STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAUL LETO, RICHARD MEYER, and BERTA ANDERES,	)	
Petitioners,	)	
vs.	)	CASE NO. 94-7073
DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
Respondent,	)	
and	)	
BEACH DEFENSE FUND, INC.,	)	
Intervenor.	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 7 - 8, 1995, at Hollywood, Florida, before Errol H. Powell, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David B. Mankuta, Esquire
Atkinson, Diner, Stone & Mankuta, P.A.
Post Office Drawer 2088
Hollywood, Florida 33022-2088

For Respondent: Melease A. Jackson
Dana M. Wiehlel 1/
Assistant General Counsels
Division of Environmental Protection
2600 Blair Stone Road, Mail Station 35
Tallahassee, Florida 32399-2400

For Intervenor: Steve Welsch, President
Beach Defense Fund, Inc.
315 DeSoto Street
Hollywood, Florida 33019

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioners are eligible for a permit, pursuant to Section 161.053, Florida Statutes, for construction seaward of the Coastal Construction Control Line in Broward County, Florida.

PRELIMINARY STATEMENT

In November 1993, Paul Leto, Richard Meyer, and Berta Anderes (Petitioners) filed an application, through its representative, for a permit from the Department of Environmental Protection (Respondent). The application requested a Coastal Construction Control Line permit, pursuant to Chapter 161, Florida Statutes, for construction of a single-family residence, riprap structure, and associated minor structures in Broward County, Florida.

On July 13, 1994, Respondent filed a final order denying the permit. By certified letter dated July 14, 1994, Respondent notified Petitioners of the denial, and included a copy of the final order. Petitioners filed a petition for formal hearing. On December 19, 1994, this matter was referred to the Division of Administrative Hearings.

At hearing, Petitioners presented the testimony of three witnesses and entered ten exhibits into evidence. Respondent presented the testimony of five witnesses and entered 14 exhibits into evidence. Intervenor presented the testimony of one witness and entered four exhibits into evidence and proffered one exhibit.

A transcript of the formal hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for January 5, 1996. An extension of time was granted until January 8, 1996, to file post-hearing submissions. The parties filed proposed findings of fact which are addressed in the appendix to this recommended order.

FINDINGS OF FACT

1. On November 30, 1993, Vander Ploeg and Associates, Inc., on behalf of Paul Leto, Richard Meyer, and Berta Anderes (Petitioners) submitted an application to the Florida Department of Environmental Protection (Respondent) for a permit to perform construction on their property seaward of the Broward County Coastal Construction Control Line. Respondent deemed their application complete on April 18, 1994.

2. Petitioners proposed construction will be seaward of the Coastal Construction Control Line.

3. The proposed construction will occur on two adjacent lots in Broward County. Petitioner Leto is the owner of one of the lots described as Lot 19, Block 196, Hollywood Central Beach, Plat Book 4, Page 20, Public Records of Broward County. Petitioners Meyer and Anderes are the owners of the other lot described as Lot 20, Block 196, Hollywood Central Beach, Plat Book 4, Page 20, Public Records of Broward County. Petitioner Leto purchased his lot in September 1992 and Petitioners Meyer and Anderes purchased their lot in March 1993.

4. The lots were platted in or around the 1920's.

5. Both lots are seaward of the seasonal high water line, on a sandy beach with no frontal dune structure. They are bordered by the Atlantic Ocean on the eastern most side and by a roadway (Surf Road) which is immediately adjacent to the lots on the western most side and landward of the lots. Approximately 200 feet north of the lots is an existing structure and approximately 800 feet south of this first existing structure is another existing structure.

6. Petitioners topographical survey, which was submitted to Respondent in December 1993, showed that Lots 19 and 20, each measured 40 feet in a shore parallel direction and 80 feet in a shore normal direction, i.e., perpendicular to the shoreline.

7. The proposed structure will be located directly on the sandy beach.

8. The City of Hollywood, Florida has granted Petitioners a variance. Further, the proposed construction complies with the rules, zoning regulations, and ordinances of the City of Hollywood.

9. Petitioners' application requests a permit for the construction of a single-family residence on the lots, which will house two families. However, the proposed construction is for a duplex, not a single-family residence.

10. Petitioners are willing, and agreeable, to changing the design of the proposed structure to comply with Respondent's specifications for a single-family residence.

11. Additionally, the proposed construction includes a riprap which will also be located on the sandy beach. A riprap is typically used for protective armoring. No structure presently exists for the riprap to protect. Furthermore, the riprap proposed by Petitioners is not adequately designed as a coastal protection structure, and if the proposed single-family residence is modified in accordance with Respondent's specifications, the proposed modified single-family residence would not be eligible for coastal armoring.

12. The riprap structure is not an integral part of the structural design. Petitioners are willing, and agreeable, to eliminating the riprap structure.

13. No other issues exist as to the structural integrity of the design of the proposed project.

14. The lots on which the proposed structure will be located are a part of the beach-dune system. The natural function of the beach provides protection to upland property.

15. The lots on which the proposed structure will be located are subject to normal storm-induced erosion.

16. Tide and wave forces will impact the proposed structure during storms of minor intensity, including five-year storms.

17. The proposed structure will induce greater erosion on the lots as a result of scour due to the interaction of the storm waves and currents with the proposed structure.

18. During the storm, the normal storm-induced erosion combined with the scour erosion will form a breach or depression in the subject property. In turn, the upland property will be exposed to greater tide and wave forces, increasing the risk of erosion and damage to the upland property.

19. The subject lots and surrounding properties have been subjected to unnatural forces which have added to the erosion. The Port Everglades inlet has inhibited the natural downdrift of sand. The City of Hollywood's beach maintenance division has been regularly pushing sand seaward and in the process,

breaking down natural forming cliffs. Even though these unnatural forces are capable of being eliminated, the normal storm-induced erosion and the scour erosion would still exists.

20. The existing developed structures to the north and south of the subject lots appear to create a reasonably uniform line of construction. However, the developed structures have been unduly affected by erosion. The proposed structure will be located within this line of construction.

21. During a major storm along the shoreline, waves remove sand from the beach and dune area and deposit the sand in an offshore bar.

22. After the major storm, a recovery of the beach and dunes takes place. Normal wave activity carries the sand from the offshore bar back to the beach, and the sand is then carried landward by winds and is caught and trapped by dune vegetation; thereby reforming a dune.

