographic study was realistic in his experience and that he had no questions or concerns regarding the data and methodology used to confirm that data. In addition to Mr. Buckingham's testimony and the study, itself, the testimony of Dr. Echternacht established that flushing is of no concern and is thoroughly adequate at the site. Dr. Echternacht is the Department's hydrographic engineer, whose function is to review all dredge and fill permit applications which may have impacts upon the hydraulics of surface water systems. He has reviewed approximately 1,500 dredge and fill permit applications. His testimony and that of Mr. Buckingham is accepted, as is that of other Department expert witnesses in establishing the excellent flushing characteristics of the site and that the construction and operation of the marina will not adversely affect the present hydrographic situation at the site, as that relates to establishing that no water quality violations will occur.

25. All marinas are potential sources of pollutants. The first to be addressed involves the installation of the pilings themselves during the construction of the marina. This is a potential source of turbidity. Turbidity involves the suspension of bottom sediments and substrate material in the water column, which can pose, among other problems, the retardation of light penetration through the water column which can have an adverse impact on photosynthesis in marine grass beds. In extreme cases, it can cause the destruction of grass beds through killing of the grass by lack of adequate light penetration, as well as the smothering effect of sediments being deposited upon grasses. The method to be used by St. Joe in installing the pilings will be by "jetting" them into the bottom of the river initially and then driving the pilings into the river bottom to the required depth to support the piers. Witnesses for St. Joe and the Department established that this method will constitute an adequate safeguard to be employed during construction to minimize any turbidity. Any temporary or local turbidity caused by the installation of the pilings will be transitory and will pose no significant water-quality violation; however, turbidity curtains will, be employed, if necessary, by the applicant to control any such turbidity during construction.

26. Another potential source of turbidity at a marina involves the dredging, washing or disturbance of the river bottom caused by boat propellers or boat keels. The evidence demonstrated that the risk of such "prop dredging" or wash at this marina will be negligible due to the design features and conditions at the site, including the channels and channel markers, and particularly by the depth of waters prevailing at the site.

27. The marina basin and boat slips are located in water of sufficient depth to prevent prop dredging or wash. The average depth of the entrance channels is between 10 and 12 feet. Maneuvering within the marina basin will occur in depths of 10 feet or greater. Although the most landward boat slips are located in depths of approximately eight feet, the average depth within most slips is approximately 10 to 12 feet. These depths are based upon the bathymetric survey of the site and confirmed by random soundings performed during the course of the hydrographic study in evidence. Further, these depths are "mean low water" depths. Mean low water reflects the "lowest expected level" within a 29-day tidal epic. The "mean lower low" level is the lowest expected level over the course of a year. That level prevailing at the site, according to the study, is 0.1 feet lower than mean low water. The maximum draught of boats expected to be moored at the marina is 4.5 feet. Thus, the depths in the marina will allow ample clearance between propellers and keels and the river bottom. The required clearance between boat bottoms and propellers and the river bottom can further be assured by proper placement of boats in the boat slips in the leasing process and in the assignment of boat slips to casual, temporary users of the marina. In other words, the larger boats will be assigned to the deeper, more waterward slips. Other measures include warning signs, which should be placed along the six-foot depth contour, along the landward edge of the entrance channels and beyond the waterward extent of the grass beds. This will insure that boaters do not stray into shallow-water, aquatic habitat areas.

28. A second factor in determining the potential for prop dredging at the marina is the nature of the sediments themselves. Four witnesses, including those testifying for the Department and for the Petitioners, established that the sediments at the site are primarily sand-based, with minimal organic silt content. The sandy nature of the sediments minimizes the potential for turbidity caused by prop dredging or prop washing (hydraulic currents created by propeller operation) because sand, by its density, mass and weight, tends to settle out to the bottom much quicker if it is suspended in the water column. Even if prop dredging did occur at the marina, generating turbidity, the high flushing characteristic of the site would quickly transport and disperse any such turbidity and render it undetectable and likely prevent its deposition on the grass beds.

29. A potential source of pollutants at a marina is boat fuel. Expert witnesses for the Department and the applicant established that the design and operational features of the marina, primarily the absence of any fueling facilities, will minimize or eliminate the potential for pollutants generated by fueling operations.

