

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHIRLEY W. DUNBAR and)
DAVID M. DUNBAR,)
)
 Petitioners,)
)
 vs.) Case No. 99-3180
)
 DEPARTMENT OF TRANSPORTATION,)
)
 Respondent.)
 _____)
 DAVE LA HART and)
 VAL LA HART,)
)
 Petitioners,)
)
 vs.) Case No. 99-3181
)
 DEPARTMENT OF TRANSPORTATION,)
)
 Respondent.)
 _____)
 HOWARD GRINER,)
)
 Petitioner,)
)
 vs.) Case No. 99-3182
)
 DEPARTMENT OF TRANSPORTATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on November 16, 1999, in Tallahassee, Florida, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioners: Thomas Crapps, Esquire
Douglas Law Firm, P.A.
Post Office Box 1674
Tallahassee, Florida 32302

For Respondent: Ollie L. Evans, Esquire
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

STATEMENT OF THE ISSUE

The issue is whether Respondent properly issued Site Approval Order No. 3-99-01 for Ochlockonee Bay Seaplane Base pursuant to Chapter 330, Florida Statutes, and Chapter 14-60, Florida Administrative Code.

PRELIMINARY STATEMENT

On November 24, 1998, Respondent Department of Transportation (Respondent) issued a Notice of Intent to issue site approval for a proposed private seaplane base to be known as Ochlockonee Bay Seaplane Base. The Notice of Intent stated that a public meeting would be conducted on January 14, 1999, to determine the following:

- (a) that the site is adequate for the proposed seaplane base;
- (b) that the proposed seaplane base if constructed or established, will conform to minimum standards of safety contained in Rule Chapter 14-60, F.A.C.; and
- (c) that safe air traffic patterns could be worked out for such proposed seaplane base and for all existing airports and approved airport sites in its vicinity.

On June 21, 1999, Respondent issued Site Approval Order No. 3-99-01. This order granted site approval for the proposed seaplane base with the following provisions:

1. All operations are to be conducted in VFR [visual flight rules] weather conditions.
2. Aircraft operations are limited to use only by the licensee and invited guests. It is the responsibility of each invited pilot(s) to comply with federal flight requirements.
3. That the provisions in FAA [Federal Aviation Administration] approval letter dated May 22, 1998, be complied with.
4. Traffic patterns and operational procedures are subject to review by this department prior to licensing or relicensing.

This determination in no way preempts or waives any ordinances, laws or regulations of any other governmental body or agency.

By letter dated June 27, 1999, Petitioners Shirley W. Dunbar and David M. Dunbar requested an administrative hearing to contest the site approval. Petitioners David LaHart and Val LaHart requested an administrative hearing by letter dated July 1, 1999. Petitioner Howard Griner requested an administrative hearing by letter dated July 6, 1999. Respondent referred these requests to the Division of Administrative Hearings on July 28, 1999.

The Division of Administrative Hearings assigned DOAH Case Nos. 99-3180, 99-3181, and 99-3182 to the requests for an administrative hearing filed by Petitioners Shirley and David

Dunbar, David and Val LaHart, and Howard Griner respectively. The undersigned consolidated the cases by order dated August 13, 1999. Hereinafter, Petitioners Shirley and David Dunbar, David and Val LaHart, and Howard Griner shall be referred to collectively as Petitioners.

A Notice of Hearing dated August 13, 1999, scheduled a formal hearing on November 16-17, 1999. During the hearing, Petitioners presented the testimony of three (3) witnesses and offered thirteen (13) exhibits, which were accepted into evidence. Respondent presented the testimony of one (1) witness and offered no exhibits for admission into evidence.

The Transcript of the proceeding was filed on December 6, 1999.

On December 16, 1999, the parties filed a Joint Motion for Continuance requesting additional time to file their proposed recommended orders. This motion was granted by order dated December 20, 1999.

The parties filed their Proposed Recommended Orders on January 6, 1999.

FINDINGS OF FACT

1. On July 8, 1997, Walt Dickson, the applicant, filed an Airport Site Approval and License Application with Respondent for a seaplane base located two (2) miles south of Panacea, Florida, in Ochlockonee Bay, Wakulla County, Florida, at

Latitude N29 degrees, 59'35" N, Longitude W 84 degrees, 23'73"
W.