23. Constructing the structure as proposed will not locate the structure a sufficient distance landward of the beach-dune system. As a result, the proposed structure will interrupt natural fluctuation in the shoreline and not preserve the natural recovery following the storm-induced erosion.

24. The cumulative impact on the beach-dune system by the proposed structure would be severe, i.e., the effects on the beach-dune system by repeating this same proposed structure along the subject shoreline would be severe. There would be structure-induced scour and general degradation of the beach-dune system. Additionally, the recovery potential of the subject area following a major storm event would be threatened.

25. Over the years, the beach of the subject property has been subjected to a re-nourishment project consisting of pumping sand from offshore. This method of re-nourishment may have negatively impacted the sand bar system immediately offshore affecting the hindrance of erosion. A sand bar system immediately offshore softens wave action on the shore and aids in inhibiting erosion.

26. The proposed structure will hinder lateral public beach access. Currently, lateral beach access exists along the beach between the existing northern developed property and the existing southern developed property. The proposed structure will be located on the sandy beach, and the seaward face of the proposed structure will be within approximately one foot of the wet sand beach. At times, the proposed structure will be surrounded by water on at least three sides. No alternative beach access would be available.

27. The proposed riprap will also be located on the sandy beach and will further hinder lateral public beach access. 2/

28. Loggerhead turtles, which are nesting marine turtles, engage in nesting activities along the stretch of beach where the subject property is located. They are a threatened species, i. e., close to extension.

29. Although they do not nest every year, the turtles usually provide several nests in a single year. Typically, one hundred eggs comprise a turtle nest.

30. In 1992, approximately 2,221 loggerhead turtle nests were in Broward County, with 22 of these nests located within 1,000 feet of the subject

property. Turtle nesting efforts have been observed in the beach area of the subject property. One nest was found within the subject property.

31. Structures located on the sandy beach interfere with marine turtle nesting habits. If female turtles make contact with the structures, they often abort nesting attempts, which results in false crawls. Repetitive false crawls harms successful nesting, which may cause malformed egg chambers, impacting the successful incubation of the nest. Also, interaction with a structure can cause injury or death to a female turtle attempting to nest.

32. Additionally, urbanization activity and lighting on the beach deter nesting.

33. A loss of marine turtle nesting habitat will result if the proposed structure is constructed.

34. Also, armoring, such as the proposed riprap, can result in nests being placed more seaward. 3/ Consequently, the nests would be threatened with tidal inundation, which would affect the mortality of the nest itself.

35. As one nest has been located within the subject property, at least one nest or crawl per year would be affected by the proposed structure.

36. Within 30 years, the proposed structure will be seaward of the seasonal high water line. The location of the proposed structure is seaward of the 30-year erosion projection for the subject property.

37. Beach Defense Fund, Inc. (Intervenor) presented no evidence to show that its interest is different than the public at large and that it has substantial interest separate and apart from the public.

CONCLUSIONS OF LAW

38. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Subsection 120.57(1), Florida Statutes.

39. Petitioners, as the applicants for the permit, have the burden of demonstrating entitlement to the permit. Florida Department of Transportation v. J. W. C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

40. The Florida Legislature has specifically recognized the importance of preserving and protecting Florida's beaches and its coastal barrier dunes. Section 161.053, Florida Statutes, provides in pertinent part:

> (1)(a) The Legislature finds and declares that the beaches in this state and the coastal barrier dunes adjacent to such beaches, by their nature, are subject to frequent and severe fluctuations and represent one of the most valuable natural resources of Florida and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion,

provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.

41. Section 161.053, Florida Statutes, provides further in pertinent part:

> (5) ...[A] permit to alter, excavate, or construct on property seaward of established Coastal Construction Control Lines may be granted by the department as follows:
> (a) The department may authorize an excavation or erection of a structure at any coastal location as described in subsection (1) upon receipt of an application from a property and/or riparian owner and upon the consideration of facts and circumstances, including:
> 1. Adequate engineering data concerning shoreline stability and storm tides related to shoreline topography;
> 2. Design features of the proposed structures or activities; and
> 3. Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system, which, in the opinion of the department, clearly justify such a permit.

42. Rule 62B-33.005, Florida Administrative Code, provides in pertinent part:

> (2) Seaward of the Coastal Construction Control Line ... special siting, structural and other design considerations are required:
> (a) for the protection of the beach-dune system;
> (b) for the protection of any proposed or existing structures; and
> (c) for the protection of adjacent properties.
>
> * * *
>
> (7) An individual structure or activity may not have an adverse impact on the beach or dune system at a specific site; however, a number of similar structures or activities along the coast may have a significant cumulative impact resulting in the general degradation of the beach or dune system along that segment of shoreline. The Department may not authorize any construction or activity whose cumulative impact will threaten the beach or dune system or its recovery potential following a major storm event.

43. Further, Rule 62B-33.007, Florida Administrative Code, provides in pertinent part:

> (1) The proposed structure or other activity shall be located a sufficient distance landward of the beach-dune system to permit natural shoreline fluctuations and to preserve the dune stability and natural recovery following storm induced erosion ...
>
> (2) All structures shall be designed so as to minimize any expected adverse impact on the beach-dune system or adjacent properties and structures and shall be designed consistent with Section 62B-33.005, Florida Administrative Code.

44. Petitioners have failed to demonstrate that their proposed construction has satisfied or is not prohibited by the above cited statutory and rule provisions .

45. At its discretion and under certain circumstances, Respondent may grant a permit for construction seaward of the established coastal construction control line. Subsection 161.053(5), Florida Statutes, provides in pertinent part:

> (b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if the existing structures have not been unduly affected by erosion, a proposed structure may, at the discretion of the department, be permitted along such line on written authorization from the department if such structure is also approved by the department.