30. Another potential source of pollutants at a marina is waste from boat heads and bilges generated by flushing boat heads or pumping out of bilges with bilge pumps. Expert witnesses for St. Joe, as well as the Department, established that the design and operational features with which this marina will be characterized will minimize or eliminate the potential for such pollutants to be generated because liveaboard boats will be prohibited, and the pumping out of heads and bilges will also be prohibited because of the conditions agreed to by the applicant for a grant of this permit.

31. Another potential source of pollutants at a marina is the use of anti-fouling paint used on the bottoms of boats and the periodic scraping and repainting of boats. Expert witnesses for the Department and the applicant established that the operational features and design of this marina will minimize the potential for pollutants from this source because boat painting, sanding, and scraping and other operations attendant to boat painting will be absolutely prohibited at the marina.

32. Finally, another potential source of pollutants would be trash and garbage materials. The potential for pollution from this source will be minimized by the use of trash containers and dock boxes located at frequent intervals around the piers and boat slips, as well as the instructional signs to be placed on the piers and slips by the applicant and the publication of marina rules in order to inform boat operators and guests of the necessity to dispose of trash in the proper containers.

33. It has thus been established that the design and operational characteristics of the marina and conditions to be imposed thereon will minimize or eliminate the potential for pollutants to be generated and placed in the surface waters at the site. The marina will not occasion violations of applicable water-quality standards. Any pollutants which might be deposited in the surface waters at the site will be quickly transported and dispersed so as to be undetectable at the marina or in the vicinity of the marina because of the critical role played by the hydrographics prevailing at the site.

Public Interest Impacts

34. Much of the testimony at hearing regarding impacts upon the various public interest standards, including wildlife and habitats, focused upon the grass beds, and the benthic communities prevailing in deeper water at the site, as well as the fact that the site is used by manatees. Dr. Quinton White was accepted as an expert in biology and biological impacts of marina construction and operation. He testified on behalf of the applicant. His testimony and that of other expert witnesses offered by St. Joe and the Department established that

there would be no adverse impact on benthic communities and organisms, including manatees, caused by the construction and operation of the marina. The Petitioners called expert witnesses on the issue of impacts on wildlife. Mike Allen, a Florida Game and Fresh Water Fish Commission staff member, testified that he was not really qualified as an expert in fisheries or benthic communities but, rather, in terms of terrestrial species which are not involved in this proceeding. Lawson Snyder, another Florida Game and Fresh Water Fish Commission staff member, was accepted as an expert in fisheries biology on behalf of Petitioner but testified that the marina's impacts upon fish and wildlife would not be detectable. Jim Valade, a Florida Department of Natural Resources staff member, was also accepted as an expert in marine biology, including fish and manatees, but testified that the permit applicant has taken steps to protect manatees in virtually all aspects and that his department's concerns regarding the safety of manatees have been adequately addressed by the design and proposed operation of the marina. Bill Watkins, a St. Johns River Water Management District staff member, was accepted as an expert in biology, but testified that the design of the marina provides the grass beds "a fair degree of protection" and declined to opine that the marina would have any adverse impacts upon wildlife or fish. Finally, Dr. Carol DeMort, in her deposition, specifically declined to render any opinion regarding adverse impacts upon wildlife or fish. Thus, the evidence adduced by the Petitioners at hearing did not rebut the evidence introduced by the applicant that the marina will have no detectable impacts upon wildlife or habitats involved in the vicinity of the site

