

STATE OF FLORIDA  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

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STATE OF FLORIDA  
DEPARTMENT OF  
ADMINISTRATIVE SERVICES

GREENSPACE PRESERVATION  
ASSOCIATION, INC., ET AL,

DOAH CASE NO. 97-002845

97-002846

SJRWMD FOR NO. 97-1769

Petitioners,

vs.

AP  
DRA-CWS

CITY OF GAINESVILLE AND ST. JOHNS  
WATER MANAGEMENT DISTRICT,

Respondents.

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FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings (DOAH), by its duly designated administrative law judge, the Honorable Donald R. Alexander, held a formal administrative hearing in the above-styled case on October 20 and 21, and November 6, 1997, in Gainesville, Florida.

A. APPEARANCES

For Petitioners, GREENSPACE PRESERVATION ASSOCIATION, INC.; FRANK WARD; SAL LOCASCIO; FREDERICK P. PETERKIN; AND HAROLD M. STAHLER.:

Samuel A. Mutch, Esquire  
2790 Northwest 43rd Street  
Suite 100, Meridien Centre  
Gainesville, Florida 32606

For Respondent, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT  
(District staff):

Jennifer B. Springfield, Esquire  
Mary Jane Angelo, Esquire  
St. Johns River Water Management District  
Post Office Box 1429  
Palatka, FL 32178-1429

For Respondent, CITY OF GAINESVILLE. (the City):

Richard R. Whiddon, Jr., Esquire  
Post Office Box 1110  
Gainesville, FL 32602-1110

On December 19, 1997, Judge Alexander submitted to the St. Johns River Water Management District, and all other parties to this proceeding, a Recommended Order, a copy of which is attached hereto as Exhibit "A." District staff filed exceptions to the Recommended Order. This matter then came before the Governing Board on January 14, 1996, for final agency action.

### **B. STATEMENT OF THE ISSUE**

The issue in this case is whether the City's applications for an individual stormwater permit and a noticed general environmental resource permit for Phase 1A of the proposed Hogtown Creek Greenway should be approved.

### **C. RULINGS ON EXCEPTIONS**

#### **RESPONDENT DISTRICT STAFF'S EXCEPTIONS**

##### **1. Exception 1**

District staff take exception to conclusion of law 60 and assert that the Administrative Law Judge's conclusion the City provided reasonable assurances that its

notice general permit application meets the requirements of Rule 40C-400.475(2), Florida Administrative Code (F.A.C.), is not complete in that the Judge should have also cited Rule 40C-400.475(1), F.A.C. The Governing Board may reject or modify conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction. §120.57(1)(j), Fla. Stat. (1997). Rule 40C-400.475(1), F.A.C., sets forth certain size thresholds which a project must be below to qualify for this noticed general environmental resource permit. A project must both be below these size thresholds and meet the conditions of Rule 40C-400.475(2), F.A.C., to be authorized by this noticed general environmental resource permit.

In this case, the Administrative Law Judge found that the activity for which this noticed general environmental resource permit is sought involves piling supported structures. (Finding of Fact 39) The Administrative Law Judge found that the total area of the proposed bridge and boardwalk over surface waters or wetlands is approximately 481 square feet. (Finding of Fact 41). The Administrative Law Judge determined that the affected waters, Hogtown and Possum Creeks are designated Class III waters. (Finding of Fact 41). Since the City's application for this noticed general environmental resource permit involves piling supported structures of less than 1,000 square feet over wetlands or other surface waters, which are not designated Outstanding Florida Waters, District staff's exception number one is accepted, and Conclusion of Law 60 is modified to read that the District's requirements applicable to the City's noticed general environmental resource permit application are found in Rule 40C-400.475(1) and (2), F.A.C., and that the City has provided reasonable assurances that the project meets these requirements.

## 2. Exception 2

In its exception 2, District staff takes exception to the Administrative Hearing Officer's ultimate recommendation of approving the subject applications. District staff asserts that in his recommendation, the Administrative Hearing Officer did not set forth the relevant conditions which are to be a part of the recommended permits. District staff asserts that these conditions were implicitly accepted by the Administrative Law Judge in making his recommendation.

As to the application for the stormwater permit, we note that Rule 40C-42.032, F.A.C., provides that, unless waived or modified by the Board, certain limiting conditions are placed on every permit issued by the District under Chapter 40C-42, F.A.C. These conditions are set forth in Rule 40C-43.032(2)(a), F.A.C. These same conditions are set forth in District staff's Exhibit 3A which was admitted. (See Preliminary Statement portion of Recommended Order) The record does not indicate that any party objected to these conditions, or that the Administrative Law Judge otherwise thought they should be changed or waived. No party has objected to the District staff's exception on this point. Thus, District staff's Exception 2 is accepted as to the standard conditions in Rule 40C-43.032(2)(a), F.A.C., and these standard conditions shall be a part of the City's stormwater permit.