46. However, in the instant case, Respondent is prohibited from granting a permit for any structure unless the structure falls within an exception. Subsection 161.053(6), Florida Statutes provides in pertinent part:

> (b) [T]he department ... shall not issue any permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to part II of chapter 403, which is proposed for a location which, based on the department's projections of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for such permit...
>
> (c) Where the application of paragraph (b) would preclude the construction of a structure, the department may issue a permit for a

> single-family dwelling for the parcel so long as:
>
> 1. The parcel for which the single-family dwelling is proposed was platted or subdivided by metes and bounds before the effective date of this section;
>
> 2. The owner of the parcel for which the single-family dwelling is proposed does not own another parcel immediately adjacent to and landward of the parcel for which the dwelling is proposed;
>
> 3. The proposed single-family dwelling is located landward of the frontal dune structure; and
>
> 4. The proposed single-family dwelling will be as far landward on its parcel as is practicable without being located seaward of or on the frontal dune.

47. Petitioners have failed to demonstrate that their proposed structure falls within the exception provided in Subsection 161.053(6).

48. Further, Petitioners have failed to demonstrate that the proposed riprap, which is an armoring structure, will provide protection for an existing structure in need of protection. Rule 62B-33.007(6), Florida Administrative Code.

49. Subsection 370.12(1), Florida Statutes, provides in pertinent part:

> (c)1. Unless otherwise provided by the federal Endangered Species Act or its implementing regulations, no person may take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest, or harass any marine turtle or its nest or eggs at any time. For purposes of this subsection, "take" means an act which actually kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding or sheltering.
>
> * * *
>
> (e) The department may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting marine turtles and hatchlings and their habitat pursuant to the provisions of s. 161.053(5)...
>
> (f) The department shall recommend denial of a permit application if the activity would result in a "take" as defined in this subsection, unless, as provided for in the

federal Endangered Species Act and its implementing regulations, such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

50. Even though one nest has been located on the subject property, the evidence shows that marine turtle nesting efforts have been observed on the subject property. The evidence shows that construction of the proposed project will result in a take as defined by Subsection 370.12(1)(c). Petitioners have failed to demonstrate that they fall within the exception provided in Subsection 370.12(1).

51. Petitioners have indicated a willingness to change the proposed structure to conform to Respondent's specifications for a single-family dwelling and to eliminate the riprap. Such changes by Petitioners may place the proposed structure within the exception of Subsection 161.053(6)(c) and deserves consideration by Respondent. As to the issue of turtle nesting, perhaps a plan could be developed, in accordance with Subsection 370.12(1)(e), to protect the nesting marine turtles and hatchlings and their habitat.

52. Intervenor has failed to demonstrate that it has standing in the instant case.

RECOMMENDATION

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

RECOMMENDED that the Department of Environmental Protection enter a final order denying the application of Paul Leto, Richard Meyer, and Berta Anderes for a permit, pursuant to Section 161.053, Florida Statutes, for construction seaward of the Coastal Construction Control Line in Broward County, Florida.

DONE AND ENTERED this 31st day of May, 1996, in Tallahassee, Leon County, Florida.

ERROL H. POWELL, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of May, 1996.

ENDNOTE

1/ At hearing, the Department of Environmental Protection (Respondent) was represented by Dana M. Wiehle. Subsequently, Melease A. Jackson was substituted as counsel of record for Respondent.

2/ The riprap is not an integral part of the proposed structure. Petitioners indicate that the riprap can be eliminated.

3/ Ibid.

APPENDIX

The following rulings are made on the parties' proposed findings of fact:

Petitioners' Proposed Findings of Fact

1. Partially accepted in finding of fact 3.
2. Partially accepted in finding of fact 3.
3. Partially accepted in finding of fact 4.
4. Partially accepted in finding of fact 5.
5. Partially accepted in finding of fact 8.
6. Partially accepted in finding of fact 9.
7. Partially accepted in finding of fact 5.
8. Rejected as being not supported by the greater weight of the evidence.
9. Partially accepted in finding of fact 12.
10. Rejected as being argument, or a conclusion of law.
11. Partially accepted in finding of fact 13.
12. Partially accepted in findings of fact 30 and 35.
13. Partially accepted in finding of fact 20.
14. Partially accepted in finding of fact 19.
15. Partially accepted in finding of fact 25.
16. Rejected as being not supported by the greater weight of the evidence.
17. Rejected as being unnecessary, or irrelevant.
18. Partially accepted in finding of fact 37.
19. Rejected as being not supported by the greater weight of the evidence.
20. Rejected as being not supported by the greater weight of the evidence.

Respondent's Proposed Findings of Fact

1. Partially accepted in finding of fact 1.
2. Partially accepted in findings of fact 1, 2, 9, and 11.
3. Partially accepted in findings of fact 3 and 5.
4. Partially accepted in finding of fact 6.
5. See Preliminary Statement.
6. See Preliminary Statement.
7. Rejected as being unnecessary.
8. Rejected as being unnecessary.
9. Rejected as being argument, or a conclusion of law.
10. Rejected as being argument, or a conclusion of law.
11. Rejected as being argument, or a conclusion of law.
12. Rejected as being argument, or a conclusion of law.
13. Rejected as being argument, or a conclusion of law.
14. Rejected as being argument, or a conclusion of law.
15. Partially accepted in finding of fact 23.
16. Partially accepted in findings of fact 9 and 36.
17. Rejected as being argument, or a conclusion of law.
18. Partially accepted in finding of fact 7.
19. Partially accepted in finding of fact 16.
20. Partially accepted in finding of fact 17.
21. Rejected as being unnecessary.
22. Partially accepted in finding of fact 18.
23. Partially accepted in finding of fact 18.
24. Partially accepted in finding of fact 20.
25. Rejected as being argument, or a conclusion of law.

26. Partially accepted in finding of fact 14.
27. Partially accepted in findings of fact 21, 22, and 23.
28. Rejected as being unnecessary, argument, or a conclusion of law.
29. Partially accepted in finding of fact 24.
30. Partially accepted in finding of fact 24.
31. Rejected as being argument, or a conclusion of law.
32. Partially accepted in finding of fact 26.
33. Partially accepted in findings of fact 26 and 27.
34. Partially accepted in findings of fact 26 and 27.
35. Rejected as being argument, or a conclusion of law.
36. Partially accepted in finding of fact 28.
37. Partially accepted in finding of fact 30.
38. Partially accepted in finding of fact 29.
39. Partially accepted in finding of fact 31.
40. Partially accepted in finding of fact 34.
41. Partially accepted in findings of fact 32 and 33.
42. Partially accepted in finding of fact 35.
43. Rejected as being argument, or a conclusion of law.
44. Partially accepted in findings of fact 9 and 36.
45. Partially accepted in finding of fact 36.
46. Partially accepted in finding of fact 11.
47. Partially accepted in finding of fact 11.
48. Partially accepted in finding of fact 11.
49. Partially accepted in finding of fact 11.

