

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CONCERNED CITIZENS OF ORANGE LAKE AREA,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 91-2694
)	
CELEBRITY VILLAGE RESORTS, INC., and ST.)	
JOHNS RIVER WATER MANAGEMENT DISTRICT,)	
)	
Respondents.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 1 and 2, 1991, in Ocala, Florida, before the Division of Administrative Hearings, by its designated Hearing Officer, Diane K. Kiesling.

APPEARANCES

For Petitioner:	Crawford Solomon Qualified Representative Concerned Citizens of Orange Lake Post Office Box 481 Citra, Florida 32681
For Respondent Celebrity Resorts, Inc.:	William L. Townsend, Jr. Attorney at Law Post Office Box 250 Palatka, Florida 32178-0250
For Respondent SJRWMD:	Nancy B. Barnard Attorney at Law St. Johns River Water Management District Attorney at Law Post Office Box 1429 Palatka, Florida 32178-1429

STATEMENT OF ISSUES

The ultimate issue is whether Celebrity Resorts, Inc., (Celebrity) is entitled to a Management and Storage of Surface Waters (MSSW) permit for a surface management system to serve its proposed development in Marion County, Florida.

PRELIMINARY STATEMENT

The parties submitted three Joint Exhibits which were admitted in evidence: Joint Exhibit 1--the permit application file; Joint Exhibit 2--the engineering plans for the proposed project; and Joint Exhibit 3--the Management and Storage

of Surface Waters Applicant's Handbook (Handbook) and the proposed revisions to Chapter 40C-41, Florida Administrative Code, for Sensitive Karst Area Basin.

Petitioner, Concerned Citizens of Orange Lake Area (Citizens), presented the testimony of Douglas L. Smith, Delcie J. Suto, Carol Riley, and Crawford Solomon. Petitioner's Exhibits 3, 4, 5, and 6 were admitted in evidence.

Celebrity presented the testimony of George Michael Thompson and John D. Daniels. The St. Johns River Water Management District (District) presented the testimony of Michael A. Register, Mark D. Shafer, Karen Newman, and Dwight Jenkins. District Exhibits 1 and 2 were admitted in evidence.

No transcript was filed. The parties all timely filed their proposed findings of fact and conclusions of law. All proposed findings of fact and conclusions of law have been considered. A specific ruling on each proposed finding of fact is made in the Appendix attached hereto and made a part of this Recommended Order.

FINDINGS OF FACT

PROPOSED PROJECT

1. Celebrity is seeking a District MSSW permit to construct a surface water management system to serve a proposed recreation vehicle (RV) park. The facility is to be located in northern Marion County on the southern border of Orange Lake, an Outstanding Florida Water. The entire site is within the geographic boundaries of the District.

2. The RV park is to be located on 75 acres of land, and is to contain 372 RV and "park model" sites, four bath houses, a clubhouse, and an expanded boathouse.

3. There is a "break" in the watersheds of the Celebrity property caused by a ridge across the approximate center of the project site. The effect of this "break" is that approximately one-half of the property drains toward the lake while the approximate southerly half of the property drains into an independent depression creating a watershed separate from the lake.

4. Parts of Marion County and Alachua county have been designated as Sensitive Karst Area Basin by the District. The project site is located in the designated area.

5. The existing land use is open pasture. The property was previously used for citrus groves.

STANDING

6. Concerned Citizens of Orange Lake Area is an unincorporated group of approximately 76 individuals who want to prevent pollution of Orange Lake.

7. Of the 76 members, three members were present and testified at the hearing. The members attending the hearing were an artist (Riley), a photographer (Suto), and a bass guide (Solomon).

8. Ms. Suto testified that she lives about 1 to 1 1/2 miles from the site. Ms. Riley testified that she lives next door to Ms. Suto and determined that to be over two miles away from the site. Mr. Solomon testified that he lives on

the southeast side of Orange Lake approximately 1 to 1 1/2 miles from the project site. No witness testified that any member has a property interest in the subject property.

9. Of the members who testified, none use the subject property. There was no testimony that other members use the property.