35. St. Joe introduced evidence concerning impacts from shading upon grass beds by the marina structures themselves and from turbidity "washed" onto, the grass beds by motorized boats maneuvering in the marina basin. Expert testimony was adduced that established that shading caused by the widest pier, that is, the main pier with a width of 12 feet, would have no adverse impact on the grass beds due to shading. That testimony was un rebutted and is accepted. Two expert witnesses for St. Joe, a marine engineer and a biologist, as well as a Department witness, established that, even assuming that turbidity was generated by propeller action in the marina basin, the turbidity resulting from prop wash would not be transported 275 feet from the marina basin offshore to the grass beds at the inshore area. They attributed those opinions to the nature of the sediments involved which are not readily suspended, the flushing at the site, the distance between the basin and the grass beds, and the typical extent of prop wash from boats expected to be used at the marina. The Petitioners presented two witnesses, who testified regarding the impacts of prop wash. Mr. Allen, an expert in upland terrestrial species, testified regarding the potential for deposition of sediments on grass beds but also acknowledged that the hydrographics at the site, the distance between the marina basin and the grass beds and other protective measures would minimize this potential. One lay witness for the Petitioners testified to the effect that if a "handful" of boat owners in the marina violated the "no wake" restrictions and accelerated their boats in violation of those restrictions, they would cause turbidity to be placed upon the grass beds. His testimony was contradicted, however, by a marine engineer, who testified that prop wash is a function of many parameters (e.g., the RPM of the engine, the horsepower of the engine, the draught of the boat, and configuration of the propellers, etc.). He established that it would not be reasonable to expect prop wash extending twice the length of a boat.

36. Regarding impacts upon benthic communities at the site, the applicant introduced expert testimony which established that the benthic communities in that vicinity of the marina, including the grass beds, fin fish, shellfish, and other organisms, will not be adversely impacted by the construction and

operation of the marina in light of the safeguards which would be imposed upon the permit, as delineated herein. This is primarily due to the absence of significant concentrations of pollutants to be expected and the hydrographics prevailing at the site as that relates to the unlikelihood of boat grounding, prop dredging, and prop wash suspending pollutants and turbidity and depositing them on benthic community habitat areas. Only one of Petitioners' witnesses, Dr. DeMort, testified in her deposition concerning potential impacts upon benthic communities. Dr. DeMort made it clear, however, that she had conducted no investigations and studies necessary to enable her to render an expert opinion on the impacts upon the benthic communities prevailing at the site which might be caused by the marina's construction and operation. Her testimony in this regard only related to marina installation and operation in general and was not related to the specific design characteristics and proposed operational parameters of the subject marina.

37. Manatees are an endangered species. There is much concern about their welfare with regard to the proposed project because all parties acknowledge that the site and the shoreward grass bed areas, particularly, are frequented by manatees, particularly for summer foraging. Manatees tend to forage in shallow waters and associated grass beds. Boats pose definite hazards to manatees and cause significant manatee deaths each year due to impact from boats, as much as 15% to 30% of the known population. In response to this hazard, the U.S. Marine Mammal Commission has recommended that grass beds be protected and that establishment of protective or "no wake" zones in manatee foraging areas be accomplished. In light of such restrictions voluntarily agreed to by St. Joe and its expert testimony in this regard and in light of the manatee education and awareness measures proposed by the applicant, it has been demonstrated that the marina will not have any negative impact on the manatee population in the area. The Petitioners' only expert witness concerning manatees, Jim Valade, indeed, opined that the marina had taken steps to protect manatees "in virtually all aspects".

38. In this connection, the design features in the management and operational plan discussed herein and proposed by the applicant embodies measures to address potential impacts upon manatees which frequent the marina site. These include manatee awareness signs to be posted at the marina; and an additional specific condition has been agreed upon by the Department and the applicant which specifies the size, lettering and other details of the warning signs, and the location of them within the marina, all of which will be included in a plan to be submitted to, reviewed, and approved by the Florida Department of Natural Resources. Additionally, a permanent educational display will be located at the Yacht Club informing boaters who frequent the facility of the presence of manatees in the area and the need to minimize the impact of boats upon manatees. During construction, if a manatee is sited within 100 yards of the marina site, construction activities will cease and not resume until manatees have left the area. A handbook will be prepared concerning manatees and the effect on them of boat operation, which will be distributed to employees of the facility and to Yacht Club members and guests. This requirement and the review of it by Yacht Club members and guests will be an integral requirement in the terms of the slip leases. Additionally, no docking facilities, pilings or cleats will be located along the portions of the piers not containing boat slips in order to discourage boaters from attempting to moor at those locations, which will reduce the number of boats frequenting the marina, as that relates to manatee safety.