Intervenor's Proposed Findings of Fact

At Intervenor's request, Respondent's proposed findings of fact are treated as it's proposed findings of fact. As a result, the rulings on Respondent's findings of fact are applicable to Intervenor

NOTE: Where a proposed finding has been partially accepted, the remainder has been rejected as being unnecessary, irrelevant, cumulative, not supported by the greater weight of the evidence, not supported by the more credible evidence, argument, or a conclusion of law.

COPIES FURNISHED:

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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 ten 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.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION'S FINAL ORDER

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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL LETO, RICHARD MEYER, and
BERTA ANDERES,

Petitioners,

v. OGC Case No. 94-3756
DOAH Case No. 94-7073

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent,
and

BEACH DEFENSE FUND, INC.,

Intervenor.
_____/

FINAL ORDER

On May 31,1996, a Hearing Officer with the Division of Administrative Hearings (hereinafter "DOAH") submitted his Recommended Order to the Department of Environmental Protection, (hereafter "Department"). The Recommended Order was also served upon Petitioners, Paul Leto, Richard Meyer, and Berta Anderes, (hereafter "Petitioners"), and upon Intervenor, Beach Defense Fund, Inc. (hereafter "Intervenor"). A copy of the Recommended Order is attached as Exhibit A.

On June 13,1996, Exceptions to Recommended Order were filed on behalf of the Department. Exceptions to Recommended Order were also filed on behalf of Petitioners on June 14,1996. The Department subsequently filed a Response to Petitioners' Exceptions to Recommended Order on June 25,1996. No Response to Department's Exceptions were filed on behalf of Petitioners. No Exceptions or Response to Exceptions were filed on behalf of Intervenor. The matter is now before the Secretary of the Department for final agency action.

BACKGROUND

In November of 1993, Petitioners' representative filed a joint application with the Department for construction of "two new single family attached dwelling units", riprap structure, and associated minor structures on two adjacent lots 1/ in the City of Hollywood, Broward County, Florida. (Petitioners' Ex 3) The proposed dwelling units and appurtenant structures are to be constructed on the Atlantic Ocean beach in Hollywood. It is undisputed that the proposed construction would extend in excess of 200 feet seaward of the Broward County Coastal Construction Control Line 2/ (hereafter "CCCL").

The Department entered a "Final Order" on July 13,1994, denying Petitioners application citing failure of the proposed beach construction project to comply with various statutory and rule provisions dealing with requirements for CCCL permits. (Petitioners' Ex. 4) Petitioners then timely filed a petition for formal hearing challenging the denial of the permit and the matter was referred to DOAH for assignment of a hearing officer. A formal hearing was held at Hollywood, Florida, on December 7-8, 1995, before DOAH Hearing Officer Errol H. Powell (hereafter "Hearing Officer"). The testimony of various witnesses was presented and multiple exhibits were admitted into evidence at the formal hearing on behalf of the Department, Petitioners, and Intervenor.

The Hearing Officer entered a Recommended Order on May 31,1996, concluding that Petitioners failed to demonstrate that the proposed construction of the dwelling units or riprap would comply with the pertinent provisions of Sections 161.053, Florida Statutes, and the related rule provisions of Rules 62B-33.005, 62B-33.007, Florida Administrative Code. The Recommended Order also concludes that the evidence established that Petitioners' proposed construction would constitute a "take" 3/ of marine turtle habitats as defined by Subsection 370.12(1)(c), Florida Statutes, and that Petitioners failed to demonstrate that they fall within any exceptions set forth in Subsection 370.12(1). The Hearing Officer ultimately recommended that the Department enter a Final Order denying Petitioners' requested permit for construction of the proposed dwelling units, appurtenant structures, and riprap on the beach seaward of the Broward County CCCL.

STANDARDS OF AGENCY REVIEW

Exceptions to portions of the Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer have been filed on behalf of the Department and/or Petitioners. As a preface to the following rulings on these exceptions, it is appropriate to comment here upon the standards of review imposed by Florida law on administrative agencies reviewing recommended orders of hearing officers.

Under Section 120.57(1)(b)10, Florida Statutes, a reviewing agency is free to reject or modify a hearing officer's conclusions of law and interpretations of administrative rules with which the agency disagrees. See, also, MacPherson v. School Board of Monroe County, 505 So.2d 682 (Fla. 3d DCA 1987); Siess v. Dept. of Health and Rehabilitative Services, 468 So.2d 478 (Fla. 2d DCA 1985); Alles v. Dept. of Professional Regulation, 423 So.2d 624 (Fla. 5th DCA 1982).

The statutory provisions of Section 120.57(1)(b)10 prescribe, however, that the findings of fact of a hearing officer may not be rejected or modified, "unless the agency first determines from a review of the complete record, and states `with particularity in the order, that the findings of fact were not based on competent substantial evidence..." Accord Martuccio v. Dept. of Professional Regulation, 622 So.2d 607, 609 (Fla. 1st DCA 1993); Freeze v. Dept. of Business Regulation, 556 So.2d 1204,1205 (Fla. 5th DCA 1990); Florida Department of Corrections v. Bradley, 510 So.2d 1122, 1123 (Fla. 1st DCA 1987).

RULINGS ON EXCEPTIONS OF DEPARTMENT

Finding of Fact 10 - Changing the Design of the Proposed Structure. and Finding of Fact 12 - Eliminating Riprap Structure

These two Exceptions of the Department take exception respectively to the Hearing Officer's Finding of Fact 10 in its entirety and to the second sentence of Finding of Fact 12. The two Exceptions and corresponding findings of fact deal with factual findings by the Hearing Officer as to the purported willingness of Petitioners to modify their application to make changes in the design of the proposed dwellings structure to comply with Department specifications for a single-family residence and to entirely eliminate the proposed riprap 4/ structure. The Department contends in its Exceptions that there is no competent substantial evidence of record to support these challenged findings of fact of the Hearing Officer.

