STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SINGER ISLAND CIVIC ASSOCIATION, INC.,	)	
Petitioner,	)	
and	)	
1000 FRIENDS OF FLORIDA, INC.,	)	
Intervenor,	)	
vs.	)	Case No. 01-1800
ROBERT SIMMONS, JR./LITTLE MUNYON ISLAND OF PALM BEACH COUNTY, and DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
Respondents.	)	

RECOMMENDED ORDER

On August 20-22, 2001, a final administrative hearing was held in this case in West Palm Beach, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Rod Tennyson, Esquire
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For Intervenor: Terrell K. Arline, Esquire
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For Respondent Simmons:

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For Respondent Department:

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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent, Robert J. Simmons, Jr. (Simmons), should be issued: an Environmental Resource Permit (ERP) under Part IV of Chapter 373, Florida Statutes, and Titles 62 and 40E, Florida Administrative Code; and a Consent to Use Sovereign Submerged Lands under Chapter 253, Florida Statutes, and Chapter 18-21, Florida Administrative Code. (All citations to Florida Statutes refer to the 2000 codification; all Florida Administrative Code citations are to the current version.)

PRELIMINARY STATEMENT

On May 8, 2001, the Department of Environmental Protection (DEP) forwarded to DOAH the Petition for Administrative Hearing (Petition) filed by Petitioner, Singer

Island Civic Association, Inc. (SICA). The Petition challenged DEP's Consolidated Notice of Intent to Issue Environmental Resource Permit and Consent to Use Sovereign Submerged Lands (Intent to Issue) to Simmons. An Initial Order was entered, the parties responded, and the case was scheduled for final hearing in West Palm Beach on August 20-22, 2001.

On May 24, 2001, 1000 Friends of Florida, Inc. filed a Petition to Intervene, which was granted. On June 1, 2001, Simmons filed a Motion to Dismiss Friends' Petition to Intervene, and the parties agreed to a telephone hearing on the motion on June 8, 2001. Friends filed a response in opposition on June 5, 2001. Based on the written and oral arguments, the Motion to Dismiss was denied.

On August 15, 2001, the parties filed a Prehearing Stipulation. At final hearing, the parties had Joint Exhibits 1-42 admitted in evidence.

Simmons called the following witnesses: Charles Isiminger, project engineer; Robert Simmons, Jr., applicant and contract purchaser; John Potts, water, wastewater and power engineer; Jena Mier, seagrass and environmental consultant; and Robin Lewis, seagrass expert. He also had Simmons Exhibits 2, 5-7, 9, 10, 12, 14, 15-18, 20, 23, 25, 26, 35-39, and 44 admitted in evidence. Ruling was reserved on

SICA's objection to Simmons Exhibit 42; the objection is now overruled, and it also is admitted in evidence.

DEP called a former DEP employee, John Fellows, and a current DEP employee, Tim Rach. DEP also had its Intent to Issue admitted in evidence as DEP Exhibit 3/SICA Exhibit 12.

SICA called Bernard Rice, SICA's corporate representative, and John Khalil, an electrical engineering expert. It also had SICA Exhibits 2, 4, 5, 10, 12, 15, 22, 24, and 26-30 admitted in evidence.

Friends called Captain Ed Davidson for navigation issues, and Carmen Vare as a seagrass expert. It also had Friends Exhibits 1, 3, 4, 5, 14, 14a, 15, 24, and 24a admitted in evidence during the hearing. Ruling was reserved on Simmons's objections to Friends' Exhibits 11 and 17; the objections are now overruled, and they also are admitted in evidence.

After presentation of evidence, DEP requested a transcript of the final hearing, and the parties were given 15 days from the filing of the transcript in which to file proposed recommended orders (PROs). The Transcript (in six volumes) was filed on September 10, 2001, making PROs due September 25, 2001. SICA and Friends moved for an extension until October 15, 2001. Simmons and DEP agreed to an extension of time until October 2, 2001, but opposed any further extension, and an extension was granted until

October 10, 2001. Simmons and DEP filed a joint PRO, and SICA and Friends filed a joint PRO.

Apparently unaware that Simmons also filed a Motion to Tax Attorneys' Fees and Costs under Section 120.595(1) on October 1, 2001, SICA and Friends filed a joint motion to strike the portions of the joint PRO filed by Simmons and DEP addressing alleged improper purpose and imposition of attorney fees and costs under Section 120.595(1). Subsequently, SICA moved for an extension of time to respond to the Motion to Tax Attorneys' Fees and Costs, and an extension was granted until November 2, 2001. On October 23, 2001, Simmons filed a response in opposition to the joint motion to strike, and on November 2, 2001, SICA filed a response in opposition to the Motion to Tax Attorneys' Fees and Costs.

Based on the filings, the joint motion to strike portions of the joint PRO filed by Simmons and DEP is denied, and both PROs have been considered in their entireties; Simmons's Motion to Tax Attorneys' Fees and Costs also is denied.

FINDINGS OF FACT

A. The Applicant

1. Respondent, Robert Simmons, Jr. (Simmons), is the applicant for: a consent of use of sovereign submerged lands owned by the Trustees of the Internal Improvement Trust Fund; and an ERP to construct a private, single-family, residential

dock for access to Little Munyon Island and to fill jurisdictional wetlands on the island in order to construct a residence on the island.

2. Simmons has offered to purchase Little Munyon Island and the 16 acres of privately-owned, mostly submerged land surrounding it for $2.6 million. Under the contract of purchase, Simmons is required to close by April 2, 2002.

3. If the contract to purchase closes, Simmons plans to construct an 8,000 to 10,000 square-foot residence, with swimming pool, on Little Munyon Island. He estimates that the residence, once built, will be worth $12 million to $15 million.

B. Little Munyon Island.

4. Little Munyon Island is a 1 1/2 acre, undeveloped and unbridged island located in the Lake Worth Lagoon, which has been designated Class III waters of the state.