2. The application gives the following legal description of the proposed facility: Lot lying between Williams Brothers Lumber Co. lot and Troy Fain lot on river in SW 1/4 of Section 1.

3. A map of the proposed seaplane base was attached to the application. The map shows a sea lane 1/ toward the middle of Ochlockonee Bay. The sea lane has an east/west heading. It is three (3) miles long with a primary width of one (1) mile and a usable width of one-half (1/2) mile. The application does not indicate the exact position of the sea lane.

4. The application's map indicates that a bridge for U.S. Highway 98 is located east of the proposed sea lane and shoreline facilities. The bridge crosses the bay, connecting the bay's northern and southern shores. The bridge has an approximate height of 42 feet above sea level. East of the bridge, the mouth of the Ochlockonee Bay opens into the Apalachee Bay and the Gulf of Mexico.

5. The application's map indicates that the shoreline facilities of the proposed seaplane base are located on the northern shore of the Ochlockonee Bay, west of the bridge and east of Bayside Marina. A plot of the proposed shoreline

facility shows a dock or pier, of undetermined length and width extending into the bay.

6. Ms. Ann Tiller, Respondent's aviation licensing specialist for district three, performed the initial review of the subject application. She considered Chapter 330, Florida Statutes, Chapter 14-60, Florida Administrative Code, and FAA Advisory Circular No. 150/5395 in conducting her review of the application.

7. First, Ms. Tiller reviewed the application to ensure that it was complete. She determined that the application contained, among other things, the following information:

FAA air space determination, zoning approval from the appropriate governmental agency, copy of the deed, lease or easement, legal description that indicates section, township, range and geographical coordinates, general location maps showing nearby roads, towns and landmarks, U.S. Geological Survey quadrangle maps . . . [o]r equivalent with facility plotted.

8. Ms. Tiller testified that the application "in itself probably would not show that [the site] is adequate." She stated that "[w]hen [the applicant] sends me the application, he is telling me that he thinks it is adequate."

9. The application did not address the following factors outlined in FAA Advisory Circular No. 150/5395: performance characteristics of the proposed seaplane, water currents or wave action, shifting channels, ship or boating activity on the

water, prevailing winds, wind data during daylight hours, adequacy of the water depth for a seaplane, or information about the taxi channel dimensions for the take-out and launch ramp.

10. On May 8, 1998, Ms. Tiller conducted a site inspection to determine the adequacy of the site. She did not go out into the bay on a boat.

11. During the inspection, Ms. Tiller advised the applicant's representative that the required approach ratio for the takeoff and landing area was 20 to 1 and that the applicant would need to install a windsock before receiving a license. She made a general observation of the proposed site, finding no obvious reason to deny site approval.

12. After making the inspection, Ms. Tiller completed an Airport Site Inspection report. The report states that the site "is feasible for the proposed use and can meet the requirements set forth in Airport Licensing and Zoning Rule Chapter 14-60." Ms. Tiller did not consider the factors listed in the FAA Advisory Circular in making this determination.

13. According to Ms. Tiller, the standards in the FAA Advisory Circular apply after the applicant receives site approval. She considers them as guidelines during the licensing phase of the application review, showing "what possibly could be done."

14. By letter dated May 22, 1998, the FAA informed the applicant as follows:

. . . it has been determined that the subject seaplane base will not adversely affect the safe and efficient use of airspace by aircraft provided the following requirements are complied with:

1. All operations are conducted in VFR weather conditions.
2. The landing area is limited to private use.
3. You execute and maintain an operational letter of agreement with the Wakulla County Airport that would insure operation at this proposed seaplane base will not disrupt or conflict with operations at the existing public use airport.

We recommend you reference FAR [Federal Aviation Regulations] 91.69, Right of Way Rules; Water Operations and comply with FAA Advisory Circular, AC 150/5395-1, Seaplane Bases.

15. On April 19, 1999, the Wakulla County Board of County Commissioners executed an Operational Letter of Agreement between the Ochlockonee Bay Seaplane Base and the Wakulla County Airport.

16. Prior to the hearing, Bobby Grice, Respondent's Public Transportation Manager, made a site inspection. He did not go out into the bay on a boat.