The Department's Exception is correct in that none of the Petitioners actually testified at the formal hearing that they are willing to amend their permit application by dividing the "common wall "dwelling units into two separate buildings and by eliminating the proposed riprap structure. Petitioners' architect Derek Vander Ploeg did testify at the formal hearing that the proposed riprap structure was not a "critical part" of his design. (Tr. 63-64) Mr. Vander Ploeg further testified that he utilized a "common wall" design for the dwelling structure due to "economics of construction", and that conceivably you could build, duplicate the structure and build them any distance apart that's practical." (Tr. 65-66) Richard Bochnovich, a civil engineer hired to provide engineering expertise with respect to the proposed construction described in Petitioners' permit application, also testified that the design of the dwelling units is not "dependent upon that riprap." (Tr. 81)

In addition, the Petitioners' counsel of record in this case also represented to the Hearing Officer in Petitioners' Proposed Finding of Fact 9

submitted after conclusion of the formal hearing that the rip rap structure "can be eliminated to satisfy the concerns raised by Respondent's staff." Moreover, Petitioners' represent in the last paragraph of their Exception 2 that, if the only impediment to granting of the permit is that the two dwelling units be physically separated, then "petitioners will simply divide the two". Petitioners' counsel of record in this case is presumed to have authority to make such representations in behalf of his clients in absence of any evidence to the contrary.

In view of the above, the Department's Exceptions to the Hearing Officer's Finding of Fact 10 and to the second sentence of his Finding of Fact 12 are denied.

Exception to Conclusion of Law 51

This final Exception of Department takes issue with the Hearing Officer's Conclusion of Law 51 in its entirety. The first sentence of Conclusion of Law 51 is merely a summary of the Hearing Officer's factual findings in Finding of Fact 10 and the last sentence of Finding of Fact 12. The Department's Exception to this first sentence of Conclusion of Law 51 is rejected for the reasons set forth in the above rulings denying the Department's Exceptions to these related findings of fact of the Hearing Officer.

As noted above in the Standards of Agency Review portion of this Final Order, the reviewing agency is free to reject or modify a hearing officer's conclusions of law with which the agency disagrees. The conclusion in the second sentence of Conclusion of Law 51 suggesting that certain structural changes to the design of the proposed dwelling units and elimination of the proposed riprap purportedly acceptable to Petitioners "may place the proposed structure within the exception of Subsection 161.053(6)(c) and deserves (sic) consideration by the Respondent" appears to be a matter of future speculation condemned by the court in Metropolitan Dade County v. Coscan Florida. Inc., 609 So.2d 644 (Fla. 3d DCA 1992). The final sentence of Conclusion of Law 51 suggesting that "perhaps a plan could be developed... to protect the nesting marine turtles and hatchlings and their habitat" also appears to constitute impermissible speculation by the Hearing Officer in violation of the Coscan decision.

In Coscan, the court held that the hearing officer erred by relying on the provisions of a settlement agreement between the Department and the permit applicant dealing with future monitoring to constitute the necessary reasonable assurances that the project met the applicable water quality standards based on the evidence presented at the formal hearing. The court ruled in the Coscan opinion that:

> We conclude that the hearing officer must examine the applicant's proposal to determine [at this time] whether the project provides the necessary reasonable assurances called for by the statute. [emphasis supplied].

Id. at 609 So.2d 648

The Coscan decision was expressly relied upon in the Department's Final Order in Tamaron Utilities. Inc. v. Dept. of Environmental Protection, 16 FALR

3112 (DEP June 17,1994). In the Tamaron Utilities Final Order, the Department concluded as follows:

> The attempt of the Hearing Officer to impose upon the Department the duty to draft conditions in the Final Order that might or might not ultimately result in Tamaron's compliance with the Grizzle-Figg advanced waste treatment requirements is too speculative to comply with Florida case law holding [that a permit applicant has to provide reasonable assurances at the time of the hearing] that the project complies with the applicable statutory and rule requirements for design, operation and discharge. [emphasis supplied]

Id. at 3122.

The Hearing Officer's suggestions that the specified potential design changes to Petitioners' permit application "deserves (sic) consideration by the Respondent" and that "perhaps a plan could be developed" to resolve his finding of a take of marine turtle nests and their habitats are rejected as impermissible speculation in violation of the quoted Coscan rationale as interpreted in the Tamaron Utilities Final Order. It is also significant that the ultimate Recommendation of the Hearing Officer in this case is for outright denial by the Department of Petitioners' permit application and omits any suggestions that the application be amended and supplemented as suggested in Conclusion of Law 51.

Based on the matters discussed above, the Department's Exception to Conclusion of Law 51 is denied as to the first sentence and is granted as to the second and third sentences.

RULINGS ON PETITIONERS' EXCEPTIONS

Exception 1- Finding of Fact No. 8

This initial Exception of Petitioners takes issue with the Hearing Officer's failure to include in his Finding of Fact No. 8 the undisputed fact that construction of "single- family" residences on the subject beach lots was expressly approved by the City of Hollywood. (Petitioners' Exhibits 5 and 6) The Department's Response to Exceptions does not contain any opposing argument as to this particular Exception of Petitioner. Petitioners, however, have not cited any legal authority arguably holding that the Department is bound by the City of Hollywood's zoning determination in its interpretation of whether a proposed structure in a CCCL permit application is a "single-family dwelling" within the purview of the exception provisions of Section 161.053(6)(c), Florida Statutes.

The Department's own Rule 62B-33.005(6), Florida Administrative Code, provides in pertinent part that "the Department will not consider as binding county and municipal zoning and building codes, or property covenants or deed restrictions, which are contrary to the purposes of Chapter 161, Florida Statutes." See, also, Stradler v. Oakley, 410 So.2d 954 (Fla. 1st DCA 1982), concluding that the meaning of a term such as "one dwelling" or "dwelling house"

as applied in exemptions, criminal law, or zoning ordinances "may vary with the context of its usage." Id. at 955.

With the caveat noted above, Petitioners' Exception 1 is granted.