5. Little Munyon Island is a natural island, one of only three in the Lake Worth Lagoon. Anasthasia rock atop the Pleistocene formation comes to the surface at the site. The island has been enlarged over the years by placement of spoil from dredging of the Intracoastal Waterway (ICW) to the west of the island. In addition, due to erosion on the west and accretion on the east, the island has shifted to the east. Now the eastern edge of the accreted eastern side actually is

outside the 16 acres described by the deed Simmons seeks to have conveyed to him.

6. Little Munyon Island is located just south of the John D. MacArthur State Park and Big Munyon Island. The waters in the Park have been designated as Class II, or Outstanding Florida Waters under Florida Administrative Code Rule (Rule) 62-302.700(2)(b). The boundary of the Park is approximately 1,100 feet north of Little Munyon Island.

7. The eastern boundary of the ICW right-of-way is located about 220 feet west of Little Munyon Island; the centerline of the ICW is about 550 feet west of the island. Singer Island is an Atlantic Ocean barrier island approximately half a mile east of Little Munyon Island.

8. The evidence was that less of Little Munyon Island is inundated by high tides than used to be. As a result, more of the island's vegetation was native in the past. Perhaps due to the deposit of spoil material, relatively little of the island is inundated any more. As a result, exotic vegetation such as Australian pine, Brazilian pepper, and seaside mahoe has invaded and comprises about 35 percent of the island's vegetation. The native vegetation includes red, black and white mangroves, buttonwood, and cabbage palms.

9. Although it is private property, Little Munyon Island is currently being used quite extensively by the public,

without authorization from the owner. Boaters frequent the island, leaving trash and other debris behind. Visitors to the island have chopped down native vegetation, such as mangroves, in order to build campfires on the island.

10. Boaters visiting the island for recreational activities often ground their boats around the island. Grounding and extricating boats often causes the boats' propellers to dredge up seagrasses and dig holes in seagrass beds.

C. The Lake Worth Lagoon.

11. The Lake Worth Lagoon is a saltwater estuary. It stretches about 21 miles south from PGA Boulevard and varies in width from about 1 to 1 1/2 miles. The Lagoon is tidally influenced twice per day through the Lake Worth Inlet, which is located about 2-3 miles south of Little Munyon Island. The Inlet connects the Lagoon with the Atlantic Ocean. There is a tidal range of 2.8 to 2.9 feet between mean high and mean low tides in the vicinity of the island.

12. Much of the historical extent of the Lagoon has been filled, and it is located in the most urbanized portion of Palm Beach County. From 1940 to 1975, the Lagoon lost more than 87 percent of its mangroves due to shoreline development.

13. Little Munyon Island is located roughly in the middle of a large bay in the northern part of the Lagoon, which has not been filled or bulkheaded. This bay is one of the few remaining natural areas of the Lake Worth Lagoon.

14. The Earman River, also known as the C-17 canal, discharges into the Lake Worth Lagoon west and a little north from Little Munyon Island to the west of the ICW.

15. The part of the Lake Worth Lagoon around Little Munyon Island is vegetated with very high quality seagrasses, including Cuban Shoal Grass (Halodule wrightii), Turtle Grass (Thalassia testudinum), Manatee Grass (Syringodium filiforme), Paddle Grass (Halophila decipiens), and Johnson Grass (Halophila johnsonii). Johnson Grass is a federally listed threatened species of seagrass, but it tolerates a range of water quality and bottom sediments and is relatively abundant in the Lake Worth Lagoon.

16. Five of the six types of seagrasses found in the Lagoon occur in the vicinity of Little Munyon Island. The area around Little Munyon Island is the best area of seagrasses in all of Palm Beach County, and it has the highest density of seagrasses. The quality of seagrasses in the area is "as good as it gets in the Lake Worth Lagoon."

17. The tide from the Lake Worth Inlet flows north and south through the ICW. As a result, the same waters pass both

Little Munyon Island and Big Munyon Island as the tide ebbs and flows. Silt and suspended particles in the water column around Little Munyon Island could be carried by the tide to the Class II waters around Big Munyon Island.

18. There is a high degree of biological diversity in the area around Little Munyon Island. The seagrass beds and flats around Little Munyon are a breeding ground for fish and other aquatic resources. The portion of the Lake Worth Lagoon around Little Munyon has been identified as Essential Fish Habitat by the South Atlantic Fishery Management Council and the National Marine Fisheries Service. It is essential fish habitat for postlarval, juvenile, and adult brown and pink shrimp, red drum, and gray snapper.

19. Seagrasses protect small fish and provide a food source for a whole ecosystem that starts with the seagrasses. Seagrasses provide a valuable source of oxygen, food, and shelter. One square meter of seagrass can generate 10 liters of oxygen per day. They may be one of the most prolific ecosystems in the world in terms of biomass production.

20. The water quality in the Lake Worth Lagoon is improving due to stormwater regulation and reduction in the discharge of sewage effluent. This has caused the quality of seagrasses in the area to improve over the past 18 years. Seagrass recruitment has occurred around the area, and new

kinds of seagrasses have colonized since 1983. It is reasonable to believe that seagrasses will continue to colonize around the island if water quality continues to improve. If conditions are right, seagrasses can spread and colonize areas where they do not now occur.

D. The Proposed Project

Initial Application

21. In the initial application for ERP and consent of use filed on January 20, 2000, Simmons proposed to construct an L-shaped, 5,208 square foot dock made of poured concrete, 10-12 inches thick. The proposed dock's 12-foot wide access pier was to extend westward from shore for 306 feet, with a 12-foot wide terminal platform extending 140 feet to the south. The entire dock was to be elevated to 5.0' NGVD (National Geodetic Vertical Datum of 1929). The entire dock was to be within privately-owned submerged lands, but intended mooring on the western side of the terminal platform would have been over sovereign submerged lands.

22. Initially, the access pier was to cross the center of a sunken barge that lies approximately 240 feet off the island's western shore. In a response on March 10, 2000, to DEP's request for additional information (RAI), the footprint of the proposed dock was shifted south so that the access pier crossed just south of the sunken barge, where Simmons'

seagrass consultant, CZR, said there were fewer seagrasses. This also shortened the access pier to 296 feet and reduced the overall area of the docking facility to 5,088 square feet. In addition, mooring piles to the west of the terminal platform were eliminated; as modified, four mooring piles were to be placed parallel to the terminal platform, on the eastern side. As modified, the entire dock structure and mooring area was located within the privately-owned submerged lands.