17. Mr. Grice determined that the proposed takeoff and landing area met the required approach ratio of 20 to 1. He also concluded that the proposed sea lane, which is west of the

bridge with a heading of 927, did not require a pilot to takeoff and land in close proximity to the bridge. Mr. Grice reached this conclusion without knowing the precise location of the takeoff and landing area.

18. Mr. Grice's observation of the site did not reveal anything that "[p]rohibited [him] from saying that . . . somewhere in the bay that's 3 miles long and a mile wide, that somewhere in there we cannot find an area that is at least 1800 feet long, that's at least deep enough for a plane, and without obstruction."

19. Mr. Grice testified as follows when questioned regarding the possible placement of crab traps in the area that serves as the proposed takeoff and landing area:

I would not know if someone had gone in there and put [a crab trap] out, no more than I would know if one was out there with a motorboat running over it. But with the low tide, not the lowest, that's when we would go out and look with the applicant. And at that time if we saw some areas [where crab traps could not be seen] at low tide, then we would certainly assume that . . . at higher tide that [the crab traps] would not be in the way.

20. The greater weight of the evidence indicates that crab traps, twelve (12) to eighteen (18) inches in height, are exposed in the proposed seaplane runway during tides which are low but not the lowest. When the tide is higher, the crab traps are submerged, leaving no indication as to how deep they are in

the water. In addition to crab traps, other debris such as picnic tables and pieces of destroyed docks are submerged or floating at unknown locations in the bay.

21. Mr. Grice saw channel markers in the bay. He did not know whether there were any markers in the area of the proposed sea lane. He assumed that the proposed sea lane area was large enough for the applicant to find at least some place where channel markers would not interfere with the required minimum length and approaches.

22. The greater weight of the evidence indicates that channel markers are located directly in the proposed flight path of the seaplane. However, there is no persuasive evidence that these channel markers create a hazard in the approach and departure path of the proposed sea lane.

23. The evidence also shows that the largest concentration of channel markers is located near the seaplane base's taxi and launch areas along the north shore of the bay. The seaplane will have to taxi across the channel and over the mudflats, areas of the bay with soft bottoms, to reach the proposed sea lane.

24. Mr. Grice did not consider the depth of the water in the proposed launch area, taxi area, and sea lane. Therefore, he did not know whether the water depth was adequate for a seaplane. He did not know what type of seaplane(s) would use

the seaplane base. According to Mr. Grice, Respondent can place restrictions on the site before licensing to prohibit the use of the seaplane base when the water is at a depth that Respondent determines is unsafe.

25. The depth of the water at mean lower low water levels ranges between one (1) and four (4) feet in the proposed sea lane area. The four (4) foot soundings are located at the eastern tip of the proposed sea lane area, closet to the bridge.

26. The depth of the water at mean lower low water levels ranges between one-half (1/2) foot and three (3) feet along the bay's northern shore in the vicinity of the seaplane base's launch area.

27. Respondent asserts that its primary concern is safety. Therefore, Respondent makes a judgement call about boats and people swimming in the landing area. There is no evidence that Respondent considered the effect of boat traffic before approving the site at issue here.

28. The channel of the bay is within 100 feet of the place where the proposed seaplane will be taken in and out of the water. The greater weight of the evidence indicates that many grouper boats and sport fishing boats use the channel on weekday mornings. On the weekends, boat and jet ski traffic in the channel increases substantially. The weekend boat traffic in the channel is fairly constant.

29. The prevailing wind on the bay is out of the southeast or southwest during most of the day. The prevailing wind runs perpendicular to the proposed sea lane area. A crosswind takeoff and landing is dangerous, especially over a certain speed.

30. The proposed seaplane base is located 80 feet from a dock referred to as the Williams dock. A channel marker is only a few feet from the end of the dock. The greater weight of the evidence indicates that taking a seaplane in and out of the water at the proposed seaplane base launch area is dangerous due to the following conditions: (a) swift channel current of six to ten knots that runs horizontal to the bay's northern shore and perpendicular to the dock; (b) heavy boat traffic in the channel; (c) the concentration of channel markers near the launch area; (d) prevailing winds which run almost perpendicular to the proposed launch area; and (e) the close proximity of the Williams dock.