39. This portion of the St. Johns River functions as a highly productive juvenile fish nursery and sports fishing area. Therefore, an examination of the marina's potential impacts upon marine productivity, fishing and recreation in the area is an important consideration in this proceeding. The discussion of this potential impact involves the same issues discussed in connection with impacts upon water quality and wildlife habitat; namely, the generation of pollutants and the impacts upon the grass beds and benthic communities directly by boat operation itself. Unrefuted testimony adduced by the applicant and the Department has established that impacts upon the fish population and upon marine productivity, fishing and recreational values will not be adverse. No deleterious effect is likely to be occasioned the fisheries and fish habitat and the habitat of other aquatic organisms in terms of juveniles or adults or to the sport fishing values of the area in which the marina will be located. Indeed, the marina structures and the shade and concealment offered by moored boats will provide additional habitat for juvenile fish, as well as provide an additional source of food because of the "fouling communities" of life forms which will be expected to grow on the pilings. These will serve as food for juvenile fish and some species of adult fish which, in turn, will enhance the food supply of predatory fish operating at an upper level in the food web. The boats and structures themselves also will operate as a source of protection for certain fish populations from predators. The Petitioners produced a fisheries biologist as an expert witness, who testified in this regard; but he acknowledged that he did not know whether noticeable impacts on conservation of fish, marine productivity and recreational values will be caused by the installation and operation of the marina. He testified in a general sense that he feared some negative impacts might result but did not feel that any such impacts would be detectable based upon testimony he heard and deferred to, including testimony that the littoral zone would not be impacted by the marina to any significant degree. He ultimately opined that the marina would likely have little impact on sports fishing. The other witness produced by the Petitioners concerning impacts upon fishing and recreational values was unable to render any expert opinion, by her own admission, because she had conducted no studies or otherwise been provided information regarding the design and proposed operation of the marina. Consequently, the testimony adduced by the applicant as to these parameters is accepted; and it has been established that the marina will not adversely impact fisheries, fish conservation, aquatic habitat, sport fishing, recreational values and marine productivity in the area involved at the project site.

40. Regarding potential impacts upon the public health, safety and welfare and property of others, the applicant and the Department adduced expert testimony that no adverse impact regarding these interests will occur. The testimony of Petitioners' experts similarly establishes that the marina would not pose safety hazards or would otherwise give rise to any noticeable impacts upon the public health, safety, welfare and property of others.

41. Regarding potential impacts upon navigation or the flow of water, St. Joe and the Department introduced expert testimony to establish that the marina would not adversely impact navigation or the flow of water, and it is so found. The Petitioners' introduced no evidence regarding this subject.

42. Regarding potential impacts upon significant historical and archaeological resources, the applicant and the Department introduced evidence that no adverse impact as regards

these resource parameters will occur. Although one of the Petitioners, in her testimony, speculated that the marina could "detract" from the William Bartram scenic highway, she was unable to specify how the marina would impact the highway or to what extent the highway was a significant, historical or archaeological resource. It is found that no such adverse impact on the William Bartram scenic highway will occur.

Cumulative Impact

43. Regarding cumulative impacts, the applicant and the Department introduced evidence that the marina would not give rise to impacts which, cumulative with the impacts of other marina facilities, would be significant. The evidence establishes that there are six marinas within four miles of this marina site; two upriver, and four downriver. Due to the hydrographic circumstances in the area and the distance of the other marinas from this site, it has been demonstrated that the addition of this marina to the area will not result in any adverse cumulative impacts. Mr. Mike Allen, the expert in upland terrestrial species (not involved in this proceeding), referenced in his testimony the cumulative impacts he feared on sports and commercial fishing. Mr. Allen made it clear, however, that his reference was not to cumulative impacts caused by the marina and existing marinas but, rather, to impacts which could be brought about by many such future facilities located in this particular area. The evidence does not reflect, however, that any other marinas are conceptually contemplated or are the subject of other permit applications for this area for the future. It is thus found that no significant adverse cumulative impacts will be occasioned by the installation and operation of the subject facility.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes (1989).