23. The dock was specifically designed for use in construction of an 8,000 to 10,000 square-foot residence, plus swimming pool, on the island. The terminal platform was designed so that Simmons could moor barges between the terminal platform and the mooring piers and offload needed construction materials and equipment. It was contemplated that the barges would be 55 feet long by 24 feet wide and draw three and a half feet of water and that they would be maneuvered by push-boats. The dock also was designed to permanently moor a vessel 120-140 feet long drawing five and a half feet of water.

24. Simmons intends to live with his family in the proposed new residence on Little Munyon Island. He currently owns a house on the mainland in North Palm Beach on the western side of the Lake Worth Lagoon across the ICW from Little Munyon Island. He plans to park cars and use a dock at

that location and operate his boat back and forth to Little Munyon Island. This would necessitate crossing the ICW several times a day.

25. To construct the planned residence and pool on Little Munyon Island, the application proposed construction of a retaining wall around the island, generally no more than 5 feet landward of the perimeter wetlands on the island. Approximately 28,500 square feet (0.65 acres) would be within the retaining wall. Three feet of fill would then be placed within the retaining wall to elevate the pad for the residence to about 6 feet above sea level. Filling the Island would necessitate cutting down all the vegetation inside the retaining wall and filling 0.15 acres of jurisdictional wetlands consisting of mangroves and other wetland species.

26. In the initial application, utilities were going to be provided by directionally-drilling a forced sewer main, water line, electric, cable, phone, and natural gas line from State Road A1A on Singer Island, under sovereign submerged lands in the Lake Worth Lagoon, to Little Munyon. In concerns expressed in the RAI about resource impacts and extension of utilities to an undeveloped coastal island, Simmons deleted the subaqueous utility lines in the modification on March 10, 2000.

June Modification

27. During a low, low (spring) tide in April 2000, CZR noticed for the first time that there was a sand bar between the northern third of the sunken barge and Little Munyon Island. In June of 2000, Simmons again modified his application to shift the docking facility back north so that the access pier was aligned with the sand bar. Simmons also proposed to extend the dock out into deeper water, making the dock 376 feet long, and placing the last 33 feet of the dock and the entire terminal platform (a total of 1,230 square feet) on and over sovereign submerged lands. The terminal end of the dock was modified to be 100 feet long by 10 feet wide. The width of the access pier also reduced generally to ten feet; however, over a stretch of 70 feet of the access pier to the west of the sunken barge (where it crossed lush seagrasses), the width of permanent concrete access pier was further reduced to four feet. (Three-foot high, hinged, grated railings designed to fold down would widen the access pier to ten feet on demand. See Finding 37, infra.) These modification reduced the overall size of the docking facility to 4,240 square feet. In addition, the decking was elevated higher, to 5 feet above mean high water (MHW). The mooring piles on the east side of the terminal platform (now over lush seagrasses) were deleted.

28. The house pad and retaining wall were not changed from the initial filing. Having dropped the idea of subaqueous utilities, Simmons proposed "self contained utilities" consisting of:

> Water - Well with reverse osmosis (RO) plant, as necessary, for potable water. Water for irrigation and toilets will be reused on-site treated wastewater. Drinking water will likely be bottled.
> Wastewater treatment - Treatment by small on-site package plant, not septic tank.
> Power - Solar with backup generator.

No specifics or analysis of the impacts from these systems were provided, and no assurances were given that they would not pollute.

29. The June modification also proposed mitigation for the loss of the 0.15 acres of wetlands on the island that would be filled. Simmons proposed placement of rip-rap breakwaters just landward of the existing limit of seagrass, or further landward, to provide wave and scouring protection and planting of mangrove and other species landward of the rip-rap. It was suggested that seagrasses also would propagate landward of the rip-rap.

30. In an August 2000 response to DEP's RAI, Simmons detailed the mitigation plan. Under the plan, 350 linear feet of rip-rap breakwaters would be placed along the northwestern and southwestern shores of Little Munyon Island, and the area

landward of the breakwaters would be planted with red and black mangrove and smooth cordgrass. Exotic vegetation would be removed from the mitigation areas. Under the plan, 0.31 acres of high quality wetlands would be created to mitigate for the loss of 0.15 acres of jurisdictional wetland fill.

E. DEP Denies Application, as Modified

31. On November 9, 2000, DEP issued a Consolidated Notice of Denial of Environmental Resource Permit and Consent to Use Sovereign Submerged Lands. Discussion focused on impacts on seagrasses, impacts from the proposed utilities, and the mitigation plan.

32. Although DEP noted that the size of the project was reduced from the original application, it concluded that the "dock will still have shading impacts on seagrasses, including Johnson's grass (Halophila johnsonii), a federally-listed threatened species." DEP also noted that the construction of the breakwaters could potentially impact seagrasses.

33. Additional reasons for denial involved the utilities proposed for the uplands. DEP wrote: "The proposed utilities (RO plant, package plant) have a potential for impacts to the Lake Worth Lagoon (Class III Waters) through both a potential discharge and from long-term degradation. Also, no details on the use (short-term or permanent residency) or maintenance of the utilities was provided, both of which could affect how

well the utilities function and whether they could affect water quality or habitat."

34. DEP also noted that the proposed mitigation "does not create wetlands. It replaces 0.31 acres of submerged and intertidal habitat with 0.31 acres of mangroves and cordgrass habitat." It was also mentioned that anticipated trimming of mangroves would further reduce the value of mitigation.

35. DEP concluded that Simmons had "not provided reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with Part IV of Chapter 373, F.S., and the rules adopted thereunder." DEP specifically concluded the proposal did not meet the balancing criteria set forth in Section 373.414, Florida Statutes, and Rules 62-330, 40E-4.301 and 40E-4.302.

F. Third Modification and DEP Intent to Issue

36. Simmons and his lawyer and consultant met with DEP staff in November of 2000. A site visit was made on December 8, 2000. After the meeting and site visit, Simmons proposed to further modify the project in several respects.