31. Respondent considers site approval as permission to build the proposed airport. According to Mr. Grice, "[i]t gives the applicant[s] some kind of assurance that they don't go out and spend a lot of money and then DOT comes back and goes through this hearing process after they have spent a lot."

32. Respondent uses the FAA Advisory Circular as a guideline primarily during the licensing phase of application

review. Respondent acknowledges that the language in each provision of the circular determines whether a provision is advisory or mandatory. Respondent admits that provisions of the circular containing the words "should" or "shall" relate to mandatory safety issues.

33. Approximately two weeks before the hearing, the FAA requested clarification concerning the coordinates of the seaplane base because its proposed latitude and longitude as provided by the applicant may be incorrect. If the FAA does not issue an approval after receiving clarification, Respondent will deny the application due to the lack of an FAA air space determination.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

35. Petitioners must prove by a preponderance of the evidence that the proposed seaplane site does not meet the requirements of Section 330.30, Florida Statutes, and Rules 14-60.005 and 14-60.007, Florida Administrative Code. Florida Department of Transportation v. J.W.C. Co., Inc., and the Department of Environmental Regulation, 396 So. 2d 778 (Fla. 1st DCA 1981).

36. Section 334.044(2), Florida Statutes, requires Respondent to "[t]o adopt rules, procedures, and standards for the conduct of its business operations and the implementation of any provision of law for which the department is responsible."

37. Section 330.29, Florida Statutes, provides as follows:

330.29 Administration and enforcement; rules; standards for airport sites and airports.--It is the duty of the department to:

(1) Administer and enforce the provisions of this chapter.

(2) Establish minimum standards for airport sites and airports under its licensing jurisdiction.

(3) Adopt rules pursuant to sections 120.536(1) and 120.54 to implement the provisions of this chapter.

38. Section 330.30, Florida Statutes, provides as follows, in pertinent part:

330.30 Approval of airport sites and licensing of airports; fees.--

(1) SITE APPROVALS; REQUIREMENTS, FEES, EFFECTIVE PERIOD, REVOCATION.--

(a) Except as provided in subsection (3), the owner or lessee of any proposed airport shall, prior to the acquisition of the site or prior to the construction or establishment of the proposed airport, obtain approval of the airport site from the department. . . . The department, after inspection of the airport site, shall grant the site approval if it is satisfied:

1. That the site is adequate for the proposed airport;

2. That the proposed airport, if constructed or established, will conform to minimum standards of safety and will comply with applicable county or municipal zoning requirements;

3. That all nearby airports, municipalities, and property owners have been notified and any comments submitted by them have been given adequate consideration; and

4. That safe air-traffic patterns can be worked out for the proposed airport and for all existing airport site in its vicinity.

(b) Site approval may be granted subject to any reasonable conditions which the department may deem necessary to protect the public health, safety, or welfare. . . .

39. Rule 14-60.003(1), Florida Administrative Code, states as follows, in pertinent part:

(1) Purpose. The purpose of this rule chapter is to promote safe civil aviation by eliminating hazards; to provide standards for airport sites and categories; to license airports subject to the licensing requirements of Chapter 330, Florida Statutes; to provide for airport markings; and to promote flight safety by providing for airspace protection.

40. Rule 14-60.005(8), Florida Administrative Code, set out the requirements for site approval as follows, in pertinent part:

(8) Site Approval.

(a) Prior to receiving site approval, an applicant shall:

1. Demonstrate that the site is adequate for the proposed airport.
2. Demonstrate that the proposed airport, if constructed or established, will conform to minimum standards of safety as defined herein.
3. Include documentation evidencing local zoning approval by the appropriate governmental agency. Where there is no local zoning, a written statement of that

fact from the appropriate governmental agency official shall be submitted.

4. Provide the Department a list of all airports and municipalities within 15 nautical miles of the proposed airport and all property owners within 1,000 feet of the proposed airport or within 300 feet, horizontal measurement, of the primary surface of a proposed heliport or helistop.

5. Provide the Department with a copy of FAA airspace determination, of applicable, or, if not applicable, demonstrate that safe air traffic patterns could be worked out for the proposed airport.