10. Twenty-six members wrote letters of concern to the District.

11. Ms. Suto testified to the existence of high levels of lead in her well water.

WATER QUANTITY

12. The existing land use, pasture, was used to determine the pre-development peak rate and volume of discharge.

13. The existing surface drainage of the 75-acre project site is divided into two basins. On the north side of the property, the surface water flows toward Orange Lake. This basin is designated on the plans, sheet 3 of 16, by a "2." The south portion of the property is contained within the landlocked drainage basin which is designated on the plans, sheet 3 of 16, by a "1."

14. The post-development flow of surface water will be in the same direction as the pre-development flow.

15. There are no proposed development plans or encroachments into the 100-year floodplain. Therefore, there is no increase in potential for damages to off-site property or persons caused by floodplain development or encroachment, retardance, acceleration, displacement, or diversion of surface waters. There is no reduction in natural storage areas and, in fact, the proposed project increases the natural storage on site.

Drainage Basin 2

16. The District's criterion for systems discharging to basins with an outlet is that the post-development peak rate of discharge for the 25-year, 24-hour storm event shall not exceed the pre-development peak rate of discharge for the 25-year, 24-hour storm event. The District's criteria also require that the post-development volume of discharge not exceed the pre-development volume of discharge.

17. The retention system which ultimately discharges to Orange Lake is designed to retain the entire 25-year, 24-hour storm event through the series of basins on site.

18. The pre-development peak rate of discharge for the drainage basin which flows to the lake is 55 cubic feet per second (cfs) during the 25-year, 24-hour storm event.

19. The post-development peak rate of discharge from drainage basin 2 is 4 cfs.

20. The post-development peak rate of discharge is less than the pre-development peak rate of discharge.

21. Runoff from each RV site will be collected in an individual, ten-inch-deep retention basin.

22. Runoff from the road will be collected in roadside swales. Runoff from the clubhouse, country store, and associated parking lots will be conveyed to drainage retention area (DRA) No. 8.

23. The individual retention basins have the capacity to retain the 25-year, 24-hour storm event without discharging.

24. Any surface water discharges from the individual retention basins in Basins 2A, 2B, and 2C as designated on sheet 3 of 16 will flow to DRA Nos. 4, 5, and 7, respectively.

25. In Basin 2D, runoff from the road and RV park model sites will flow to DRA No. 6. The discharge from DRA No. 6 in the 25-year, 24-hour storm will be zero (0) cfs. In larger storms, any discharge from DRA No. 6 will flow to DRA No. 7. In the event DRA No. 7 overflows, the runoff will flow to DRA No. 5.

26. Basins 2G and 2F are located around two existing sinkholes which currently collect stormwater runoff. In the proposed project, Basins 2G and 2F continue to drain the same area as pre-development. However, additional impervious surfaces will be placed in the drainage area. For this reason, an additional three to five feet of clean fill will be placed in the bottom of each sinkhole for filtration purposes.

27. Basins 2H and 2I are less than one acre and currently drain off site. Berms are proposed around the property line at the basin to keep the stormwater on site. Basins 2H and 2I retain 3/4 inch of runoff over the individual basin.

28. The runoff from Basins 2E1 and 2E flows to DRA No. 8 via a drainage swale.

29. DRA No. 8 will retain 3/4 inch of runoff from the drainage area and is an off-line retention basin. The DRA No. 8 is equipped with a diversion box which allows the 3/4 inch of runoff to enter the DRA and then diverts the runoff from larger storms around the DRA so that the treatment volume of runoff (3/4 inch) continues to be treated in DRA No. 8 and does not mix with and discharge from DRA No. 8 during larger storms.

Drainage Basin 1

30. Drainage Basin 1 as designated on plan sheet 3 of 16 is a landlocked basin which does not discharge to Orange Lake.

31. In Drainage Basin 1, as in Basin 2, the runoff from the RV sites flows to the individual retention basins which retain the 25-year, 96-hour storm event. The runoff from the road flows to swales. Overflow from the basins and swales flow to the DRAs. Drainage Basin 1 does not discharge during the 100-year, 24-hour or the 25-year, 24-hour storm event, pre-development or post-development

32. Drainage Basin 1 is designed to retain the 100-year, 24-hour storm, which is an 11 inch storm event.

33. Drainage Basin 1 is also designed to retain the 25-year, 96-hour storm event.

34. The 25-year, 96-hour storm event is 143% of the 25-year, 24-hour storm event.

WATER QUALITY

Design Criteria

35. The District's design criteria for water quality are set out in Section 40C-42.025, Florida Administrative Code.

36. The District's retention criteria require that a proposed system have a treatment/pollution abatement volume of 1/2 inch of runoff from the site.