Exception 2- Finding of Fact No. 9

Petitioners' second Exception takes exception to the Hearing Officer's finding in the second sentence of his Finding of Fact No. 9. The Hearing Officer found therein that the proposed dwelling structure as designed by the architect in the pertinent documents submitted to the Department in connection with Petitioners' permit application is actually a "duplex", rather than "two attached single-family dwelling units" as characterized by Petitioners. 5/ This finding of fact of the Hearing Officer affirms the same finding of fact in the Department's "Final Order" filed on July 13,1994, which initiated this formal administrative proceeding. (Petitioners' Ex. 4, page 1) Petitioners contend that there-is no competent substantial evidence of record to support this finding of the Hearing Officer. The Department's Response to Exceptions asserts that the Hearing Officer's finding that the dwelling structure as designed in the permit application documents is a duplex rather than two separate single-family residences is supported by the testimony at the formal hearing of its expert witness J. B. Manson-Hing.

Mr. Manson-Hing is a civil engineer and longtime employee with the Department who was accepted by the Hearing Officer as an expert in coastal engineering and coastal processes without any objection from Petitioners' counsel.6 (Tr. 194-199) Manson-Hing testified that one of his duties as Area Engineer for Broward County is to determine whether the proposed structures in a CCCL permit application meet the necessary statutory and rule requirements, including a determination as to whether any proposed dwelling structures are single-family dwellings or multifamily dwellings. (Tr. 213) Mr. Manson-Hing repeatedly testified to his professional opinion that Petitioners' proposed dwelling structure was a "multifamily structure" or "two-family dwelling", which is a "duplex". (Tr. 213, 216-217, 226)

As noted above in the Standards of Agency Review, it is a settled rule of administrative law that the findings of fact of a hearing officer may not be rejected or modified, unless the agency first determines from a review of the complete record that the findings of fact were not based on competent substantial evidence. This expert testimony of Mr. Manson-Hing constitutes competent substantial evidence supporting the challenged finding of the Hearing Officer that Petitioners' proposed dwelling structure is not a "single-family dwelling" within the purview of the exception provisions of Section 161 .053(6)(c), Florida Statutes.

The case law of Florida uniformly holds that considerable deference should be accorded to administrative interpretations of statutes and rules that the agency is required to enforce, and that such administrative interpretations should not be overturned unless clearly erroneous. See, e.g., Falk v. Beard, 614 So.2d 1086,1089 (Fla. 1993); Dept. of Environmental Regulation v. Goldring, 477 So.2d 532, 534 (Fla. 1985); Harloff v. City of Sarasota, 575 So.2d 1324,1327 (Fla. 2d DCA 1991); Reedy Creek Improvement Dist. v. Dept. of Env. Regulation, 486 So.2d 642, 648 (Fla. 1st DCA 1986). Furthermore, the administrative interpretation of the governing statutory and rule provisions by the enforcing agency does not have to be the only one, or even the most desirable interpretation. It is enough if the agency interpretation is a permissible one. Golfcrest Nursing Home v. State. Agency for Health Care Admin., 662 So.2d 1330,

1333 (Fla. 1st DCA 1995); Little Munyon Island v. Dept. of Environmental Regulation, 492 So.2d 735, 737 (Fla. 1st DCA 1986).

This agency interpretation that Petitioners' proposed dwelling units constitute a multifamily duplex rather than two single-family dwellings within the purview of the exception provisions of Section 161.053(6)(c), Florida Statutes, as testified to by the Department's longtime CCCL permit reviewer J. B. Manson-Hing, does not appear to be clearly erroneous or impermissible. It is an established rule of statutory construction that exception provisions to a general statutory prohibition are to be strictly construed against the party attempting to take advantage of the exception. See, e.g., State v. Nourse, 340 So.2d 966, 969 (Fla. 3d DCA 1976); 49 Fla. Jur. 2d, Statutes, Sec. 199. Furthermore, it is uncontroverted that the proposed dwelling units in this case have a common foundation and are only separated by a "common wall". (Tr. 65-66, 216; Petitioners' Ex. 7) In the opinion in Overstreet v. Turbin. 53 So.2d 913 (Fla. 1951), the Florida Supreme Court observed that "[t]he structures here involved are so called duplex or two-family dwellings], each unit being owned in fee simple by separate owners, having separate plumbing and electrical wiring, separate entrances and walkways, [and being connected only by an eight-inch party wall]." [emphasis supplied] Id. at 914.

Petitioners correctly note in this Exception that their architect Derek Vande Ploeg did testify at the formal hearing that he designed the proposed dwelling units as "two single-family residences". Mr. Vande Ploeg, however, never gave any specific testimony as to his interpretation of the statutory term "single-family dwelling" as codified in Subsection 161.053(6)(c), Florida Statutes. Moreover, a review of the transcript of the formal hearing testimony reveals that Mr. Vande Ploeg was never tendered by Petitioners nor accepted by the Hearing Officer as an expert witness in the DOAH proceedings. (Tr. 56-69)

In any event, even if this testimony of Derek Vande Ploeg was deemed to be conflicting "expert testimony", the decision to accept one expert's testimony over that of another is a matter within the sound discretion of the Hearing Officer and cannot be altered by the reviewing agency, absent a complete lack of competent substantial evidence of record from which the finding could be reasonably inferred. See, Collier Medical Center v. State, Dept. of HRS, 462 So.2d 83,85 (Fla. 1st DCA 1985); Florida Chapter of Sierra Club v. Orlando Utilities Commission, 436 So.2d 383, 389 (Fla. 5th DCA 1983). Furthermore, the sufficiency of the facts required to form the opinion of an expert must normally reside with the expert and any purported deficiencies in such facts relate to the weight of the evidence, a matter also within the province of the Hearing Officer as the trier of the facts. Gershanik v. Dept. of Professional Regulation, 458 So.2d 302, 305 (Fla. 3rd DCA 1984), rev. den. 462 So.2d 1106 (Fla. 1985).

In view of the above, Petitioners' Exception 2 taking exception to the second sentence of the Hearing Officer's Finding of Fact No. 9 is denied.

Exception 3-Findings of Fact Nos. 12, 17, and 18

In this composite Exception, Petitioners apparently take exception to the Hearing Officer's findings in Findings of Fact 17 and 18 that the proposed riprap structure will increase erosion of the subject beach area due to "scour erosion". The reference to Finding of Fact 12 is seemingly inexplicable since Petitioners' Exception states they "do not take issue with the [Hearing Officer's] finding that the riprap structure is not an integral part of the

plan" and their Proposed Finding of Fact 9 submitted to the Hearing Officer concurs with his finding that Petitioners are willing to eliminate the riprap structure.