District staff's Exception 2 also asserts that Special ERP conditions 1, 7, 8, 9, and 28, and Other Conditions 1, 2, and 3, should be attached to the stormwater permit. Special ERP conditions 1, 7, 8, 9, and 28 were set forth in District staff's Exhibit 3B which was admitted. (See Preliminary Statement portion of Recommended Order). Other conditions

1 and 2 were set forth in the City's Exhibit 19 (consisting of the District staff's technical staff report for the stormwater permit) which was admitted. Other condition 3 was set forth in District staff's Exhibit 4 which was admitted. The record does not indicate that any party objected to any of these conditions. Moreover, the Administrative Law Judge's findings of fact reflect the requirements of these conditions. For example, other condition number 3 is referred to in Finding of Fact 17, special condition 7 is referred to in Finding of Fact 24, and the monthly sinkhole monitoring requirements of special condition 8 is reflected in Finding of Fact 33. Thus, it appears the Administrative Law Judge assumed the application of these special conditions in determining that reasonable assurances were provided. Therefore, District staff's Exception 2 is accepted on this point, and these conditions shall be a part of the City's stormwater permit.

As to the application for the noticed general permit, Rule 40C-400.215, F.A.C., requires several standard conditions, set forth in that rule, to be applied to all noticed general environmental resource permits. This conditions were also set forth in the City's Exhibit 20 which was admitted. There is nothing in the record or the Administrative Law Judge's findings of fact that indicates that these conditions should not be applied to this noticed general environmental resource permit. Therefore, District staff's Exception 2 is accepted on this point, and the conditions of Rule 40C-400.215, F.A.C., shall be a part of the City's noticed general environmental resource permit.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

The Recommended Order dated December 19, 1997, attached hereto as Exhibit A, is adopted in its entirety except as modified by the final action of the Governing Board of

the St. Johns River Water Management District (rulings on District staff's Exceptions 1 and 2). The City of Gainesville's applications numbered 42-001-0789AIG-ERP and 400-001-0309AIG-ERP for a stormwater environmental resource permit and noticed general environmental resource permit, respectively, are hereby granted under the terms and conditions provided herein.

DONE AND ORDERED this 14<sup>th</sup> day of January 1998, in Palatka, Florida.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

BY: *D. Roach*  
DAN ROACH  
CHAIRMAN

RENDERED this 15<sup>th</sup> day of January 1998

BY: *Patricia C. Schultz*  
PATRICIA C. SCHULTZ  
DISTRICT CLERK

copies to:

DONALD R. ALEXANDER, Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550;

Jennifer B. Springfield, Esquire  
Mary Jane Angelo  
St. Johns River Water management District  
Post Office Box 1429  
Palatka, FL 32178-1429

Samuel A. Mutch, Esquire  
2790 Northwest 43rd Street  
Suite 100, Meridien Centre  
Gainesville, Florida 32606

Richard R. Whiddon, Jr., Esquire  
Post Office Box 1110  
Gainesville, FL 32602-1110

NOTICE OF RIGHTS

1. Any substantially affected person who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action within 90 days of rendering of the final District action.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla.R.App. 9.110 within 30 days of the rendering of the final District action.

3. A party to the proceeding who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Land and Water Adjudicatory Commission (Commission) by filing a request for review with the Commission and serving a copy on the Department of Environmental Protection and any person named in the order within 20 days of adoption of a rule or the rendering of the District order.

4. A District action or order is considered "rendered" after it is signed by the Chairman of the Governing Board on behalf of the District and is filed by the District Clerk.

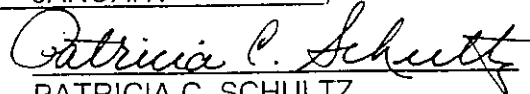
5. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraphs #1 or #2 or for Commission review as described in paragraph #3 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

SAMUEL A MUTCH, ESQ  
2790 NORTHWEST 43RD STREET  
SUITE 100 MERIDIEN CENTRE  
GAINESVILLE FL 32606

At 4:00 P.M. this 15TH day of JANUARY, 1998.



PATRICIA C. SCHULTZ  
DISTRICT CLERK  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, Florida 32178-1429

CERTIFIED MAIL # Z229-564-524



**NOTICE OF RIGHTS**

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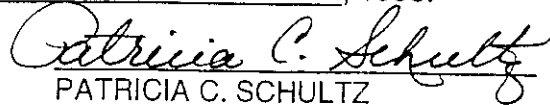
5. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraphs #1 or #2 or for Commission review as described in paragraph #3 will result in waiver of that right to review.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

RICHARD R WHIDDON, JR. ESQ  
PO BOX 1110  
GAINESVILLE FL 32602-1110

At 4:00 P.M. this 15TH day of JANUARY, 1998.



PATRICIA C. SCHULTZ  
DISTRICT CLERK  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, Florida 32178-1429

CERTIFIED MAIL # Z229-564-525

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

DONALD R ALEXANDER, HEARING OFFICER  
DIVISION OF ADMINISTRATIVE HEARINGS  
THE DESOTO BUILDING  
1230 APALACHEE PARKWAY  
TALLAHASSEE FL 32399-1550

At 4:00 P.M. this 15TH day of JANUARY, 1998.



PATRICIA C. SCHULTZ  
DISTRICT CLERK  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, Florida 32178-1429

CERTIFIED MAIL # P337-543-238