37. The portion of the dock that was previously reduced to 4 feet in width was proposed to be constructed with a grated deck. The dock was elevated from 5.0 feet above MHW to 5.25 feet above MHW measured at the top of the deck. The

design of the rest of the dock remained the same. No changes were proposed to the retaining wall or filling of wetlands.

38. As for utilities, Simmons proposed the "Little Munyon Island Power and Sewerage Plan" This plan represented that 90 percent of the complex's power would be provided by solar energy, producing approximately 72 kilowatts (kW) of electricity. The plan also stated: "Water treatment both for drinking and waste waters will be processed through Atlantis Water treatment Auto Flash systems. This approach will use waste heat to evaporate and clean the water. This process will return used waters to potable with no more than 5 percent effluent. Any effluent will be secured and containerized and periodically (2xs per year) removed from the island." An "auto-flash" system creates distilled potable water using waste heat to evaporate all water from the effluent.

39. The new Little Munyon Island Power and Sewerage Plan did not mention the use of irrigation waters on Little Munyon Island. DEP's staff reviewer understood from the new plan that there would be no wastewater irrigation on Little Munyon Island and that all waste would be processed by distillation, i.e., potable water.

40. As for the mitigation plan, the two previously-proposed rip-rap breakwaters were modified to reduce their footprints, and the southern breakwater was moved somewhat

landward at the southern end to avoid seagrasses. A third breakwater was added to the north side of the island. This increased the amount of mitigation area from 0.31 to 0.36 acres. In addition, Simmons submitted a revised mitigation plan to plant mangroves and spartina behind the breakwaters. Simmons also offered to record a conservation easement on the 16 acres of privately-owned submerged lands surrounding Little Munyon Island.

41. DEP issued a Consolidated Notice of Intent to Issue Environmental Resource Permit and Consent to Use Sovereign Submerged Lands on March 12, 2001. In recommending this action, DEP's staff reviewer understood that there would be no discharge whatsoever on the island under the "Little Munyon Island Power and Sewerage Plan," and that all wastewater would be recycled and reused. Specific Condition (18) stated: "Power and wastewater service for the island shall be provided as described in the attached 'Little Munyon Island power and sewerage plan'. No discharge of effluent is authorized on the island." DEP's staff reviewer understood the permit to mean that "water, the material that comes out . . . of the other end of the waste water system" would not be discharged on the island. If DEP's staff reviewer knew Simmons was planning to use another system to treat wastewater or was planning to discharge reuse water on the island, it "would have been a

concern," and he "would have questions about what that involved." He agreed that "spray irrigation would have been a concern" and would have raised issues related to the level of treatment, water quality and quantity and runoff from the upland part of the island into the waters of the Lake Worth Lagoon. The main concern would have been nutrients.

42. In granting the revised application, DEP reversed its previous conclusions that Simmons had not complied with applicable statutory and rule criteria, and specifically found that "the Department has determined, pursuant to Section 380.0651(3)(e), F.S., that the facility is located so that it will not adversely impact Outstanding Florida Waters or Class III waters, and will not contribute to boat traffic in a manner that will adversely impact the manatee."

G. The Challengers

43. The proposed project is opposed by Petitioner, Singer Island Civic Association, Inc. (SICA), and by Intervenor, 1000 Friends of Florida, Inc. (Friends). SICA and Friends are both Florida corporations. SICA commenced this proceeding by filing a verified Petition for Administrative Hearing. Friends filed a verified Petition to Intervene. It was stipulated that SICA and Friends have standing as Florida citizens under Section 403.412(5). SICA also asserted

standing based on the proposed project's effects on its substantial interests and those of its members.

44. SICA is a membership organization with 1,200 members, who reside on Singer Island. SICA has an office located at 1281 North Ocean Drive, Singer Island, Florida. It also owns submerged real property in the Lake Worth Lagoon just west of and adjacent to Singer Island. SICA's membership includes individuals and condominium associations. Several individual members and condominium association members own property that borders State Road AIA on Singer Island. Some have riparian rights to the Lake Worth Lagoon.

45. SICA performed a survey of its members and received 330 responses. Ninety percent of those responding believed they would be affected by the proposed project. More than 75 percent said they fished in the Lagoon and believed the project would hurt fishing; 80 percent said they enjoy and study the wildlife around the Lagoon; and 72 percent believed wildlife viewing would be impacted by the project. Members of SICA use the Lake Worth Lagoon for boating, fishing, recreation, or enjoyment of wildlife. The membership and the corporation are concerned about the potential of the project to pollute the Lake Worth Lagoon and adversely affect the environmental resources of the Lagoon.

46. SICA's purpose includes the preservation of the environmental resources of the Lake Worth Lagoon and opposition to proposals to fill the submerged lands along State Road AIA. The type of relief sought by SICA in this action is the type of relief that is proper for the corporation to seek on behalf of its members.

47. Both SICA and a substantial number of its members are substantially affected by Simmons' proposed project.

48. A number of issues raised by SICA and Friends were dropped by the time the parties filed their Prehearing Stipulation. SICA and Friends further refined their claims at final hearing. The remaining challenges to the project focus on turbidity and shading of seagrasses caused by the construction and operation of the project, as well as on the potential secondary impacts of utilities proposed to serve the residence on the island.

H. Direct Impacts from Proposed Dock

49. The proposed dock is significantly larger than a typical private, single-family dock. No other of its proportions can be found in Palm Beach County. Typically, private, single-family docks are four-feet wide and made of wood, with spaced wooden planks for decking. The proposed docking facility's size and construction technique are more typical of a commercial docking facility.

50. A docking facility of the size and kind proposed is not required for reasonable access to Little Munyon Island. Rather, it is required for construction and maintenance of a 8,000 to 10,000 square-foot residence, plus swimming pool, that will be worth $12 million to $15 million when completed. A less intense use of the island would have fewer impacts on the environment.

51. Alternatively, there are other ways to build a house on the island without constructing a permanent dock of this size. Simmons might be able to push a barge temporarily up to the island, construct the house and then mitigate for the temporary impacts of beaching the barge. Simmons also might be able to construct a temporary span of trusses, a system used by the Florida Department of Transportation when working on coastal islands.