45. This proceeding arises under the purview of Section 403.918(1)(2), Florida Statutes (1989), which provides that an applicant for such a permit, as involved herein, must provide reasonable assurances that water-quality standards will not be violated and that the project will not be contrary to the public interest. Also at issue are the water-quality standards for State Class III surface waters, which are involved at the project site.

46. The permit applicant bears the burden of demonstrating entitlement to the dredge and fill permit being sought and must present evidence demonstrating that entitlement. The applicant must bear the burden of making a preliminary presentation of evidence showing entitlement which "depends to a large extent on the nature of the objection raised by the Petitioners requesting a hearing". If the applicant makes a preliminary showing of entitlement, the permit must be issued unless the Petitioners

present "contrary evidence of equivalent quality" and prove the truth of the facts alleged in their petitions. See, Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981). Assuming a preliminary showing of entitlement, the Petitioners in opposition to such a permit application cannot carry their burden of presenting contrary evidence by mere presentation of speculation concerning what "might" occur. Chipola Basin Protective Group, Inc. v. Florida Chapter Sierra Club, 11 FALR 467, 480-81 (December 29, 1988).

47. Section 403.918(1), Florida Statutes, requires an applicant to provide reasonable assurances that water-quality standards will not be violated; and Section 403.918(2), Florida Statutes, requires such an applicant to prove reasonable assurances that a project is not contrary to the public interest in regard to projects, such as this one, which are not proposed to be placed in outstanding Florida waters. The subject project is proposed to be installed in Class III surface waters of the State so that the applicant's burden involves a demonstration that the project "is not contrary to the public interest". Section 403.918(2)(a), Florida Statutes, sets forth seven (7) criteria, which are employed by the Department in determining whether a project is "not contrary to the public interest". Additionally, reasonable assurances must be provided that the cumulative impacts of the project and similar projects, existing, under construction, or reasonably expected in the future, will not adversely impact the water-quality considerations of Section 403.918(1), Florida Statutes, and the public-interest parameters associated with subsection (2) of that statutory section.

48. The applicant's burden "is one of reasonable assurance, not absolute guarantees". Manasota 88, Inc. v. Agrico Chemical Company and Florida Department of Environmental Regulation, 12 FALR 1319, 1325 (February 19, 1990). The burden does not require that the applicant "eliminate all contrary possibilities" or address impacts which are "only theoretical and...could not be detected or measured in real life". Florida Keys Citizens Coalition v. 1800 Atlantic Developers and Florida Department of Environmental Regulation, 8 FALR 5564, 5577 (October 17, 1986), reversed on other grounds, 552 So.2d 946 (Fla. 1st DCA 1989). Rather, an applicant must provide reasonable assurances which take into account contingencies which might reasonably be expected.

49. The preponderant evidence of record culminating in the above Findings of Fact clearly demonstrates that St. Joe has met the test set forth in Section 403.918(1), Florida Statutes, and has provided reasonable assurances that the marina will not result in the violation of applicable Class III water-quality standards embodied in Chapter 17- 3, Florida Administrative Code. The evidence also demonstrates that the applicant has met the test set forth in Section 403.918(2), Florida Statutes, and has provided reasonable assurances that the marina is not contrary to the public interest. St. Joe presented expert testimony, studies admitted into evidence, and other evidence establishing that the proposed design and operational measures and conditions to be imposed on operation and construction regarding the project and

the project site will render all potential impacts to be of a non-violative nature. The evidence adduced by Petitioners may be categorized in several ways. First, some of the evidence actually supported the applicant's case, such as the ultimate opinions rendered by Jim Valade and Lawson Snyder. Secondly, some of the evidence consisted of general concerns, as distinguished from specific expert opinions, expressed as to the impacts of marinas in general in a generic sense but not as applied to any specific scientific information concerning the characteristics of this marina site and the design, construction and operation of the proposed marina as it might actually impact the waters, benthic communities, etc. at the site. Witnesses, including expert witnesses for the Petitioners, expressing these more generic concerns, were Dana Morton, Mike Allen, and Dr. Carol DeMort. They admitted to have little or no familiarity with design, construction and operational features of the marina at issue and no specific familiarity with the physical and biological characteristics of the site. Finally, other testimony consisted of speculation or fears of impacts caused by the marina without a specific description of the source or extent of such impacts. For example, none of the Petitioners' witnesses testified regarding levels or concentrations of pollutants which they contended would be generated at the marina or to what extent the various resources enumerated as considerations in the above statutory provision, would actually be exposed to or impacted by those unspecified levels of pollutants or physical operation of boats or the marina facilities itself. Thus, the Petitioners failed to rebut the showing of entitlement by the applicant to the permit with any evidence of "equivalent value". JWC, supra.

