

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDMUND BRENNEN,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-0494
)
 JUPITER HILLS LIGHTHOUSE MARINA)
 and STATE OF FLORIDA, DEPARTMENT)
 OF ENVIRONMENTAL PROTECTION,)
)
 Respondents.)
)
 _____)
 PAUL C. and DOROTHY MARIN,)
)
 Petitioners,)
)
 vs.) CASE NO. 95-0495
)
 JUPITER HILLS LIGHTHOUSE MARINA)
 and STATE OF FLORIDA, DEPARTMENT)
 OF ENVIRONMENTAL PROTECTION,)
)
 Respondents.)
)
 _____)
 D. L. LANDRETH,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-0496
)
 JUPITER HILLS LIGHTHOUSE MARINA)
 and STATE OF FLORIDA, DEPARTMENT)
 OF ENVIRONMENTAL PROTECTION,)
)
 Respondents.)
)
 _____)
 DAVID and GERI WENDT,)
)
 Petitioners,)
)
 vs.) CASE NO. 95-0497
)
 JUPITER HILLS LIGHTHOUSE MARINA)
 and STATE OF FLORIDA, DEPARTMENT)
 OF ENVIRONMENTAL PROTECTION,)
)
 Respondents.)
)
 _____)
 JULIUS and STELLA FIELDER,)
)
 Petitioners,)
)

vs.)	CASE NO. 95-0498
)	
JUPITER HILLS LIGHTHOUSE MARINA)	
and STATE OF FLORIDA, DEPARTMENT)	
OF ENVIRONMENTAL PROTECTION,)	
)	
Respondents.)	
<hr/>		
JACKIE and BRIGHT JOHNSON, JR.,)	
)	
Petitioners,)	
)	
vs.)	CASE NO. 95-0943
)	
JUPITER HILLS LIGHTHOUSE MARINA)	
and STATE OF FLORIDA, DEPARTMENT)	
OF ENVIRONMENTAL PROTECTION,)	
)	
Respondents.)	
<hr/>		

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in these cases on September 20 - 21, 1995, at West Palm Beach, Florida, before Errol H. Powell, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioners:	Timothy C. Laubach, Esquire 1218 Mount Vernon Street Orlando, Florida 32803 J. A. Jurgens, Esquire Post Office Box 1178 Winter Park, Florida 32790-1178
For Respondent Jupiter Hills Lighthouse Marina:	Scott G. Hawkins, Esquire M. Tracey Biagiotti, Esquire Post Office Box 3475 West Palm Beach, Florida 33402
For Respondent Department of Environmental Protection:	Lynette L. Ciardulli Douglas MacLaughlin Assistant Generals Counsel Department of Environmental Protection 2600 Blair Stone Road Tallahassee, Florida 32399-2400

STATEMENT OF THE ISSUES

The issue for determination is whether Jupiter Hills Lighthouse Marina is entitled to be issued a permit by the Department of Environmental Protection for its project application submitted July 29, 1992, and revised November 15, 1993, to enlarge an existing marina and add new slips.

PRELIMINARY STATEMENT

On December 13, 1994, the Department of Environmental Protection (Respondent DEP) filed its Notice of Intent to issue Permit No. 432170499 (Permit) to Jupiter Hills Lighthouse Marina (Respondent Jupiter Hills), granting its application submitted July 29, 1992, and revised November 15, 1993, to enlarge an existing marina and add new slips. The proposed project is located in Martin County, Florida. On December 28, 1994, Edmund Brennan, (Petitioner Brennan) filed a petition in opposition to granting the permit and requested an administrative hearing. Paul C. and Dorothy Marin (Petitioners Marin), D. L. Landreth (Petitioner Landreth), David and Geri Wendt (Petitioners Wendt), Julius and Stella Fielder (Petitioners Fielder), and Jackie and Bright Johnson, Jr. (Petitioners Johnson) filed identical petitions in opposition to the issuance of the Permit, requesting an administrative hearing.

These matters were referred to the Division of Administrative Hearings. Subsequently, all of the matters were consolidated for hearing. An amended petition was filed on April 28, 1995.

At hearing, Petitioners Fielder were dismissed as parties. Further, at hearing, Petitioners presented the testimony of two witnesses, Petitioner Brennan testified in his own behalf, and Petitioners entered four exhibits into evidence. Respondent Jupiter Hills presented the testimony of four witnesses and entered 19 exhibits into evidence. Respondent DEP presented the testimony of one witness and entered two exhibits into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The parties submitted proposed findings of fact which are addressed in the appendix to this recommended order.