37. For discharges to an OFW, the pollution abatement volume is increased by fifty percent. Therefore, the system must have the volume to retain 3/4 inch of runoff from the site. Each retention basin retains a minimum of 3/4 inch of runoff from the site.

38. The District's criteria regarding quantity of water discharged require a larger volume of runoff to be retained than the District's criteria regarding quality. Therefore, the retention system exceeds the District's criteria regarding quality in order to meet the criteria regarding quantity.

39. The District's retention criteria require that the basin recover the treatment volume within 72 hours. Most of the retention basins retain more than the required treatment volume of 3/4 inch, and most will also recover, or become dry, within 72 hours.

40. The retention basins are capable of being effectively maintained in that the side slopes and bottom of the basins can easily accommodate mowing equipment.

41. For erosion control, staked hay bales and silt screens will be utilized on site during construction to prevent the off-site transport of soil material. Following construction, the retention basins will be vegetated with sod to prevent erosion.

42. The District's criteria require that facilities which receive stormwater runoff from areas with greater than fifty percent of impervious surface shall include a baffle or other device for preventing oil and grease from leaving the system.

43. DRA Nos. 1, 4, 5, and 8 are equipped with an oil and grease removal device called a baffle. The baffle is an acceptable engineering design for the removal of oil and grease from stormwater in a retention basin.

44. The facility operation is uncomplicated. If the individual basins did fill due to a storm event greater than the 25-year, 24-hour or the 25-year, 96-hour in the landlocked basin, they would simply overflow into a DRA. No structures are involved to prevent flooding in large storm events.

Water Quality Impacts

45. The individual retention basin at each RV site is considered off-line because it does not discharge in the 25-year, 24-hour storm event.

46. DRA Nos. 1, 2, 3, 4, 5, 6, and 7 are considered off-line because they do not discharge during the design storm.

47. DRA No. 8 is considered off-line because of the diversion box which provides for the retention of the treatment volume and diversion of the larger storms.

48. Off-line retention systems generally show greater pollutant treatment efficiencies than other types of stormwater treatment.

49. The first 1/2 inch of runoff or the "first flush" of rainfall contains ninety percent of the pollutants from the site.

SURFACE WATER

50. Utilizing information and methodologies generally accepted by experts in the field of water quality, the District analyzed and projected the average surface water and groundwater quality of the discharge from the surface water management system for the proposed project.

51. No data on runoff concentrations currently exists for RV parks. This analysis was based on a review of existing data on untreated runoff concentrations from three multifamily developments and one highway study.

52. Because data from studies of multifamily residential and highway projects was used, the District's estimates of the untreated runoff concentrations for this project are conservative in that the actual concentrations are probably less than estimated.

53. The District's analysis of the average quality of the discharge from the proposed system was also based on projecting the treatment efficiencies associated with the system.

54. This analysis was done by reviewing data from documented studies previously conducted to ascertain the treatment efficiency of retention methods of stormwater treatment.

55. Generally, retention of the first 1/2 inch of runoff removes eighty percent of the pollutants.

56. On this project, a treatment efficiency of ninety-five percent was assumed based on the fact that the system is off-line treatment and a minimum of 3/4 inch of runoff from the site will be retained in the basins prior to discharge.

57. The expected average untreated runoff concentrations were then reduced by the expected treatment efficiencies to project post-treatment water quality of the discharge from the proposed system.

58. These numbers were then compared to Chapter 17-302, Florida Administrative Code, water quality standards for Class III water bodies, and ambient water quality in Orange Lake.

59. Orange Lake is classified as an OFW. Therefore, the proposed project cannot be permitted if it will cause degradation of that water body.

60. The background data or ambient water quality data for phosphorous and nitrogen was taken from the Orange Lake Biological Report by the Florida Game and Freshwater Fish Commission in 1986. The ambient water quality for the other parameters in Table 2 of District Exhibit 2 was computed using eight years of data from a District monitoring station on Orange Lake.