6. Demonstrate that the runway(s) on the proposed airport will not be within 5,000 feet of any solid waste management facility, monofill, or sludge land spreading for airports serving only non-turbine aircraft, or within 10,000 feet of any aforementioned facilities or operations for airports serving turbine-driven aircraft.

(b) All airport sites must be inspected by a representative of the Department and a written report containing a recommendation shall be filed by the Department.

1. If the inspection shows that the site is feasible and can meet the requirements set forth in Rule 14-60.005(9)(a)1.--5. [sic] above, the Department shall issue a notice of intent.

a. A notice of intent shall state the name of the applicant; give the location of the airport by latitude and longitude as well as by section, township and range, and state the type of license applied for and the earliest date a site approval order may be issued.

b. The notice of intent shall be published in a newspaper of general circulation in the county in which the proposed site is located. . . .

c. Interested persons, in order to request a public meeting, must submit a written request to the Department. . . .

- d. If requested in writing, a public meeting shall be conducted prior to the issuance of a site approval order. . . .
- e. If after the public meeting, if one is held, and in full consideration of any comments received, the Department determines that the proposed airport can comply with the standards set forth in Rule 14-60.005(9)(a)1.--6. [sic] and considering the airspace determination from FAA and "area of critical concern" approval from the Florida Department of Environmental Protection (if such approval or determination is applicable), the Department shall issue a site approval order.
- f. The site approval order shall state:
 - (I) The name and mailing address of the applicant;
 - (II) The location of the proposed airport by geographical coordinates (latitude and longitude); section, township and range; and distance and direction from the nearest community; and
 - (III) Any special conditions which must be met prior to licensing.

41. Rule 14-60.006, Florida Administrative Code, sets forth the requirements for airport licensing as follows, in pertinent part:

(1) Upon compliance with all conditions enumerated in the site approval order, satisfactory final inspection by a representative of the Department, and payment of the required license fee, an airport license shall be issued subject to any conditions deemed necessary to protect the public health, safety, or welfare.

* * *

(8) Specific conditions will be attached to all private airports, limited airports, and emergency hospital helistops in accordance with the following provision. Safety considerations and operational procedures will be added as conditions to any aviation

facility license to insure the public health, safety, or welfare. Conditions implementing zoning restrictions related to airport operations will also be added as needed to avoid unnecessary disturbance of persons or activities on the ground.

(a) At a minimum, the conditions for a private airport will include:

1. Aircraft operations are limited to use only by the licensee and invited guests. It is the responsibility of each invited pilot(s) to comply with federal flight requirements.

2. Traffic patterns and operational procedures are subject to review by the Department prior to licensing.

42. Rule 14-60.007, Florida Administrative Code, sets forth the minimum standards for airports. This rule requires private airport landing strips to be at least 1,800 feet in length with 100 feet for the primary surface width and 50 feet for the usual landing width. Rule 14-60.007(2), Florida Administrative Code. The rule also sets the approach zones for public and private airports at a 20 to 1 approach slope. Rule 14-60.007(3), Florida Administrative Code.

43. Rule 14-60.007(5), Florida Administrative Code, sets forth specific minimum standards for seaplane bases as follows, in pertinent part:

(a) No seaplane base shall be approved which requires aircraft to land or take off in close proximity to a bridge, public beach, poser line, boat dock or other area which could constitute a danger to person or property.

(b) If a seaplane is to be based, moored, or hangared at any given location in

Florida, a Florida airport license must be obtained.

(c) All seaplane bases shall have, in addition to the facilities required of land airports (where applicable), the following minimum services facilities:

1. At least three U.S. Coast Guard approved life preservers of the ring or throwing type, with sufficient line attached to each, shall be kept available during hours of operation.

2. An operational propelled boat (an outboard is permissible) shall be immediately available at all times when flights are in progress.

3. A dock or float, suitable for the type of seaplane using the base, shall be so located as to afford the maximum degree of safety in taxiing approach.

4. Suitable beaching facilities for the type of aircraft using the base shall be provided. Where an adequate ramp is maintained, the dock or float may be omitted.