50. The Petitioners raised an issue concerning the likelihood of effective enforcement or implementation of some of the design and operational measures and conditions proposed by the Department and accepted by St. Joe. These issues were primarily raised in the testimony of Tom Beale, who testified as to his experience as a boat operator with lax marina operators and unruly or unlawful boaters. The enforcement measures proposed by the applicant, including the warning signs, mandatory provisions for slip-leasing agreements, and the provision of dock personnel for all operating hours of the marina, have been acknowledged in other administrative proceedings as being adequate mechanisms of enforcement. *City of Parker v. Bravo and Florida Department of Environmental Regulation*, 9 FALR 5014, 5021-24 (August 24, 1987); *MacMillan v. Dax and Trin Development Corporation and Florida Department of Environmental Regulation*, 7 FALR 3780, 3792-96 (July 29, 1985). In evaluating the reasonable assurances provided by an applicant in this regard, it must be remembered that the applicant is charged with the burden of active and vigorous enforcement of the conditions imposed upon the grant of its permit but that the applicant cannot be expected to provide an absolute insurance policy, in effect, that persons using its facility will never violate the law prevailing or the restrictive conditions imposed upon the grant of its permit and the operation of its facility which it is charged in that permit with enforcing. Rather, there is a threshold presumption that "people will observe and abide by the law". *MacMillan*, 7 FALR at 3796. The burden of the applicant is to provide reasonable

assurances, not absolute assurances. In this particular, the applicant has done so by proposing an extensive program designed to enforce the provisions and prohibitions incorporated in the design and operation of the marina. This Recommended Order, in the above Findings of Fact, indicates other conditions established by the preponderant evidence of record concerning additional conditions or, in several instances, more restrictive conditions, which should be imposed in order for the permit to be granted. If those conditions are imposed upon a grant of the permit, as delineated in this Recommended Order, the reasonable assurances delineated above will be adequately addressed and enforced. It is not the applicant's burden to automatically assume that the marina patrons will ignore signs, warnings, lease agreements, the enforcement measures of the dock master's personnel, or operate their crafts so as to place themselves, their guests, and the benthic communities involved in jeopardy and violate the clearly enunciated and posted rules of the marina. Under the pertinent rules and statutes bearing upon this and similar proceedings, applicants are not required to bear such a heavy burden.

51. The Petitioners have also raised an issue involving the applicant's undisputed need to obtain permits for certain upland facilities necessarily associated with the proper operation of the marina in terms of the reasonable assurances provided by the applicant being effective. For example, the sewage and bilge water pump-out facilities at the marina will transport waste to an upland waste water collection and treatment system, which, ultimately, must be reviewed and permitted by the Department. Also the Yacht Club storm water treatment facilities must be permitted by the Water Management District, which has jurisdiction thereof. St. Joe has acknowledged the need to obtain these additional permits and already has determined through its experts that the construction and operation of these upland facilities are feasible in terms of their operational characteristics and relevant environmental standards. The Petitioners introduced no evidence regarding any impacts of these upland facilities concerning the environmental standards prevailing and enforceable in this proceeding, referenced above, or which would indicate that the facilities are not feasible as that might relate to the proper operation of the subject marina facility in terms of the reasonable assurances required for the grant of its permit. As held in *Caloosa Property Owners Association, Inc. v. Department of Environmental Regulation*, 462 So.2d 523 (Fla. 1st DCA 1985), the mere fact that an applicant seeking a dredge and fill permit will need other permits for associated development does not require the Department to consider simultaneously all those other permits. In *Caloosa*, the First District Court of Appeal rejected the argument that permits not yet acquired for an associated development must be considered in the context of a dredge and fill permit application. *Id.* at 525-27. The court specifically noted "that only one permit for dredge and fill was at issue, and that other needed permits would be processed separately at future dates". *Id.* at 527N.4. Similarly, in *J.T. McCormick v. City of Jacksonville and Department of Environmental Regulation*, 12 FALR 960, 988 (January 22, 1990), an applicant for a landfill construction permit