61. The projected average concentration for each constituent in the discharge from the system is less than the ambient water quality of Orange Lake. Therefore, the proposed surface water discharge will not violate state water quality standards in waters of the state.

62. The post-development pollutant loading rates should be equal to or better than the pollutant loading rates from the use of the property as citrus or pastureland because the runoff is being retained on site and treated before being discharged.

GROUNDWATER

63. Groundwater discharges were reviewed by assessing the type of soil below the retention basin and the distance to the water table.

64. The soil on the site contains some organic matter which is beneficial for treatment purposes.

65. Based on the borings submitted by Celebrity, the water table, if any, is five feet or more below the bottom of any proposed retention basin.

66. Runoff in the basin will percolate through the soil.

67. Nutrients such as nitrogen and phosphorus will be taken up by the vegetation in the bottom of the basins.

68. Metals will bind to the soil material below the basin.

69. Oils and greases will be broken down through microbial degradation into nontoxic material.

70. Groundwater discharges from the proposed system will not violate any applicable state groundwater quality standards.

71. These standards will be met within the first three feet below the treatment basins.

72. The standards will also be met by the time the groundwater discharge moves to the edge of the zone of discharge which is at the property boundary.

73. The discharge from the proposed Celebrity project will not cause or contribute to a violation of state water quality standards in the receiving waters.

SINKHOLES

74. Sinkholes may form on the site.

75. Sinkholes that form will probably be "cover subsidence" sinkholes. Cover subsidence sinkholes are those in which a void below the surface fills with the soil from above, causing a depression in the ground surface.

76. There are four relict sinkholes on site. They are cover subsidence sinkholes.

77. The sinkhole nearest the lake has water in the bottom. Stormwater runoff is directed away from the sinkhole. Any water which enters the sinkhole from the land surface or above will enter from the sky.

78. The District has proposed criteria for stormwater systems in designated Sensitive Karst Area Basins. Those criteria are that 1) the water in the basins shall be no deeper than ten feet deep; 2) there should be at least three feet of unconsolidated material between the bottom of the basin and the top of the water table; and 3) the basins should be fully vegetated. The District currently applies these criteria as policy.

79. In this project, the basins are shallow, ranging from ten inches deep at the RV sites to 2 1/2 feet in the DRAs.

80. The basins have at least three feet of unconsolidated material between the bottom of the basin and the top of the water table. In the soil borings performed by Celebrity, the water table was shown to exist between five and fifty feet below land surface.

81. The proposed project design meets or exceeds the proposed criteria for Sensitive Karst Area Basins.

82. The basins will be fully vegetated or sodded with grass.

83. Lineations or lineaments are solution features which may indicate a fracture of the underlying limestone.

84. There may be a lineament on the site.

85. There are other sinkholes in the area.

86. If a cover subsidence sinkhole develops in an individual retention basin or DRA, stormwater, if any, will seep or percolate through the several feet of soil prior to reaching an aquifer.

87. Most of the pollutants in the retention basin will meet groundwater quality standards prior to percolation and further treatment in the soil.

OPERATION AND MAINTENANCE

88. Special conditions Nos. 13, 14, and 15 on the permit will require Celebrity to inspect the system monthly for sinkhole development. If a sinkhole develops, Celebrity must notify the District within 48 hours of its discovery. Celebrity must submit a detailed repair plan within 30 days for written approval by the District.

89. Celebrity proposes to repair any sinkholes that develop by a District-approved method.

90. Celebrity Resorts, Inc., is a legally established corporation registered in Delaware and owns the subject property.

91. Celebrity does not intend to subdivide the property but to sell memberships to use the property on a time-share basis.

92. Celebrity will administratively operate the site by employing a park manager who will remain on the property 24 hours a day. If any problems occur with the basins, either he or his designee will be on site to respond quickly to the situation. The park manager will have a full-time maintenance staff which will operate the park.

93. Celebrity will financially operate and maintain the proposed system using funds currently raised and in the future by membership fees. Celebrity is a publicly held corporation. Funds raised from the sale of stock, approximately \$3,500,000, have paid for legal and administrative fees as well as the land purchase.