5. A source of fresh water at the beaching area and sufficient hoses for washing aircraft shall be accessible.

6. An adequate supply of line for heaving, towing, securing, or rescue operation shall be kept available.

7. The minimum water depths and landing area lengths shall be posted at the dock area and noted.

(d) Seaplane base standards as defined in the current FAA Advisory Circular 150/5395-1, Seaplane Bases, are incorporated herein by reference.

44. Depending on the language of each provision, FAA Advisory Circular Number 150/5395-1, provides standards and/or guidelines for seaplane bases. Some of the provisions include minimum safety standards which Respondent "should" consider in determining whether the site of a seaplane base is adequate, and

if constructed or established, will conform to minimum standards of safety. Some of the relevant provisions include, but are not limited to, the following:

CHAPTER 1. INTRODUCTION

* * *

2. EXPLANATION OF TERMS

* * *

d. Hazard to Air Navigation. Any obstruction to air navigation having a substantial adverse effect upon the safe and efficient use of the navigable airspace by aircraft or upon the operation of an air navigation facility. An obstruction to air navigation is presumed to be hazard to air navigation until an FAA study determines otherwise.

e. Obstruction. Any object, including a parked aircraft, which may hinder aircraft operation or which may have an adverse effect upon the operation of an air navigation facility.

f. Obstruction to Air Navigation. Any object, including a parked aircraft, located in navigable airspace.

* * *

CHAPTER 2. SITE SELECTION

* * *

12. WATER OPERATING AREA

a. Size. The size of the water operation area depends on: The performance characteristics of the seaplanes using the site, existing or potential obstructions in the surrounding area, water currents, and wave action.

b. Location. The location of the water operation area and related shore development is influenced by:

* * *

(5) atmospheric and meteorological conditions, such as fog, wind, and smoke;

* * *

(7) ship and boating activity. . .

* * *

c. Coordinated Use. Although each community and site is different, a relationship does exist, and operational use of seaplanes must be coordinated with other users and interested parties in the area. Ample maneuvering and turning areas should be provided with consideration made for shipping, pleasure boats, prevailing winds, and currents.

13. APPROACH AND DEPARTURE PATHS.

a. Populated Areas. The approach and departure paths should be clear of established shipping or boating lanes. An over water approach is preferable to an approach-departure path over populated areas, beaches, and shore developments. Where surrounding development mitigates against straight-in approach and/or departure paths, an over water climbing turn or letdown procedure may be possible.

b. Operational Limitations. The approach and departure paths should be clear of hazards. If an obstruction to air navigation, determined to be a hazard, cannot be altered or removed, the FAA will impose aircraft operational limitations, e.g. limit the type of aircraft operations, to mitigate the hazard. Lighting, or marking obstructions to air navigation is frequently sufficient to preclude an object being a hazard and avoid the need for operational limitations.

14. WATER AREAS. When selecting a site, it is necessary to choose one that has adequate length, width, and depth dimensions, as well as an unobstructed approach and departure path for the type of seaplanes to be accommodated.

a. Current Flow. Landing and takeoff area should be located where the currents are less than 3.5 mph (5.5 kn/h). Where currents exceed this recommendation, provision should be made to allow space to accommodate handling difficulties particularly in the slow taxiing mode used to approach a floating dock or in beaching operation. It is preferable to have the

current flow away from the dock or float. Prevailing winds may negate some adverse effect of currents. The following locations should be avoided:

- (1) currents that exceed 7 mph (12 km/h);

* * *

15. WATER SURFACE CONDITIONS.

* * *

b. Floating Debris. Areas subject to excessive debris or debris over extended periods of time should be avoided. Logs are not only a hazard to aircraft, but also to docking facilities constructed in the river. A floating log moving at river speed has considerable momentum and the potential for destruction when it impacts a fixed object.

* * *

17. SEA LANE ALIGNMENT.

a. Operational Flexibility. An unmarked sea lane or water operating area is normally the choice of seaplane pilots. This allows the pilot to take advantage of the entire water area in order to adjust landing and takeoff operation for current, wind, and waves.

b. Prevailing Winds. If a sea lane is designated, it should be aligned to provide maximum wind coverage. It may be desirable to limit wind analyses to wind data taken during daylight hours since seaplane operation are almost nil after dark.

c. Wind Data. Recorded wind observations taken in the immediate vicinity of the site over an extended period of time are the most desirable. When local observations are not available, data from a nearby locality or airport can be used. Wind data should be validated by comparing observed wind conditions at the proposed water operating area with winds reported at the nearby location. These comparisons should be made under conditions of high and low wind velocity, from all quadrants, on both clear and cloudy days, and at substantially different temperatures.