52. The amount of shading caused by a docking facility is influenced by numerous factors. But if other factors are equal, generally the larger the surface area of the dock, the more shading occurs; likewise, solid poured concrete decking shades twice as much as grated decking material. As a result, all other factors being equal, the proposed dock will produce more shade than a typical private, single-family dock. In addition, there is a halo effect around the footprint of a dock that is about 2.25 times the square footage of the dock.

53. The area under solid concrete decking will receive no sunlight. No seagrasses will ever grow in this area, eliminating possible recruitment of seagrasses in this area.

54. Simmons made a laudable effort to locate, configure, and orient his proposed docking facility so as to reduce the shading impact of the dock's footprint and halo effect. The use of grated material over the area of greatest seagrass cover also was appropriate. But shading impacts and halo effects were not avoided entirely.

55. In its April 2000 biological survey, CZR depicted an area approximately 40 feet wide by 250 feet long between the west of Little Munyon Island and a sunken barge as a "barren," meaning it had no seagrasses. Clearly, sand has built up over the years in this area due to influence of the sunken barge, and parts of the sandbar may be exposed at every mean low tide. This area may be devoid of seagrasses. But other parts of the sandbar may only be exposed at every low, low (spring) tide and may not actually be "barren."

56. An onsite inspection and video tape of the area was made by Carman Vare of the Palm Beach County Division of Environmental and Resources Management in August of 2001. This inspection and video confirmed that there were no seagrasses in the sandy area from the mean high tide line on Little Munyon Island running west along the proposed footprint

of the dock for a distance of approximately 130 feet. But at a point approximately 130 feet from shore, within 5 feet north of the tape placed at the presumed centerline of the proposed dock and sandy area, Vare began to find rhizomes (roots) of Cuban Shoal Grass (Halodule wrightii) in the sediment. Rhizomes of this seagrass continued to be found out to approximately 182 feet from the shore. At that point, sparse patches of Johnson Seagrass began approximately 5-10 feet north of the tape. This type of grass continued to be found to a point roughly 205 feet from the shore. From 205 feet to 215 feet from the shore, Cuban Shoal Grass rhizomes reappeared. There were no seagrasses from 215 feet to the east edge of the barge, which is approximately 243 from the shore. The area around the barge has been scoured out by waves and currents.

57. It is possible that Vare placed his tape somewhat north of the actual centerline of the proposed dock. It is not clear from the evidence, but a sunken piling Vare swam over at one point may have been north of the centerline of the proposed dock. Also, while no seagrasses were observed when Vare swam south of the tape, Vare did not swim further than 5 to 10 feet south of the tape, so he did not know how far south of his transect line the area was barren of seagrasses. In any event, it was clear that the entire area depicted by CZR

as "barren" was not in fact completely devoid of seagrasses; there were seagrasses and seagrass rhizomes either within the footprint of the proposed dock in the 110 feet or so east of the sunken barge, or very close to the north of the footprint in that locale.

58. The sunken barge is made of decomposing wood. It is about 30 feet wide and about 100 feet long. It is often exposed at low tides, but is submerged during high tides. While there are no seagrasses growing in the barge, the barge is providing some fish habitat. If the barge were removed, seagrasses probably would re-colonize the area.

59. West of the barge for approximately 50 feet is a colony of lush Cuban Shoal Grass. Coverage is sparse very near the barge but quickly thickens to the west to approximately 75 percent coverage. (CZR mischaracterized the density of this grass as 30 percent, perhaps in part because CZR did not conduct its surveys during the optimal growing season).

60. From 50 to 70 feet west of the barge, CZR found moderate (30 percent) cover of Paddle Grass (Halophila decipiens). There are no grasses from 70 to 103 feet west of the barge. However, CZR found moderate (30 percent) cover of Paddle Grass south of the proposed footprint of the access

dock and east of the terminal platform, extending south past the end of the terminal platform.

61. The proposed terminal platform is in approximately 8-9 feet of water. The sediments under the terminal platform are composed of sand, silt, clays and organic materials. There are no grasses under the proposed terminal platform.

62. The terminal platform would be directly over lush beds of Halophila decipiens (paddle grass) and Halodule wrightii (shoal grass) if the proposed dock were shortened by 35 feet, as Simmons has suggested to avoid having to obtain consent of use of sovereign submerged lands.

I. Secondary Impacts from Proposed Dock

63. As indicated, Simmons plans to use the proposed docking facility for construction and maintenance of a 8,000 to 10,000 square foot residence. He plans to use 55-foot long construction barges, drawing 3-4 feet of water, to bring fill, rocks, and other construction materials to Little Munyon Island. The barges will be moored to the western side of the proposed terminal platform. The use of construction barges will cause turbidity during construction.

64. Simmons proposes to offload tons of fill from the barge and carry this fill over the dock to Little Munyon Island. One estimate was that, if Simmons used barges 120-130 feet long and capable of hauling 300 tons of fill, he would

need to deliver 27-30 barge loads of fill to the dock. There is a reasonable likelihood that some of this fill will fall into the water.

65. Simmons provided no analysis of the impacts of offloading and delivering this much fill to the island. There was no evidence of how Simmons planned to move sand around to fill the island, or its potential to cause turbidity.

66. The location of the proposed dock in this case complicates the navigation of barges and vessels to and from the dock. Little Munyon Island is roughly centered in the Lake Worth Lagoon; and, except for some protection from the island itself, the dock is fully exposed to wind from all directions. Meanwhile, the "sail effect" of large boats adds to the difficulty of navigating them in the wind. The proposed dock also is exposed to the full effect of the current. A tidal range of a couple of feet can cause a current of about 1-2 knots; mean tidal range in the location of the proposed dock is as much as 2.8 to 2.9 feet. Finally, the proposed dock is near the ICW, which has a lot of boat traffic and wake. All of these factors can affect maneuverability of boats, create closure problems, or push the boats away from the dock.