The testimony of record does not support Petitioners' assertion that it is "undisputed that a rip rap structure will inhibit erosion and protect against scouring." The Hearing Officer's findings that the riprap structure will "induce greater erosion on the lots as a result of scour" and that "the normal storm-induced erosion combined with the scour erosion will form a breach or depression in the subject property "are amply supported by the expert testimony of J. B. Manson-Hing. (Tr. 235-237) Petitioners rely on the conflicting testimony of their witness Derek Vander Ploeg that the riprap structure would have a positive effect by enhancing beach renourishment. (Tr. 62-64)

The agency reviewing a recommended order may not reweigh the evidence, resolve conflicts therein or judge the credibility of witnesses, as those are evidentiary matters within the province of the hearing officer as the trier of the facts. Martuccio v. Dept. of Professional Regulation, 622 So.2d 607, 609 (Fla. 1st DCA 1993); Heifetz v. Dept. of Business Regulation, 475 So.2d 1277,1281 (Fla. 1st DCA 1985). A reviewing agency is also not free to modify the findings of fact in a recommended order to fit a conclusion desired by it or by a party by interpreting the evidence or by drawing inferences therefrom in a manner different from the interpretations made and inferences drawn by a hearing officer from the testimony at an administrative hearing. Id. at 1281-1282.

Based on the matters discussed above, Petitioners' Exception 3 taking Exception to the Hearing Officer's Findings of Fact Nos. 12,17, and 18 is denied.

Exception 4- Finding of Fact No. 24

This cursory one-paragraph Exception takes issue with the Hearing Officer's finding of a severe [adverse] cumulative impact 7/ on the beach system if Petitioners' proposed project was permitted and constructed. This finding of the Hearing Officer is based on the uncontroverted expert testimony of J. B. Manson-Hing. (Tr. 261-263; 364-365). As noted previously in this Final Order, a reviewing agency has no authority to substitute its judgment for that of a hearing officer by reweighing the evidence, judging the credibility of witnesses, or interpreting the evidence and inferences drawn therefrom in a different manner. Such judgments, interpretations, and inferences are evidentiary matters within the province of the hearing officer as the trier of the facts. Consequently, Petitioners' Exception 4 taking exception to Finding of Fact No. 24 is denied.

Exception 5- Finding of Fact No. 30

Petitioners' Exception 5 takes exception to the Hearing Officer's findings relating to evidence of the existence of loggerhead turtle 8/ nests and nesting efforts on the proposed building site and at other beach locations in the immediate vicinity. These factual findings set forth in the Hearing Officer's Finding of Fact No. 30 and the related Conclusion of Law 50 are based on the uncontroverted expert testimony of the Department's witness Michael Sole and Petitioners' own exhibit. (Tr. 457, 481-485; Petitioners' Ex. 8) Mr. Sole was accepted by the Hearing Officer as an expert in marine turtle conservation. (Tr. 427-433)

Petitioners correctly observe in this Exception that there was evidence of only one marine turtle nesting site on the subject property. The evidence also established, however, the existence of in excess of 50 marine turtle nests on the beach within 1,000 feet of the subject property during the years 1991 through 1995. (Tr. 457) Petitioners are once again disagreeing with the Hearing Officer on the sufficiency and weight of the evidence to support his findings of fact. As previously discussed herein, questions relating to the sufficiency and weight of the evidence, including expert testimony, are evidentiary matters within the province of the Hearing Officer and the reviewing agency does not have authority to substitute its judgment on such evidentiary matters. Accordingly, Petitioners' Exception 5 taking exception to the Hearing Officer's Finding of Fact No. 30 is denied.

Exception 6- Conclusions of Law Nos. 46-47

Petitioners' final Exception takes issue with the Hearing Officer's Conclusions of Law 46 and 47 concluding that Petitioners have failed to demonstrate that their proposed dwelling units fall within the "single-family dwelling" exception set forth in Subsection 161.053(6)(c), Florida Statutes. These Conclusions of Law relate back to and are integrally connected with the Hearing Officer's Finding of Fact 9. This Exception must be rejected for the reasons set forth in the prior ruling denying Petitioners' Exception to Finding of Fact No. 9.

It is also significant that the singlefamily dwelling exception provisions of Section 161.053(6)(c) are not mandatory in nature. To the contrary, the discretionary nature of this statutory subsection is evidenced by the plain language stating that "...the department [may issue] a permit for a single-family dwelling for the parcel so long as..." [emphasis supplied] Thus, Petitioners would have no absolute right to the grant of this exception to the general prohibition of Section 161.053(6)(b) against issuing CCCL permits for structures located seaward of the projected 30-year erosion control line even if the Department had determined that proposed dwelling units were two separate single-family dwellings. In fact, Mr. Manson-Hing actually testified at the formal hearing that, even if the project design was amended to construct two separate freestanding dwelling structures, he would not change his opinion that the permit should be denied due to the erosion problem on the beach. (Tr. 337)

Consequently, Petitioners' Exception 6 taking exception to the Hearing Officer's Conclusions of Law 46 and 47 is denied.

CONCLUSION

Notwithstanding the assertions of Petitioners' counsel to the contrary, this is not a case of minor design problems with the proposed structures that are easily resolvable by a couple of changes in the project blueprints. The Department's Broward County Area Engineer and chief CCCL permit reviewer J. B. Manson-Hing testified at the formal hearing that Petitioners' proposed construction would exacerbate erosion problems at the beach site and that the application would not comply with the CCCL permit requirements even if the dwelling units were separated and the riprap eliminated. Mr. Manson-Hing also testified of his opinion that the project would hinder lateral access of the public along the beach due to the proximity of the eastern extremities of the dwelling structure to the waters of the Atlantic Ocean.

The Hearing Officer's related Findings of Fact 19-23 and 26 finding that existing beach erosion problems will be heightened and that lateral public beach

access will be hindered by the proposed structures were not even challenged in Petitioners' Exceptions. Thus, Petitioners' claim that the Department staff reviewing their application could have and should have done more to resolve the project's primary defects is not compelling. Finally, the Coscan decision obviously imposes severe restrictions on the legality of agreements entered into between the Department and an applicant after the conclusion of a DOAH formal hearing in an attempt to bring an application into compliance with the applicable permitting laws.