18. BOTTOM CONDITIONS.

a. Type. Soil type and bottom conditions can influence construction of fixed and floating dock structures, as well as affect taxi operations from the water operating area to the shoreline facility. Mud bottoms ordinarily present little or not difficulty. . . .

b. Conditions. . . .Objects that project from the bottom and constitute a water hazard should be removed. If this is impractical, then the objects should be conspicuously marked to alert users to their presence.

19. BIRD HAZARDS. The location of bird sanctuaries or areas that attract flocks of birds should be considered when orienting water operating areas. Waterways historically used by large flocks of birds should be avoided.

* * *

CHAPTER 3. WATER OPERATING AREA

* * *

22. WATER OPERATING AREA DIMENSIONS. A water operating area at least 2,500 feet (750m) by 200 feet (60m) is recommended. This size will accommodate a sea lane 2,500 feet (750m) by 100 feet (30m) with 200 foot (60m) diameter turning basin at each end. Although a depth of 6 feet (1.8m) is preferred, a minimum depth of 3 feet (1m) is adequate for single-engine operation. The length of the water operating area needs to be increased by 7 percent per 1000 feet (300m) of elevation above sea level to compensate for the change in density altitude.

23. TAXI CHANNEL DIMENSIONS. A taxi channel for small seaplanes should have a minimum width of 125 feet (38m), although a width of 150 feet (45m) or more is desirable. The channel should provide direct access to the onshore facility and, when possible, should be oriented so the approach to the ramp or float will be into the prevailing wind or

current. A minimum clearance of 50 feet (15m) should be provided between the side of the channel and the nearest obstruction.

* * *

CHAPTER 4. SHORELINE FACILITIES

* * *

26. INTRODUCTION

a. Shoreline Facilities. Shoreline installations provide two general functions:

(1) enable servicing, loading and unloading, and mooring without removing the aircraft from the water, and

(2) provide haul-out facilities for removing seaplanes from the water for fresh water wash downs and maintenance.

27. SLIPWAYS. Rectangular slips dredged in the shore line are common and economical and often need no specially constructed sides or ends. . . .

a. Location. A slipway should be where the water level change is not greater than 2 feet (.6m) and the minimum low water depth is not less than 1.5 feet (1.5m).

* * *

28. RAMPS. Ramps vary widely in size, shape, and construction materials. . . .

a. Location. A minimum of 100 feet (30m) of unobstructed water should be available directly offshore from the ramp, in the direction from which approaches are normally made.

* * *

d. Depth. A 4 foot (1.2m) depth of toe will provide sufficient clearance for most waterborne aircraft. A 3 foot (1m) depth will accommodate all but the heaviest types of amphibians. An 18 inch (45cm) depth is adequate for small, light floatplanes. In all cases, depth dimension should be established based on the low water level datum in that locality.

* * *

29. FIXED DOCKS.

a. Location. A minimum of 100 feet (30m) of unobstructed water or a turning basin should be available in the direction from

which approaches are normally made to the floating dock. Docks should be located so that aircraft have access to both sides. Aircraft are usually tied on the inshore side of the dock during inclement weather, in order to use the dock as a breakwater.

b. Clearance. The recommended minimum clearance between the centerline of a taxi route and the near faces of piers, floats, ramps, or marine railway is 60 feet (18m). Waterborne aircraft can safely taxi past obstructions as close to the centerline of the taxi route as one-half their wingspan plus 15 feet (5m); however, this factor should be increased at locations having strong currents and windy conditions. An unobstructed dock surface area 21 feet (6.5m) wide will provide for wing clearance over the dock and permit most floatplanes or small amphibians to come alongside the dock or pier.

c. Separation. When aircraft operate under their own power into, out of, or between mooring positions, the recommended minimum separation between the limits of the mooring positions is 30 feet (10m). When aircraft are moved by hand, the separation distance between the centers of the berthing or mooring positions should be no less than 60 feet (18m).