FINDINGS OF FACT

1. On July 29, 1992, Jupiter Hills Lighthouse Marina (Respondent Jupiter Hills) submitted an application to the Department of Environmental Protection (Respondent DEP) for a permit to enlarge an existing dock facility to 488 feet and to increase the existing 6 slips to 48 new slips. Respondent Jupiter Hills is located 0.7 miles north of Martin County Line Road, on U. S. Highway One, Indian River Lagoon, Jensen Beach to Jupiter Inlet Aquatic Preserve, more particularly described as Martin County, Section 19, Township 40 South, Range 43 East, Indian River Lagoon Class III Waters.

2. On November 15, 1993, Respondent Jupiter Hills amended its application at the request of Respondent DEP. The revised proposed project increases the dock facility from 6 slips to 18 slips, restricting 12 of the 18 slips for sailboat use; and proposes a new 149 foot long T-shaped pier from the existing pier, creating a total dimension of 180 feet by 60 feet. Further, Respondent Jupiter Hills proposes to remove four existing finger piers and 10 existing mooring pilings, to add eight finger piers and 34 new mooring pilings, and to place riprap along the existing seawall and new pier.

3. The proposed project is located in an Outstanding Florida Water (a designated aquatic preserve), the Jensen Beach to Jupiter Inlet Aquatic Preserve, which is a part of the Indian River Preserve.

4. Significant water quality parameters for this proposed project include coliform bacteria, heavy metals, and oil and grease.

5. Water quality standards for oil and grease are not being currently met. However, to address this noncompliance, Respondent Jupiter Hills has agreed to include, as part of this project, the installation of an exfiltration trench to trap grease coming from the uplands. This trench will improve water quality, causing a net improvement of water quality in the proposed project area.

6. Stormwater from the area, including a portion of U. S. Highway One and parking areas within U. S. Highway One right-of-way, discharge directly into Respondent Jupiter Hills. This stormwater then drains directly into tidal waters. The exfiltration trench is designed to intercept up to three-fourths of an inch of the stormwater flow currently draining into the basin.

7. The owners of Respondent Jupiter Hills will maintain the exfiltration trench. They have signed a long-term agreement with Respondent DEP for the maintenance of the trench, and the agreement is included in Respondent DEP's Intent to Issue.

8. Water quality standards for fecal coliform are currently being met. The construction of the proposed project will not preclude or prevent continuing compliance with these standards.

9. Respondent Jupiter Hills has proposed a sewage pump-out station which is not currently in the area and which will encourage boaters to pump boat sewage into the city treatment area instead of dumping the sewage into the water. The pump-out station will be connected to the central sewage system, but boaters will not be required to use the sewage pump-out station.

10. However, since liveboards are more likely to cause fecal coliform violations, Respondent Jupiter Hills has agreed that no liveboards will be permitted in the proposed project.

11. Water quality standards for heavy metals are currently being met. The construction of the proposed project will not preclude or prevent continuing compliance with these standards.

12. Respondent Jupiter Hills proposes to use construction materials which have not been treated by heavy metals.

13. Also, because the proposed project area flushes in one tidal cycle, any additional metals from the boats themselves would be swept away quickly.

14. The proposed project will not adversely impact or affect the public health, safety or welfare or the property of others.

15. Respondent Jupiter Hills has provided reasonable assurance that water quality standards will be met, continue to be met, and not violated. As a result, the public health and safety are protected.

16. The proposed pump-out facility will reduce the incidences of illegal head discharges into the Jupiter Sound. Thus, this facility will benefit the health and safety of swimmers or others participating in water-related activities in the Jupiter Sound.

17. The proposed project will not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.

18. Respondent Jupiter Hills has agreed to several measures designed to reduce any adverse impacts to fish and wildlife and the measures have been incorporated into the Intent to Issue. Respondent Jupiter Hills has agreed to not allow new power boats to dock at the proposed facility, which will prevent adverse affects on the manatee population in the area. Additionally, the proposed pump-out facility will improve the water quality, resulting in a benefit to fish and wildlife, including the Benthic habitat and seagrasses. Respondent Jupiter Hills has further agreed to install navigational signs, directing boaters away from manatees, and no wake signs, indicating the presence of manatees; these signs do not presently exist. Furthermore, Respondent Jupiter Hills has agreed to post signs directing boaters away from any seagrasses located in the proposed project area.

19. Whether seagrasses in the proposed project area will be adversely affected is also a factor to be considered.

20. Inspections and surveys of the proposed project area in December 1992 and mid-March 1993 revealed one patch of *Halophila decipiens* and *Halophila johnsonii* at the 100 foot contour but no seagrasses within the footprint of the proposed project. A survey of the area in late April 1994 revealed some seagrasses in the proposed project area but no seagrasses within the footprint of the proposed project. In September 1995, an examination of the area revealed *Halophila decipiens* just waterward of the existing slips down to the southern property boundaries 20 to 30 feet wide and revealed sparse seagrasses approximately 300 to 500 feet from the shoreline.