67. Unless Simmons wants to run the serious risk of losing control of the construction barges and inadvertently

damaging seagrass beds, he will have to use a tug with significant maneuvering power. Tugs create more hydraulic thrust than other vessels because they generate more torque. Tugs also have more prop wash than most boats because they have deeper draft and larger propellers, in the range of 3 1/2 feet in diameter.

68. The proposed dock was designed to moor a vessel up to 120-foot long parallel to the western side of the terminal platform when not being used for construction barges. If not being used for either barges or one large vessel, the mooring could accommodate two vessels of between 50-60 feet in length. Although not contemplated or ideal, it would be physically possible to moor three large vessels west of and perpendicular to the terminal platform inside the four mooring piles located 40 feet off the terminal platform. (These piles are 33 feet apart and designed to secure the construction barges, or one large vessel, parallel to the western side of the terminal platform.)

69. While there are railings on the access pier to discourage mooring, there are no railings on the terminal platform. It also would be possible to moor boats on the east side of the terminal platform, which would be over lush seagrass beds. Simmons plans to moor his boat there when the western side is occupied by construction barges.

70. Boats of 50-60 feet usually have twin inboard engines that range from 400 to 600 horsepower each. They can have propellers of between 26-30 inches in diameter. The engines and propellers are installed in a declining angle on such boats with the thrust vector pointing downward toward the bottom. Boats in this size range generally of draw 4-6 feet of water depending on the size and type of the vessel. A 70-foot trawler draws 6 feet of water.

71. Unlike outboard engines (which also typically are lower-powered), inboard engines do not turn. Larger vessels move around by employing differential power. With twin inboard engines, navigation can by accomplished by using power pulsing, using the engines at different speeds, or by making one engine push forward and the other push in reverse. Winds and currents increase the need to use pulse powering to maneuver into and away from docks. For these reasons, the operation of 50-60 foot boats even in 5-10 feet of water can disturb the bottom through hydraulic scouring. As indicated, tug boats maneuvering a barge can scour the bottom even more.

72. DEP's staff concluded that the operation of the dock would have no effect on seagrasses and sediments and would not cause turbidity or scouring problems in part by applying a longstanding policy which assumes that turbidity will not be a concern if one foot of water is maintained between boats using

a dock and the bottom. The permit contains a condition that Simmons maintain one foot below boats.

73. The so-called one-foot rule was designed for small, outboard-powered boats. As larger and more powerful vessels have increasingly used Florida's relatively shallow waters, the rule has become antiquated and ineffective for protection of marine resources from scouring and turbidity. Certainly, it will not be effective to minimize the impacts of scouring and turbidity from vessels of the size authorized and expected to use this dock.

74. The so-called one-foot rule also does not differentiate between types of sediments. There is a "hole" approximately under and just west of the northernmost 60 feet of the proposed terminal platform; the hole also extends to the north beyond the proposed terminal platform. The water in the "hole" is approximately 8 feet deeper than the surrounding areas.

75. The "hole" has been there for years. It could have been caused by dredging back in the 1940s. It also is just west of where a previous dock was located and could have been caused by prop-dredging (or perhaps by a paddlewheel, which used the mid-1960s).

76. The "hole" is a silt trap. There is approximately 5 feet of silt in the bottom of the "hole." The sediment in the

hole consists of very fine particles of muck and silt, with some decomposing drift algae. The silts in the "hole" probably come from the Earman River, which drains urbanized areas of North Palm Beach and discharges into the Lake Worth Lagoon just across the Lagoon from the site. There are no seagrasses in the "hole."

77. Neither CZR nor DEP knew the "hole" was there. CZR did not identify it on its biological survey. Simmons provided no analysis of the sediments in the hole or in the mooring area of the proposed dock. DEP provided no analysis or testimony of the effect of the sediments in the "hole" on turbidity and water quality.

78. Silts and muck cause turbidity, which is a measure of water clarity. Re-suspended mucks and silts can impact seagrasses by reducing light penetration through the water and by settling on their leaves. Silts stirred up from the operation of tugboats and large boats at the end of the proposed dock could settle on the grasses under the 4-foot grated area and negatively impact the very seagrasses that DEP was trying to protect.

79. Once re-suspended, sediments can persist in the water column for 20-40 minutes, depending on the currents. A knot or two of current can suspend silts for half an hour and transport them a mile away. On an incoming tide, such a

current could transport re-suspended sediments toward and into MacArthur State Park, just 1,100 feet away.

80. To determine the extent of degradation of the turbidity standard in the OFW of the State Park, DEP would have to know the background turbidity in the Park. Neither Simmons nor DEP did a hydrographic survey or any other analysis of the project for its effect on the OFW.

81. Farther west of the proposed terminal platform, the bottom rises out of the "hole" to a depth of 8-9 feet. Starting there, and extending west all the way to the edge of the ICW, there is sparse but continuous Paddle Grass (Halophila decipiens). Allison Holzhausen, an environmental analyst with Palm Beach County, has run transects throughout the area of Lake Worth Lagoon between the proposed terminal platform and the ICW and has not found any place in that area where seagrasses did not grow. Water depths in this area do not exceed approximately 14 feet. Depending on water clarity, Paddle Grass can grow in deep waters and have been found in water up to 25 meters deep in the Atlantic Ocean off Palm Beach County.

82. CZR provided no biological survey of the seagrass communities west of the mooring area, nor did it analyze the resources or do a bathymetric survey of the area between the proposed dock and Simmons's dock on the mainland west of the

ICW. This information would be needed to determine whether the operation of Simmons's boat to and from the dock on a continuing basis would impact seagrasses and to locate the best place for a channel.

83. If the proposed dock were shortened by 35 feet, as Simmons has suggested to avoid having to obtain consent of use, the terminal platform and mooring areas would be directly over lush seagrass beds. In addition, the water there would be just 6.4 feet, or less, at MLW (mean low water); there was no evidence of detailed bathymetric information in the area. Depths would be even lower at low, low (spring) tides.

84. Several witnesses testified that the 7.4 foot depth in the area indicated on Sheet 3 of 5 of the Plan View in Simmon's application was at MLW. But Sheet 3 of 5 indicates that "datum is NGVD," meaning the National Geodetic Vertical Datum of 1929, and Sheet 4 of 5 of the Plan View indicates that MLW is approximately a foot less than NGVD.