It is therefore ORDERED:

A. Finding of Fact 8 of the Recommended Order is modified by adding the words "for single-family residences" at the end.

B. Conclusion of Law 51 of the Recommended Order is modified by deleting therefrom the second and third sentences and by adding thereto a new second sentence reading as follows:

> These proposed changes in the design of Petitioners' project, however, would not remedy the Department's major objections to their permit application.

C. The Recommended Order of the Hearing Officer, as modified in paragraphs A and B above, is adopted and incorporated herein by reference.

D. The Department's "Final Order" filed in File Number BO-335 on July 13, 1994, is affirmed.

E. Petitioners' application for a coastal construction control line permit in Broward County, Florida, is DENIED.

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Order is filed with the clerk of the Department.

DONE AND ORDERED this 12th day of July, 1996, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____

VIRGINIA B. WETHERELL
Secretary
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

ENDNOTES

1/ Petitioner Leto is the owner of one of the lots described as Lot 19, Block 196, Hollywood Central Beach, Plat Book 4, Page 20, Public Records of Broward County. Petitioners Meyer and Anderes are the owners of the adjacent lot described as Lot 20, Block 196, Hollywood Central Beach, Plat Book 4, Page 20, Public Records of Broward County.

2/ Section 161.053(1)(a), Florida Statutes, requires the Department to establish "coastal construction control lines on a county basis along the sand beaches of the state... so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions." The Broward County CCCL was established by the Department and is codified in Rule 62B-26.013, Florida Administrative Code. The cited Section 161.053 and Rule 62B-26.013 require a permit from the Department for any excavation or construction on property seaward of the established CCCL.

3/ Subsection 370.12(1)(c)1, Florida Statutes, provides that "[f]or purpose of this subsection, take means an act which actually kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding or sheltering."

4/ The term "riprap" is defined by Department rule as "a sustaining wall made to reduce the force of waves and to protect the shore from erosion and consists of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing rods or similar protrusions." Rule 62-312.020(16), Florida Administrative Code.

5/ The determination of whether or not Petitioners' proposed dwelling structure is a "duplex" or a "single-family dwelling" is significant in this case. The Hearing Officer correctly concluded in Conclusion of Law 46 that the Department is prohibited by the provisions of Section 161.053(6)(b), Florida Statutes, from granting a CCCL construction in this case unless Petitioners' proposed structure falls within the "single-family dwelling" exception of Section 161.053(6)(c). This reliance on the "single-family dwelling" exception of Section 161 .053(6)(c), Florida Statutes, as the sole basis for entitlement to the requested CCCL construction permit is acknowledged by Petitioners in their Proposed Conclusions of Law 5 and 6 filed with the Hearing Officer subsequent to the formal hearing.

6/ Mr. Manson-Hing is the Department Area Engineer for Broward County, Dade County, Monroe County and other counties along the Gulf Coast from Pasco County to Wakulla County. (Tr. 199) He is the person responsible for making final recommendations to the Department Secretary (formerly "Executive Director") concerning CCCL permit applications in Broward County. (Tr. 199-200)

7/ In the course of its review of a CCCL permit application, the Department is required to not only consider whether a structure will have an adverse impact on the beach or dune system at a specific site, but must also consider whether "a number of similar structures or activities along the coast may have a significant cumulative impact" on the beach or dune system. Rule 62B-33.005(7), Florida Administrative Code.

8/ Loggerhead turtles are one of three species of marine turtles which routinely nest on Florida beaches. (Tr. 435) Loggerhead turtles and four other

specified marine turtle species are protected under federal and state laws. See, ., Section 370.12(1), Florida Statutes; Rule 62B-33.005(9), Florida Administrative Code.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent via United States Postal Service to:

David B. Mankuta, Esquire
Atkinson, Diner, Stone & Mankuta, P.A.
Post Office Drawer 2088
Hollywood, Florida 33022-2088

Steve Welsch, President
Beach Defense Fund, Inc.
315 DeSoto Street
Hollywood, Florida 33019

Ann Cole, Clerk and
Errol H. Powell, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550

and by hand delivery to:

Melease A. Jackson, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, Florida 32399-3000

this 15th day of July, 1996.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____

J. TERRELL WILLIAMS
Assistant General Counsel
3900 Commonwealth Blvd., M.S. 35
Tallahassee, Florida 32399-3000
Telephone 904/488-9314

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FLORIDA LAND AND WATER ADJUDICATORY COMMISSION'S FINAL ORDER

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STATE OF FLORIDA

PAUL LETO, RICHARD MEYER,
and BERTA ANDERES,

Petitioners,

vs.

CASE NO. DEP RFR 94-011
DOAH CASE NO. 94-7073

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.
_____/

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission (the "Commission"), on November 19, 1996, pursuant to a Request For Review filed by Paul Leto, Richard Meyer, and Berta Anderes, Petitioners, pursuant to Rule 42-2.0131, Florida Administrative Code. No member having accepted the request to review, we hereby deny the request filed by Petitioners.

Any party to this Order has the right to seek judicial review of the Order pursuant to section 120.66, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Planning and Budgeting, Executive Office of the Governor, The Capitol, Room 2105, Tallahassee, Florida 32399- 0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days of the day this Order is filed with the Clerk of the Commission.

DONE AND ORDERED, this 19th day of November 1996, in Tallahassee, Florida.

_____
Teresa B. Tinker
for ROBERT BRADLEY, Secretary
Florida Land and Water
Adjudicatory Commission

FILED with the Clerk of the Florida Land and Water Adjudicatory Commission this 19th day of November, 1996.

_____
Patricia A. Parker
Clerk, Florida Land and Water
Adjudicatory Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following persons by United States mail or hand-delivery this 19th day of November, 1996.

_____
ROBERT BRADLEY, Secretary
Florida Land and Water
Adjudicatory Commission

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, Florida 32399

Honorable Sandra Mortham
Secretary of State
The Capitol
Tallahassee, Florida 32399

Honorable Bob Milligan
Comptroller
The Capitol
Tallahassee, Florida 32399

Honorable Bill Nelson
Insurance Commissioner
The Capitol
Tallahassee, Florida 32399

Honorable Bob Butterworth
Attorney General
The Capitol
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Honorable Frank Brogan
Commissioner of Education
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Honorable Bob Crawford
Commissioner of Agriculture
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