21. *Halophila decipiens* is more abundant and thick in the summer and tends to die off and at its thinnest in the winter.

22. Neither *Halophila decipiens* nor *Halophila johnsonii* are threatened or endangered species of seagrasses.

23. The seagrasses provide a significant environmental benefit. The benefits include nutrient recycling in the area and providing habitat for Benthic invertebrates, such as crabs, which are at the bottom of the food chain. Also, other plants grow on the seagrasses, such as algae, and the other plants provide food for other organisms.

24. Manatees eat several seagrasses, including *Halophila decipiens* but it is not one of the manatees preferred seagrasses.

25. Seagrasses can be adversely affected in two ways. One way is that prop dredging could scar the seagrasses. However, as to the proposed project, the depth of the water in the area of the seagrasses will prevent any adverse affects from prop dredging.

26. The second way that seagrasses can, and will, be adversely affected is being shaded by the proposed dock or by boats tied-up to the dock. The density of the seagrass, pertaining to this proposed project, is thin and low and approximately one percent of actual coverage.

27. In determining whether the proposed project is clearly in the public interest, Respondent DEP uses a balancing test which consists of taking the public interest criteria and weighing the pros and cons of the proposed project.

Balancing the adverse impacts on the seagrasses and the positive effects of the public interest criteria, the proposed project is clearly in the public interest.

28. The slips in the proposed project will increase by 12; however, the slips can only be used by sailboats. Since sailboats move slowly, the manatees in the area will not be adversely affected by the proposed project.

29. Neither navigation nor the flow of water will be adversely affected by the proposed project. Further, no harmful erosion or shoaling will be caused by the proposed project.

30. Adequate depths are off of the end of the dock for boats to safely navigate. Shoaling is not a potential problem, and therefore, any potential shoaling which may develop will not adversely affect navigation.

31. The proposed dock will not impact navigation into the Intracoastal Waterway (ICW) because the dock will not extend into the ICW and because Respondent Jupiter Hills will provide navigational aids to guide boaters to access the Atlantic ICW. Furthermore, there is sufficient depth for navigation between the end of the proposed dock and the sandbar where the seagrasses are located.

32. Boat traffic coming from the south will primarily originate from the residences to the south. The proposed dock will force these boaters 200 feet offshore where the natural channel is located. Additionally, the dock will keep boaters further offshore from the riparian land owners to the north, including the Petitioners.

33. To improve the public interest aspects of the project, Respondent DEP proposed that Respondent Jupiter Hills install riprap, which Respondent Jupiter Hills agreed to do. Installation of the riprap will be 367 feet along the perimeter of the proposed dock and in a 10 by 50 foot area along the bulkhead north of the dock. Some shoaling will result but will not affect navigation. The riprap will provide substrate and shelter for marine life.

34. The fishing or recreational values or marine productivity will not be adversely affected by the proposed project.

35. Marine productivity will increase because the sewage pump-out station will improve the water quality which will benefit the Benthic community.

36. The proposed project will be of a permanent nature.

37. Significant historical and archaeological resources will not be adversely affected by the proposed project. The Department of State, which is responsible for historical and archaeological resources, reviewed the Notice of Intent and has no objection to the proposed project.

38. The current condition and relative value of functions being performed by areas affected by the proposed project will be increased and, therefore, benefited.

39. No cumulative impacts are associated with the proposed project.

40. The proposed project is not in an area of pristine shoreline; the area is highly developed. Approximately 1,200 feet to the south of the proposed

project is a 270 foot dock with about 50 slips. When considered with the other docks in the area, the extension of the dock in the proposed project will not significantly or measurably further violate the water quality.

41. Respondent Jupiter Hills has provided reasonable assurance that the proposed project is clearly in the public interest.

CONCLUSIONS OF LAW

42. 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.

43. The issue of Petitioners' standing was not raised at hearing or in Respondents' post-hearing submissions and is, therefore, not addressed. Even assuming that standing is an issue, Petitioners have demonstrated that they have standing. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981).

44. Respondent Jupiter Hills, as the applicant for the permit, has 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).

45. A permit from Respondent DEP is required for Respondent Jupiter Hills' proposed project pursuant to Rule 62-312, Florida Administrative Code. This Rule provides that a permit from Respondent DEP must be obtained if dredging or filling is to be conducted in state waters, unless otherwise exempted by statute or rule. As the proposed project involves placing of piling and riprap in waters of the state, the proposed project involves filling as defined by Subsection 373.403(14), Florida Statutes, and Rule 62-312.020(11), Florida Administrative Code. No exemption is provided by statute or rule.