demonstrated that leachate from the landfill would be transported to a treatment plant. In that order, the Department rejected the argument that the applicant must demonstrate that the treatment plant will always comply with all applicable standards.

"Compliance with those standards is more properly addressed in the treatment facility's permit." *Id.* at 988. Similarly, in *The Conservancy, Inc. v. A. Vernon Allen Builder, Inc. and Department of Environmental Regulation*, 12 FALR 2582, 2586 (January 22, 1990), it was held that:

Large projects often may have a variety of activities that are potential sources of pollution requiring more than one department permit. In some cases, more than one permit may be considered at a consolidated hearing. However, there is no requirement, either expressed or implied, in any of the governing legislation of the department that would require an applicant to submit, or the department to consider, all permit applications at one time.

51. Thus, although the applicant may require additional permits in the future for related upland facilities, it need not seek them or show entitlement to them in this dredge and fill permit proceeding regarding the marina; and those questions raised by the Petitioners concerning the upland facilities and related permitting are not appropriately at issue in this proceeding.

52. In addressing impacts upon water quality, other decisions have acknowledged the importance of hydrographic assessment of a project site, such as this, and the installation of the proposed facility in the State waters at that site. In one such decision, a Hearing Officer noted "The chief means of providing this assurance [that water quality standards will not be violated] in marina permitting rests upon an accurate assessment of the system's hydrographics." *Turnberry Isle Associates v. Florida Department of Environmental Regulation*, In FALR 124, 143 (November 10, 1988); *Old Port Cove Property Owners Association, Inc. v. Florida Department of Environmental Regulation*, 9 FALR 3821, 3858 (July 1, 1987). The testimony of the applicant's experts in this regard, as well as Dr. Echternacht of the Department, and the hydrographic study in evidence itself, established the excellent flushing characteristics in the area of the marina. Conversely, the Petitioners adduced no evidence regarding the specific hydrographics of the site; and their witnesses generally expressed ignorance of the site's hydrographics.

53. The Petitioners also contended that pollutants generated by the marina, regardless of their relationship to the applicable Class III water-quality standards, may give rise to adverse impacts under Section 403.918(2) (a), Florida Statutes. Therefore, the importance of the hydrographic circumstances of the site and the project extends beyond the issue of mere compliance with water-quality standards and relates to the public

interest analysis under this section. Certainly, the operation of this or any marina can be expected to generate some level of pollutants. The fact that marinas generically may generate some pollutants does not mandate permit denial, however. See, Old Port Cove, 9 FALR at 3852, 3857-59, 3863. Where design and operational measures and hydrographic circumstances minimize the pollutants generated and render their impact negligible, the statutory criteria prevailing herein and the Class III water-quality standards embodied in Chapter 17-3, Florida Administrative Code, present no impediment to permit issuance where it has been demonstrated, as it has herein, that those criteria and standards will not be violated by any pollutants which might be generated by marina construction and operation. The Petitioners presented no evidence that the pollutants generated at the marina would violate water-quality standards or adversely impact the various interests set forth in Section 403.918(2)(a), Florida Statutes, in response to the demonstration by the applicant of reasonable assurances that those parameters will not be violated.