85. Impacts on seagrasses from scouring and turbidity would be even greater if the proposed dock is shortened by 35 feet.

J. Secondary Impacts of Wetland Fill

86. When DEP gave notice of intent to issue the Permit, it was operating under the assumption and promise that there would be "no discharge" of wastewater on Little Munyon Island.

Under the proposed "Auto-Flash" wastewater system, the only effluent would be solid "sludge," which would be removed from the island twice a year. This assumption continued into final hearing.

87. On August 7, 2001--after the permit was issued, and just a couple of weeks before final hearing--Simmons proposed a different type of wastewater treatment system that would spray-irrigate treated wastewater. The new proposed system would provide aerobic and anaerobic treatment, filter the effluent, chlorinate it, and then spray it at a rate of up to 1,040 gallons per day onto the surface of the Little Munyon Island within approximately 50 feet of the water's edge.

88. In effect, Simmons went back to his original proposal for a "waste water treatment/treatment by small on-site package plant not septic tank . . . water for irrigation and toilets will be re-used onsite treated wastewater." This system was rejected by DEP in its denial of November 4, 2000, because it lacked information on the facility and whether there would be a discharge. DEP's engineers did not review the system again after August 7, 2001.

89. The disposal of treated effluent from the onsite sewage treatment plant raises legitimate concerns over the potential of the proposed utilities to impact surface waters. Simmons's engineer, John Potts, conceded that there will be

nutrients in the wastewater. Nutrients from wastewater can cause algae to grow, which affects the health of seagrasses. Potts was unable to provide detail as to the amount of nutrients and other constituents of the wastewater.

90. DEP's experts were not familiar with the criteria for reuse of treated effluent. DEP did not know the transmissivity of the fill and could not say whether treated effluent sprayed on the island would percolate through the fill and run into the Lagoon across the top of the rock strata on the island.

91. Potts did not know how stormwater would be handled on the island; a proposed stormwater system has yet to be designed. For that reason, Potts could not say whether the sprayed treated effluent could reach the Lake Worth Lagoon. DEP also did not know how stormwater was proposed to be treated on site.

92. The solar power system proposed in the Little Munyon Island Power and Sewage Plan would only produce only 31 kW of power and provide 19 percent of the complex's power and at peak times, not the 90 percent estimated by Simmons's consultants. In effect, the propane generator was not a "backup," as suggested, but the main power source for the house and utilities and only source of power for the wastewater treatment system, since the generator must be

running to provide waste heat for the wastewater system to work. Instead of two available sources of electrical power for the wastewater treatment system in case one failed, there is really only one, the propane generator. The lack of any backup for the sewage treatment system increases its potential to fail and adversely affect surface water quality and the marine environment of the Lake Worth Lagoon.

93. DEP did not analyze stormwater or the discharge of treated wastewater and its effect on surrounding waters, stating: "Typically we don't review storm water for single family residences." But Simmons's proposed project is not a typical single family residence.

94. In rebuttal, Simmons put on evidence that there would be approximately 14,800 square feet between the retaining wall and the 50-foot setback line and that the depth of 1,000 gallons of sprayed treated wastewater would be only one-tenth of an inch if sprayed equally over that entire area. Evapotranspiration alone would account for the entire 1,000 gallons, according to the Basis of Review of the South Florida Water Management District. But the evidence was not clear as to how much of the 14,800 square feet between the retaining wall and the 50-foot setback would be available for spray irrigation.

95. The weight of the evidence was that Simmons failed to provide reasonable assurances that the disposal of wastewater on the island will not have adverse impacts on the marine resources of the Lake Worth Lagoon unless a specific conditions were added to the permit: that a properly designed and constructed stormwater system be established prior to operation of the sewage treatment facility; and that backup systems and emergency procedures be established in the event of any failure of the main system.

CONCLUSIONS OF LAW

K. Standing

96. Both SICA and Friends clearly have standing under Section 403.412(5), Florida Statutes. See Cape Cave Corp. v. State Dept. of Environmental Regulation, 498 So. 2d 1309 (Fla. 1st DCA 1986); Manasota-88, Inc. v. Department of Environmental Regulation, 441 So. 2d 1109 (Fla. 1st DCA 1983).

97. SICA also proved standing under Section 120.52(12)(b), Florida Statutes, as a "person . . . whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party." SICA owns property located in close proximity to Little Munyon Island, and the purposes of SICA include the protection of the environmental resources of the Lake Worth Lagoon. See Friends of the Everglades, Inc. v. Board of Trustees of the Internal

Improvement Trust Fund, 595 So. 2d 186 (Fla. 1st DCA 1992); Town of Palm Beach v. Department of Natural Resources, 577 So. 2d 1383 (Fla. 4th DCA 1991); and Sheridan v. Deep Lagoon Marina, 576 So. 2d 771 (Fla. 1st DCA 1991).

98. In addition, SICA has "associational standing" as a representative of its members. See Florida Homebuilders Association, Inc. v. Department of Labor, 412 So. 2d 351 (Fla. 1982). A substantial number of the members of SICA live in close proximity to the Lake Worth Lagoon. Their interests will be adversely affected by these proceedings, and the remedy SICA seeks in these proceedings is appropriate for it to seek and receive on behalf of its membership.

L. Consent of Use

99. Although Simmons' use of sovereign submerged lands was necessitated only by DEP staff's request to extend the proposed dock to avoid placement of the terminal platform over seagrasses, the requirements for consent of use still apply and must be met.