46. Section 373.414, Florida Statutes, provides in pertinent part:

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters...will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands...is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands... and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the regulated activity. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

47. Rule 62-312.080(1), Florida Administrative Code, prohibits Respondent DEP from issuing a permit unless the applicant has provided reasonable assurance based on plans, test results or other information that the proposed project will not violate water quality standards.

48. Respondent Jupiter Hills has demonstrated that it has provided reasonable assurance that the proposed project will not cause water quality violations.

49. Respondent Jupiter Hills has demonstrated that it has provided reasonable assurance that the proposed project is clearly within the public interest.

RECOMMENDATION

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

RECOMMENDED that the Department of Environmental Protection issue a final order issuing Permit No. 432170499 to Jupiter Hills Lighthouse Marina.

DONE AND ENTERED this 8th day of April, 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 8th day of April, 1996.

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 1.
2. Partially accepted in finding of fact 3.
3. Partially accepted in findings of fact 1 and 2.
4. Partially accepted in finding of fact 2.
5. Partially accepted in finding of fact 10.
6. Rejected as being irrelevant, or unnecessary.
7. See, conclusion of law 43. Also, partially accepted in findings of fact 19-27, 34-35.
8. Partially accepted in finding of fact 4.
9. Partially accepted in finding of fact 5.
10. Partially accepted in findings of fact 5 and 6.
11. Partially accepted in finding of fact 7.
12. Partially accepted in finding of fact 9.
13. Rejected as being unnecessary. Also, see finding of fact 18.
14. Partially accepted in finding of fact 10.
15. Partially accepted in findings of fact 8, 9, and 10.
16. Partially accepted in finding of fact 9.
17. Partially accepted in findings of fact 12 and 13.
18. Partially accepted in finding of fact 11.
19. See, conclusion of law 46.
20. Partially accepted in findings of fact 9 and 16.
21. Partially accepted in finding of fact 18.
22. Partially accepted in finding of fact 18.
23. Partially accepted in finding of fact 31.
24. Partially accepted in findings of fact 18 and 28.
25. Partially accepted in findings of fact 29 and 30.
26. Partially accepted in finding of fact 31.
27. Partially accepted in finding of fact 33.
28. Partially accepted in finding of fact 9.
29. Partially accepted in finding of fact 37.
30. Partially accepted in finding of fact 36.
31. Rejected as being argument, or a conclusion of law.
32. Rejected as being argument, or a conclusion of law.

33. Partially accepted in finding of fact 23.
34. Partially accepted in finding of fact 23.
35. Partially accepted in finding of fact 24.
36. Rejected as being irrelevant, or unnecessary.
37. Partially accepted in finding of fact 20.
38. Partially accepted in finding of fact 20.
39. Partially accepted in finding of fact 20.
40. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
41. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
42. Partially accepted in finding of fact 20.
43. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
44. Partially accepted in findings of fact 20 and 21.
45. Partially accepted in finding of fact 26.
46. Partially accepted in findings of fact 3 and 20.
47. Partially accepted in finding of fact 20.
48. Rejected as being not supported by the greater weight of the evidence, argument, or a conclusion of law.
49. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
50. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
51. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
52. Rejected as being not supported by the greater weight of the evidence, argument, or a conclusion of law.
53. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
54. Partially accepted in findings of fact 19-27.
55. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
56. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
57. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
58. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
59. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.

Respondent Jupiter Hills' Proposed Findings of Fact

1. Partially accepted in finding of fact 1.
2. Partially accepted in finding of fact 1.
3. Partially accepted in finding of fact 2.
4. Partially accepted in findings of fact 1 and 2.
5. Partially accepted in finding of fact 13.
6. Partially accepted in finding of fact 13.
7. Partially accepted in findings of fact 30 and 31.
8. Partially accepted in finding of fact 14.
9. Partially accepted in finding of fact 17.
10. Partially accepted in finding of fact 29.
11. Partially accepted in finding of fact 34.
12. Partially accepted in finding of fact 36.