54. Regarding impacts upon fish, wildlife, and their habitats, the applicant demonstrated that the marina will not have adverse impacts upon the grass beds, the other benthic communities, or the manatees themselves. Although manatee mortality rates are high and, in large part, directly attributable to boat operation, the witnesses in this proceeding were virtually unanimous in their agreement that, indeed, St. Joe "has taken steps to protect manatees in virtually all aspects". Although, assuming arguendo, that were no marina placed in the immediate geographical site involved, manatees might be safer or better protected, the present state of the law, as referenced herein by the above decisions and interpretation of the relevant statutory authority, does not impose such a burden on an applicant and does not render the mere use by manatees of a certain habitat area, such as that involved at the subject marina site, an absolute impediment to any demonstration of reasonable assurances that the relevant statutory and regulatory standards will not be violated. Where various protective measures will be instituted designed to assure the welfare of manatees using the littoral habitat, such as involved at this site, such as the conditions recommended to be imposed in the above Findings of Fact, reasonable assurances have been determined to be provided. See, *Coscan Florida, Inc. v. Florida Department of Environmental Regulation*, 12 FALR 1359, 1369, 1387-88 (March 4, 1990).

55. Marine productivity, fishing, and recreational values must also be considered in this proceeding. The experts testifying for both the applicant and the Petitioners established, by the totality of their testimony, that the marina proposed, with its operation restricted as proposed by the above-found conditions on a grant of the permit, will not adversely affect those interests. Indeed, on the positive side of the scale, concerning consideration of marine productivity, fishing, and recreational values, it was shown that the marina structure and the moored boats may provide additional feeding grounds and protective habitat for juvenile fish occurring in the area which can enhance their population and ultimately the population of the

species which prey upon them. Finally, St. Joe demonstrated that as to the remaining interests required to be addressed by Section 403.918(2) (a), Florida Statutes, that there will be an absence of any adverse impacts.

56. Evidence was adduced by the parties concerning cumulative impacts, as noted in the above Findings of Fact. That evidence demonstrates, by preponderance, that even considering the existence of other marinas in the area, no adverse impacts upon water quality or upon the public interest criteria embodied in the above statutory section will be detectable, especially in view of the lack of evidence of any new marinas proposed conceptually, or by permit applications, for the area of the St. Johns River involved in this proceeding.

57. In summary, the relevant standards embodied in Section 403.918(1), Florida Statutes, involving water quality as related to the specific water-quality pollutant standards contained in Chapter 17-3, Florida Administrative Code, have been reasonably assured to be complied with. The standards concerning the public interest criteria contained in Section 403.918(2) (a), Florida Statutes, have also been reasonably assured to be complied with by the preponderant evidence adduced by the applicant and the Department and which was not refuted by evidence of equivalent quality adduced by the Petitioners.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is therefore,

RECOMMENDED that the application of St. Joe Paper Company for the dredge and fill permit at issue be granted, provided that the terms and conditions enumerated in the Department's Intent to Issue, in evidence as St. Joe Exhibit 9, and accepted by the applicant, as well as those conditions found in this Recommended Order to be necessary and supported by the evidence, are incorporated in the permit as mandatory conditions.

DONE AND ENTERED this 26 day of October, 1990, in Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 29 day of October, 1990.

APPENDIX TO RECOMMENDED ORDER
IN CASE NO. 89-5053

Applicant's/Respondent's Proposed Findings of Fact

1-53. Accepted, but are subordinate to the Hearing Officer's Findings of Fact on the same subject matter, particularly in those several instances where conditions on the grant of the permit have been recommended to be modified somewhat by the Hearing Officer in light of the totality of the preponderant evidence presented.

54. Rejected, as unnecessary.

55. Accepted.

Respondent DER's Proposed Findings of Fact

The Department submitted no proposed findings of fact but, rather, adopted those submitted by the applicant/Respondent.

Petitioners' Proposed Findings of Fact

Petitioners, Hoffert, presented no proposed findings of fact but, rather, a letter in the nature of final argument which has been referenced and discussed in the above Preliminary Statement to this Recommended Order. Petitioners, Cornwell, submitted a post-hearing pleading; but it contained no specific, separately-stated proposed findings of fact, which can be separated from their mere recitation and discussion of testimony in evidence and arguments such that coherent, specific rulings could be made. Petitioners, Cornwell's post-hearing pleading did not conform to the instructions given to them by the Hearing Officer at the conclusion of the hearing concerning the appropriate manner for submission of proposed findings of fact, and they were submitted late. They have been considered in the rendition of this Recommended Order, however, in spite of the fact that they were filed in a tardy fashion.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.