94. Approximately \$400,000 has been reserved to operate the facility. It will cost approximately \$15,000 per month to run the park.

95. Memberships will be sold for \$300 per year. Part of the membership fees will go toward the general maintenance of the site.

96. Maintenance of the proposed system will include regular mowing and monthly inspection for sinkholes and repair if necessary.

WETLANDS IMPACTS OF THE PROJECT

97. The property contains waters of the state wetlands and isolated wetlands.

98. The waters of the state wetlands are those along the shore of Orange Lake.

99. One isolated wetland exists on site in the sinkhole which is closest to the lake. The sinkhole has standing water in which lemma, or duckweed, is growing. Duckweed is a listed plant species in Section 16.1.1(2) of the Handbook.

100. No construction is proposed in either the waters of the state wetlands or the isolated wetland.

101. The District criteria require the review of impacts to off-site aquatic and wetland dependent species relative to the functions currently provided by the wetlands to these types of fish and wildlife.

102. Since there will be no construction in the wetlands, there will be no impacts to the habitat, abundance and diversity, or food sources of off-site aquatic and wetland dependent species from this proposed project.

103. No threatened or endangered aquatic and wetland dependent species were observed on site.

104. The proposed permit application will not adversely affect natural resources, fish, or wildlife in a manner which is inconsistent with the District criteria.

105. The proposed permit application will not adversely affect hydrologically-related environmental functions in a manner which is inconsistent with the District criteria.

CONCLUSIONS OF LAW

106. The Division of Administrative Hearings has jurisdiction of the parties to and subject matter of these proceedings. Section 120.57(1), Florida Statutes.

107. The initial issue which requires resolution is whether Concerned Citizens of Orange Lake Area has standing to bring this action. The burden is on Citizens to prove standing. Department of Health and Rehabilitative Services v. Alice P., 367 So.2d 1045 (Fla. 1st DCA 1979). In order to have standing, a party's substantial interests must be determined by the agency action. Section 120.57, Florida Statutes.

108. Different standards have developed for determining standing of individuals and associations. While most of the standing cases have arisen within the context of rule challenges, the principles are similar in a permitting context. Boca Raton Mausoleum, Inc. v. Department of Banking and Finance, 511 So.2d 1060 (Fla. 1st DCA 1987), and Farmworkers Rights Organization v. Department of Health and Rehabilitative Services, 417 So.2d 753 (Fla. 1st DCA 1978).

109. The seminal cases are Florida Department of Offender Rehabilitation v. Jerry, 353 So.2d 1230 (Fla. 1st DCA 1978), cert. denied, 359 So.2d 1215 (Fla. 1978); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 1st DCA 1978), rev. denied, 415 So.2d 1359 (Fla. 1982), and Alice P., supra. The standard which can be synthesized from these seminal cases requires a showing of either a real and immediate effect or an injury in fact and a showing that the injury is of a type or nature which the proceeding is designed to protect [zone of interest].

110. The Florida Supreme Court next enunciated standing requirements for associations in Florida Home Builders Association v. Department of Labor and Employment Security, 412 So.2d 351 (Fla. 1982). There the court held that an association has standing to bring an action solely as a representative of its members if

1. A substantial number of its members, although not a majority, are "substantially affected" [will suffer a real and immediate effect or injury in fact];
2. The subject matter of the action is within the association's general scope of interest and activity; and
3. The relief is of the type appropriate for the association to receive on behalf of its members.

Paraphrased, the test is whether the "association has a legitimate associational interest, on behalf of a substantial number of its members, in the rule's operation." Id. at 354.

111. In Village Park Mobile Home Association, Inc., v. State Department of Business Regulation, 506 So.2d 426 (Fla. 1st DCA 1987), rev. denied, 513 So.2d

1063 (Fla. 1987), the Jerry test was revalidated to the extent that the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.