* * *

33. PIERS. Piers are recommended where the variation in water level is 16 inches (45cm) or less.

a. Location. A minimum of 100 feet (30m) of unobstructed water or a turning basin should be available in the direction from which approaches are normally made to the pier. Piers should be located so that access to them by the public will not require crossing the apron or hangar area.

b. Design Concepts. The pier should extend into the water to a point where the depth at mean low water level is at least 3 feet (1m). . . .

45. Respondent should deny the application for site approval for three reasons. First, the record shows that the applicant has not provided a final FAA airspace determination as required by Section 330.30(1)(a)4., Florida Statutes, and Rule 14-60.005(8)(a)5., Florida Administrative Code. The FAA has requested clarification of the longitude and latitude coordinates for the proposed seaplane base. The application is incomplete pending receipt of the FAA's determination that the proposed seaplane base will not adversely affect the safe and efficient use of airspace by aircraft.

46. Second, the application for site approval should be denied because Respondent has not considered all of the relevant minimum safety standards contained in FAA Advisory Circular Number 150/5395-1. Respondent must consider these safety standards before it issues a site approval order. Section 330.30(1)(a)2., Florida Statutes; Rules 14-60.005(8)2., and 14-60.007(5)(d), Florida Administrative Code.

47. Respondent considered the following in determining that the proposed site met minimum safety standards: (a) whether the approach slope met the 20 to 1 ratio pursuant to Rule 14-60.007(3), Florida Administrative Code; (b) whether the proposed sea lane met the minimum length and width requirements pursuant to Rule 14-60.007(2), Florida Administrative Code; and (c) whether a sea plane would have to take off and land in close

proximity to the bridge pursuant to Rule 14-60.007(5)(a), Florida Administrative Code.

48. Respondent did not consider provisions in the FAA Advisory Circular Number 150.5395-1 related to the following: (a) the performance characteristics of the seaplane(s) using the site; (b) existing or potential obstructions in the surrounding area; (c) water currents; (d) prevailing winds; (e) boating activity; and (f) water depth. See FAA Circular Advisory Number 150/5395-1, Chapters 2-4, cited above. All of these factors, except the type of seaplane(s) using the facility, involve safety issues that are beyond the applicant's control.

49. In the instant case, consideration of these factors is necessary to determine whether the proposed site is adequate, and if constructed, will comply with minimum safety standards. Additionally, Respondent's failure to consider these factors during the site application and site inspection process, is contrary to Respondent's stated policy of ensuring that the applicant does not spend a lot of money on an inadequate site.

50. Finally, Petitioners presented competent evidence that the proposed site is not adequate and does not meet minimum safety standards. The site contains numerous obstructions, such as crab traps in the vicinity of the taxi channel and the sea lane. Channel markers, which are concentrated in the channel, also obstruct a seaplane's approach to and departure from the

launch area. Prevailing winds from the southeast and southwest present cross winds to the takeoff and landing area. Prevailing winds will not be available in the direction from which approaches are made to the dock. Water in the sea lane, taxi channel, and launch area is too shallow for single-engine operations. Boat traffic is heavy and concentrated in the channel near the launch area. Water currents in the channel are too strong in the taxi and launch area. The proximity of the launch area is too close to the Williams dock. All of these conditions constitute a danger to persons or property. Respondent did not present any persuasive evidence to the contrary.

RECOMMENDATION

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

RECOMMENDED

That Respondent rescind Site Approval Order 3-99-01 and deny the site approval application for the Ochlockonee Bay Seaplane Base.

DONE AND ENTERED this 3rd day of February, 2000, in
Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of February, 2000.

ENDNOTE

1/ A sea lane is a defined path on a seaplane base prescribed
for the landing and takeoff run of aircraft along its length.
FAA AC 150/5395-1, Section 2-g.

COPIES FURNISHED:

Thomas Crapps, Esquire
Douglas Law Firm, P.A.
Post Office Box 1674
Tallahassee, Florida 32302

Ollie L. Evans, Esquire
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0458

Thomas F. Barry, Secretary
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, Florida 32399-0450

Pamela Leslie, General Counsel
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.