13. Partially accepted in finding of fact 13.
14. Partially accepted in finding of fact 38.
15. Partially accepted in finding of fact 39.
16. Partially accepted in findings of fact 29, 30 and 33.
17. Partially accepted in finding of fact 31.
18. Partially accepted in finding of fact 15.
19. Partially accepted in findings of fact 4, 5, 8, and 11.
20. Partially accepted in findings of fact 5 and 6.
21. Partially accepted in finding of fact 9.
22. Partially accepted in findings of fact 5, 8, and 9.
23. Partially accepted in finding of fact 9.
24. Partially accepted in finding of fact 9.
25. Partially accepted in finding of fact 9.
26. Partially accepted in finding of fact 16.
27. Partially accepted in findings of fact 9, 14, 15, and 16.
28. Partially accepted in findings of fact 18, 24, and 27.
29. Partially accepted in findings of fact 18 and 28.
30. Partially accepted in finding of fact 28.
31. Partially accepted in finding of fact 18.
32. Partially accepted in finding of fact 22.
33. Partially accepted in finding of fact 21.
34. Partially accepted in findings of fact 20 and 26.
35. Partially accepted in finding of fact 26.
36. Partially accepted in findings of fact 20 and 26.
37. Rejected as being irrelevant, or unnecessary.
38. Rejected as being unnecessary, argument, or a conclusion of law.
39. Partially accepted in finding of fact 27.
40. Partially accepted in finding of fact 27.
41. Rejected as being argument, or a conclusion of law.
42. Rejected as being unnecessary, argument, or a conclusion of law.
43. Rejected as being irrelevant, unnecessary, argument, or a conclusion of law.
44. Partially accepted in finding of fact 25.
45. Partially accepted in finding of fact 33
46. Partially accepted in finding of fact 33.
47. Partially accepted in finding of fact 40.
48. Rejected as being irrelevant, or unnecessary.
49. Rejected as being irrelevant, or unnecessary.
50. Rejected as being irrelevant, or unnecessary.
51. Partially accepted in finding of fact 10.
52. Rejected as being unnecessary, or a conclusion of law.
53. Partially accepted in findings of fact 27 and 41.

Respondent DEP's Proposed Findings of Fact

1. Partially accepted in finding of fact 1.
2. Partially accepted in finding of fact 2.
3. Partially accepted in finding of fact 3.
4. Partially accepted in finding of fact 4.
5. Partially accepted in finding of fact 5.
6. Partially accepted in finding of fact 6.
7. Partially accepted in finding of fact 7.
8. Partially accepted in finding of fact 8.
9. Partially accepted in findings of fact 9 and 10.
10. Partially accepted in finding of fact 11.

11. Partially accepted in findings of fact 12 and 13.
12. Partially accepted in finding of fact 15.
13. Partially accepted in finding of fact 14.
14. Partially accepted in finding of fact 15.
15. Partially accepted in finding of fact 16.
16. Partially accepted in finding of fact 17.
17. Partially accepted in finding of fact 18.
18. Partially accepted in findings of fact 19 and 20.
19. Partially accepted in finding of fact 20.
20. Partially accepted in finding of fact 20.
21. Partially accepted in finding of fact 20.
22. Partially accepted in finding of fact 21.
23. Partially accepted in finding of fact 22.
24. Partially accepted in findings of fact 25 and 26.
25. Partially accepted in finding of fact 26.
26. Partially accepted in finding of fact 26.
27. Partially accepted in finding of fact 27.
28. Partially accepted in finding of fact 27.
29. Partially accepted in finding of fact 28.
30. Partially accepted in finding of fact 29.
31. Partially accepted in finding of fact 30.
32. Partially accepted in finding of fact 31.
33. Partially accepted in finding of fact 32.
34. Partially accepted in finding of fact 33.
35. Partially accepted in finding of fact 33.
36. Partially accepted in finding of fact 34.
37. Partially accepted in finding of fact 35.
38. Partially accepted in finding of fact 36.
39. Partially accepted in finding of fact 37.
40. Partially accepted in finding of fact 37.
41. Partially accepted in finding of fact 38.
42. Partially accepted in finding of fact 39.
43. Partially accepted in finding of fact 40.
44. Partially accepted in finding of fact 41.

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

COPIES FURNISHED:

J. A. Jurgens, Esquire
Post Office Box 1178
Winter Park, Florida 32790-1178

Timothy C. Laubach, Esquire
Sears and Manuel, P.A.
1218 Mount Vernon Street
Orlando, Florida 32803

M.Tracy Biagiotti, Esquire
Scott Hawkins, Esquire
Jones, Foster, Johnston
& Stubbs, P.A.
Post Office Box 3475
West Palm Beach, Florida 33402
(Attorney for Jupiter Hills Lighthouse Marina)

Lynette L. Ciardulli
Assistant General Counsel
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Douglas MacLaughlin
Assistant General Counsel
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Kenneth Plante
General Counsel
Department of Environmental Protection
Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Virginia B. Wetherell, Secretary
Department of Environmental Protection
Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

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.