112. The zone of interest part of the test which arose from Agrico played an integral part in Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988), rev. denied, 542 So.2d 1333 (Fla. 1989). Ophthalmology is a case arising under Section 120.57(1), Florida Statutes, and the court discusses at great length the zone of interest concept as it relates to both rule challenges and proceedings under Section 120.57(1). The court noted, at page 1284:

We initially observe that not everyone having an interest in the outcome of a particular dispute over an agency's interpretation of the law submitted to its charge, or the agency's application of that law in determining the rights and interests of members of government or the public, is entitled to participate as a party in an administrative proceeding to resolve that dispute. Were that not so, each interested citizen could, merely by expressing an interest, participate in the agency's efforts to govern, a result that would unquestionably impede the ability of the agency to function efficiently and inevitably cause an increase in the number of litigated disputes well above the number that administrative and appellate judges are capable of handling. Therefore, the legislature must define and the courts must enforce certain limits on the public's right to participate in administrative proceedings. The concept of standing is nothing more than a selective method for restricting access to the adjudicative process, whether it be administrative or purely judicial, by limiting the proceeding to actual disputes between persons whose rights and interests subject to protection by the statutes involved are immediately and substantially affected. Thus, it has been stated, the "purpose of the law of standing is to protect against improper plaintiffs." 59 Am.Jur.2d, Parties Section 30 (1987).

The court in Ophthalmology, supra, concluded that the petitioners there lacked standing because they failed to show that:

their substantial interests will be injuriously affected in any manner that differs from the interests of the public generally

113. Board of Optometry v. Florida Society of Ophthalmology, 538 So.2d 878 (Fla. 1st DCA 1988), a companion rule challenge to the above-cited Ophthalmology case, makes it clear that general interest in the subject matter of a rule is

insufficient to support standing because the petitioners' standing must be predicated on a "legally recognized right of sufficient immediacy and reality to support their standing to challenge the validity of the adopted rule."

114. Another case, *International Jai-Alai Players Association v. Florida Pari-Mutual Commission*, 561 So.2d 1224 (Fla. 3rd DCA 1990), sheds some light on the applicable standing criteria in rule challenge proceedings. In the Jai-Alai case, the association filed a rule challenge under Section 120.56(1) to contest the changing of playing dates. Citing *Florida Home Builders*, supra, the court held that the members of the association had no standing under the Agrico test and that, therefore, the association had no standing on behalf of its members. The central injury asserted by the association on behalf of its members was that the changes in playing dates would aid fronton owners in a labor dispute, by breaking or prolonging an ongoing strike by the association, to the economic detriment of its members. The court found this to be "far too remote and speculative to qualify under the first prong of the Agrico standing test." It further held that the association did not show that the injury which it asserted on behalf of its members is the type of injury which the subject proceedings were designed to protect. This appears to be a further clarification of the zone of interest test discussed above.

115. The standing of organizations dedicated to the protection of the environment is discussed at length in *In the Matter of Surface Water Management Permit No. 50-01420-S*, 515 So.2d 1288 (Fla. 4th DCA 1987). This case reaffirmed the principles that a showing must be made that the organization has a "specific interest" which will be adversely impacted by the agency action. "Adverse impact" was interpreted to include "impending injury," "substantially affected," "sufficient immediacy and reality," and "injury in fact." Citing to the injury in fact test in *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972), the court included two standing requirements for organizations, namely that the organization seeking review must be among the injured and that the organization or its members must be injured in a manner greater than merely one of aesthetics and a lessening of environmental values of the area sought to be preserved.

116. Another decision that provides guidance in resolving the standing issues of the present case is *Grove Isle, Ltd. v. Bayshore Homeowners Association, Inc.*, 418 So.2d 1046 (Fla. 1st DCA 1982). There, the petitioner sought to challenge a determination that a marina developer did not require a lease of sovereign submerged lands. The nature of the petitioner's interests is described as follows at page 1047 of that decision:

Bayshore Homeowner's Association and others are individuals and special interest groups who reside in the residential area across from Grove Isle on the mainland and who use the proposed marina site for recreational activities. They, of course, oppose construction of the marina, arguing that it will interfere with their enjoyment of the area and pollute that part of Biscayne Bay.