100. As found, Little Munyon Island is "an unbridged, undeveloped coastal island," as defined by Rule 18-21.003(13). Rule 18-21.004(1)(h) states: "No application to use sovereignty, submerged land adjacent to or surrounding an unbridged, undeveloped coastal island or undeveloped coastal island segment may be approved by the Board of Trustees unless

it meets [listed] criteria . . .." Only the second exception criterion is applicable in this case, and it states: "2. The proposed facility is limited to a two-slip private residential dock that complies with the standards set forth in section 18-20.004(5)(b), F.A.C., ..." Even if the proposed dock could be considered a "two-slip private residential dock," it clearly does not comply with Rule 18-20.004(5)(b). That rule sets out nine "specific design standards and criteria" for "private residential single-family docks" and requires conformance "to all of" the standards and criteria. But the proposed dock in this case clearly does not conform to any of the following standards and criteria:

> 1. Any main access dock shall be limited to a maximum width of four (4) feet.
> 2. The dock decking design and construction will ensure maximum light penetration, with full consideration of safety and practicality.
> 3. The dock will extend out from the shoreline no further than to a maximum depth of minus four (-4) feet (mean low water).
>
> * * *
>
> 6. Terminal platform size shall be no more than 160 square feet. (Emphasis added.)

101. In their joint PRO, Simmons and DEP argue that the proposed dock does not violate the criteria set forth in Rule 18-21.004(1)(h), based on "a balanced interpretation of the applicable rules and the site specific conditions." It is true that an agency has broad discretion in interpreting its

own rules and laws, and reasonable agency interpretations are entitled to great deference. But an agency may not interpret a rule or law in a manner that is unreasonable. In particular, exercise of agency discretion may not be "[i]nconsistent with agency rule." See Section 120.68(7)(e)2. See also Boca Raton Artificial Kidney Center, Inc. v. Department of Health and Rehabilitative Services, 493 So. 2d 1055 (Fla. 1st DCA 1986)("By no stretch of the imagination [could the rule in question] be properly given the meaning relied upon by [the agency], despite the appellate deference normally due an agency's statutory interpretations"). It is concluded that the interpretation suggested by Simmons and DEP in this case would be in direct conflict with the language of the rule and would be clearly erroneous.

102. In their joint PRO, Simmons and DEP also proposed the following modifications to the Permit, as an alternative in the event that their proposed rule interpretation was not accepted: "(1) that the dock be shortened approximately 35 feet so that no portion of the dock will be located in sovereign submerged lands, with grating material to then be used for the entire terminal platform of 1000 square feet, still oriented in a north/south alignment, with mooring of vessels only on the western side in approximately 7-7.4 feet of water; or (2) that the terminal platform of the dock remain

in its present location, reduced to 160 square feet, and that the 33 foot long by 10-foot wide portion of the access dock extending into sovereign submerged lands be reduced to a width of 4 feet with 3 foot grating material guardrails as is done for the 70 foot portion crossing seagrasses." The second alternative still would not "conform to all of" the standards and criteria of Rule 18-20.004(5)(b). As to the first criterion, not all of the main access dock would be four feet wide or less; as to the second criterion, maximum light penetration would not be assured unless all cement decking were eliminated and replaced by grating; as to the third criterion, the dock would extend beyond maximum depth (-4 feet). The first alternative would eliminate the need for consent of use but would require a different analysis of the resource impacts before issuance of a modified ERP.

M. ERP

103. Section 373.427(3), Florida Statutes, provides that, after promulgation of rules to implement the concurrent review of consents of use and ERP's (among other authorizations) provided for in the statute, DEP may not "issue a permit under this part unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals set forth in this section which are subject to concurrent review are also satisfied."

Rules implementing Section 373.427 have been promulgated. See, e.g., Rules 62-110.106, 62-312.065, 62-330.100, and Rule 18-21.00401. For that reason, permittability of proposed dock configurations requiring a consent of use--including the second proposed alternative referred to in Conclusion of Law 102, supra--need not be addressed here.

104. As for the first proposed alternative, which would not require a consent of use, Rule 62-343.075(2) provides that no application for an ERP may be "approved until all the requirements of applicable provisions of Part IV of Chapter 373, . . . and rules adopted thereunder . . . are met."

105. Section 373.414(1) requires an applicant for an ERP "to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest." If the 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." Paragraph (a) of Section 373.414(1) provides:

> In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), 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.

Essentially the same public interest test is incorporated in Rule 40E-4.302(1).

106. Rule 40E-4.301(1) provides in pertinent part that, to get an ERP, an applicant must provide reasonable assurances that the activity to be permitted:

> (d) will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;
>
> [and]
>
> (f) will not cause adverse secondary impacts to the water resources . . ..

In addition, Rule 40E-4.302(2)(b) requires that an ERP applicant provide reasonable assurances that the activity to be permitted:

> (b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in subsections 4.2.8 through 4.2.8.2 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District.

107. Based on the findings, it is concluded that Simmons has not provided the required reasonable assurances, especially if the proposed docking facility is shortened by 35 feet. That would place the 1000 square foot terminal platform and associated mooring area directly over lush beds of Halophila decipiens (paddle grass) and Halodule wrightii (shoal grass). In addition to damage to the seagrasses from direct construction and shading impacts, water depths at the new proposed alternative location of the terminal platform and mooring area would appear to be approximately 6.4 feet, or less, at MLW. See Findings of Fact 83-84, supra. (The evidence does not include precise bathymetric information at that location.) Simmons did not provide reasonable assurances that resulting secondary impacts to the seagrasses in the area would be acceptable. In addition, even if the dock is not shortened 35 feet, there are significant secondary impacts to water quality and seagrasses surrounding Little Munyon Island

and possible impacts on the Class II Outstanding Florida Water in MacArthur State Park. See Findings of Fact 63-85, supra. Risk of those impacts is contrary to the public interest.

108. In view of the preceding conclusion, it is not necessary to decide whether the more stringent public interest test for activities that "significantly degrade" or are "within an Outstanding Florida Water" apply. See also Rule 62-4.242. But Simmons did not prove that the proposed activities, especially if the proposed docking facility is shortened by 35 feet, would not "significantly degrade" Outstanding Florida Waters.

N. Simmons's Motion to Tax Attorneys' Fees and Costs

109. Simmons moved for attorneys' fees and costs under Section 120.595(1). Under paragraph (b) of that statute, attorneys' fees and costs only can be awarded to a prevailing party.

RECOMMENDATION

Based upon 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 Robert Simmons, Jr., for an ERP and Consent of Use for his proposed docking facility.

DONE AND ENTERED this 16th day of November, 2001, in

Tallahassee, Leon County, Florida.

_____

J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
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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.