In affirming the dismissal of the Petition for lack of standing, the court went on to state:

We affirm . . . and hold that the petitioners lack standing to challenge DNR's

decision that no lease was required. Petitioners have failed to show how their "substantial interests" will be "affected" by the DNR's decision that no lease is required. They, therefore, were not entitled to initiate Section 120.57 proceedings. Section 120.52(10); Section 120.57, Florida Statutes (1979). Their petitions for administrative hearing allege that they will be adversely affected by the adverse consequences to Biscayne Bay which will be caused by construction of the marina. These allegations do not show how petitioners are "substantially affected" any more than the general public by DNR's decision not to require a lease for the marina. See *U.S. Steel Corp. v. Save Sand Key, Inc.*, 303 So.2d 9 (Fla. 1974); *Chabau v. Dade County*, 385 So.2d 129 (Fla. 3d DCA 1980).

117. The principles from *Grove Isle* and its progeny are still followed. In *Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund and Department of Natural Resources*, 13 FALR 1943 (1991), the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, concluded:

The remaining interests asserted by the Petitioner as a basis for standing in this case are the interests of its members who live near and use the subject property and the general interest of the Petitioner and its members in protecting, preserving, and conserving environmentally endangered lands. These interests are also an insufficient basis for standing in this case. In order to establish standing in a case of this nature, the Petitioner must allege that its substantial interests will be injuriously affected in some manner that differs from the interests of the general public. The Petitioner has failed to allege any substantial interest different from that of the public in general and it has failed to identify any special injury to its interests different from any injury that might be borne by the rest of the public.

118. In applying all of these principles to the evidence presented by Citizens, it can only be concluded that it lacks standing to bring this proceeding. First, it has failed to show that a substantial number of its members are substantially affected by the intended District action. There are allegedly 76 members of the organization, but only three testified at the hearing. Apparently, 26 members wrote letters to the District protesting the entire Celebrity project, but those letters were not placed into evidence. Additionally, even assuming that a substantial number of the members are affected by the permit sought, no showing was made that they are "substantially affected" by the proposed permit. Although the group's alleged goal is to prevent pollution of Orange Lake, this general concern alone is not sufficient

to establish standing because the group has not shown how it will be affected differently than the general public.

119. Although three members of the group testified that they live from 1 to 2 miles from the project site and that they use Orange Lake for recreational and business purposes, this testimony is insufficient to establish a substantial injury in fact to the organization. Finally, no showing was made that the relief sought by the group is of the type which is appropriate for Citizens to receive on behalf of its members.

120. Since the hearing has been held and the facts have been found, summary conclusions are made herein regarding the conformance of the project with the applicable statutes and rules. Celebrity must provide reasonable assurances that construction, operation, and maintenance of the MSSW system will meet all applicable District rules and statutes. It must be concluded herein that Celebrity has provided reasonable assurances that all District criteria regarding water quality, water quantity, operation, maintenance, karst sensitive areas, and wetland impacts will be met or exceeded by the MSSW system proposed.

RECOMMENDATION

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

RECOMMENDED that the petition filed by Concerned Citizens of Orange Lake Area be dismissed for lack of standing and that Celebrity Resorts, Inc., be issued a MSSW permit for its system as designed and proposed.

DONE and ENTERED this 19th day of July, 1991, in Tallahassee, Florida.

DIANE K. KIESLING
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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(904) 488-9675

Filed with the Clerk of the Division of
Administrative Hearings this 19th
day of July, 1991.

APPENDIX TO THE RECOMMENDED ORDER

The following constitutes my specific rulings pursuant to Section 120.59(2), Florida Statutes, on the proposed findings of fact submitted by the parties in this case.

Specific Rulings on Proposed Findings of Fact Submitted by Petitioner, Concerned Citizens of Orange Lake Area

1. Proposed findings of fact 1-6 are subordinate to the facts actually found in this Recommended Order.

Specific Rulings on Proposed Findings of Fact
Submitted by Respondent, Celebrity Resorts, Inc.

1. Proposed findings of fact 1-38 are subordinate to the facts actually found in this Recommended Order.

Specific Rulings on Proposed Findings of Fact
Submitted by Respondent, St. Johns River
Water Management District

1. Each of the following proposed findings of fact is adopted in substance as modified in the Recommended Order. The number in parentheses is the Finding of Fact which so adopts the proposed finding of fact: 1&2(1); 3-7(4-7); 8-20(8-20); 21(2); 22-31(21-30); 32(16); and 33-107(31-105).

COPIES FURNISHED:

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St. Johns River Water Management District
Post Office Box 1429
Palatka, FL 32178-1429

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.