

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OLD PELICAN BAY III)
ASSOCIATION, INC.,)
)
Petitioner,)
)
vs.) Case No. 08-0510
)
TERRY CARLSON and DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the
Division of Administrative Hearings by its assigned
Administrative Law Judge, Donald R. Alexander, on June 12, 2008,
in Fort Myers, Florida.

APPEARANCES

For Petitioner: Joseph Kowalski, Qualified Representative
Old Pelican Bay III Association, Inc.
12228 Siesta Drive
Fort Myers, Florida 33931-2328

For Respondent: Frank E. Matthews, Esquire
(Carlson) Amelia A. Savage, Esquire
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For Respondent: Ronald W. Hoenstine, III, Esquire
(Department) Department of Environmental Protection
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ISSUE

The issue is whether Terry Carlson's application to construct and install a single-family dock in Lee County, Florida, is exempt from the need for an Environmental Resource Permit.

BACKGROUND

This matter began on May 8, 2007, when Respondent, Department of Environmental Protection (Department), issued a letter advising Mr. Carlson that based upon information supplied in his application to modify a single-family dock in a man-altered waterbody in Lee County, Florida, the project was determined to be exempt from Department permit requirements. The letter also constituted "authorization to use state owned submerged land for the construction of [his] project."

On December 26, 2007, Petitioner, Old Pelican Bay III Association, Inc. (Association), apparently an association of property owners who reside near Mr. Carlson's property, through its President, Stephen Miller, filed a letter (Petition) requesting a hearing to contest the Department's preliminary determination on several grounds, including allegations that the dock and pilings would create a navigational hazard and that the project had changed from what was originally submitted to the Department and was no longer exempt. (The Petition did not provide any information about the organization or its members

except that it included a "group of our residents" who presumably resided near the site of the proposed activity.)

The matter was forwarded by the Department to the Division of Administrative Hearings (DOAH) on January 28, 2008, with a request that an administrative law judge be assigned to conduct a hearing.

By Notice of Hearing dated February 6, 2008, the matter was scheduled for final hearing on April 7 and 8, 2008, in Fort Myers, Florida. On March 27, 2008, the parties filed a Joint Motion for Continuance. The matter was then rescheduled to May 22 and 23, 2008, at the same location. On May 16, 2008, Petitioner filed a Motion for Continuance on the ground its qualified representative had recently undergone surgery and could not attend the hearing. By Order dated May 19, 2008, the matter was rescheduled to June 12, 2008, at the same location.¹ A Joint Prehearing Stipulation was filed by the parties on May 23, 2008, and a status conference was conducted by telephone on June 10, 2008.

On January 8, 2008, Mr. Carlson filed with the Department a Motion to Dismiss (Motion) the Petition on the ground it was untimely filed. The Motion was forwarded to DOAH on January 28, 2008, and Petitioner was given until February 7, 2008, in which to file a response. A response was filed on February 4, 2008. The Motion was denied by Order dated February 6, 2008, on the

ground the matters asserted in support of the Motion were not of record and were beyond the four corners of the Petition. After discovery was conducted, and relying upon the same ground, a Second Motion to Dismiss was filed by Mr. Carlson on May 22, 2008. An Answer was filed by Petitioner on May 23, 2008, and a Response was filed by the Department on May 28, 2008. The Second Motion to Dismiss was denied by Order dated June 2, 2008.

On May 16, 2008, the Department issued a Revised Letter to Reflect Modified Dock and Sovereignty Submerged Lands Determination. The second letter was issued because of a determination by the Department that "the project, as described, does not involve the use of sovereignty submerged lands" and therefore proprietary authorization was no longer required.

At the final hearing, Petitioner was represented by its qualified representative, Joseph Kowalski, a member of the Association, who presented the testimony of Captain Marcus Carson, a licensed pilot and accepted as an expert.² Also, it offered Petitioner's Exhibits 1 and 2. A ruling was reserved on Exhibit 1, while an objection to Exhibit 2 (a DVD described as being a composite of three videos of boat trips on the canal) was sustained on the ground the exhibit was not timely disclosed nor listed on the parties' Joint Prehearing Stipulation.³ See Order dated May 19, 2008. Exhibit 1, a copy of an email communication between Petitioner and the Department dated

March 27, 2008, is hereby received. The Department presented the testimony of Mark R. Miller, Submerged Lands and Environmental Resource Program Manager in the South District Office and accepted as an expert, and offered Department Exhibits 1 and 2, which were received in evidence. Respondent Terry Carlson presented the testimony of Timothy L. Mann, a professional surveyor and accepted as an expert; V. Allen Hoffacker, an environmental consultant and accepted as an expert; Captain Joe Verdino, a licensed boat pilot and accepted as an expert; and Captain Michael W. Bailey, a licensed boat pilot and accepted as an expert. Also, he offered Carlson's Exhibits 1-5, 7A, 7B, 8, 9, 10A, and 10B, which were received in evidence. Finally, the Department and Mr. Carlson jointly offered Respondents' Joint Exhibit 2, which was received in evidence.

There is no transcript of the hearing. Proposed Findings of Fact and Conclusions of Law were filed by Petitioner on June 20, 2008, and by the Department and Mr. Carlson on June 23, 2008, and they have been considered in the preparation of this Recommended Order. On June 23, 2008, Petitioner refiled its proposed order, together with documents marked as (Petitioner's) Exhibits 2, 3, 5, and 6, which were referred to at hearing but never marked for identification or moved into evidence, and a

copy of the DVD previously marked at hearing as Petitioner's Exhibit 2, which was accepted on a proffer basis only.⁴

FINDINGS OF FACT

Based on the evidence presented by the parties, the following findings of fact are made:

1. On April 27, 2007, Mr. Carlson filed with the Department an application to modify a single-family dock in a man-altered waterbody in Section 13, Township 46 South, Range 23 East, Lee County (County), Florida. In geographic terms, the property is located at 18570 Deep Passage Lane, which is at the base of a peninsula which extends for around one-half mile south of Siesta Drive, a roadway that appears to be in an unincorporated area of the County between the Cities of Fort Myers and Fort Myers Beach. See Carlson Exhibits 10A and 10B.

2. Although Respondents have not stipulated to the facts necessary to establish Petitioner's standing, that issue is not identified in the parties' Joint Prehearing Stipulation as being in dispute. Because no member of the Association testified at final hearing, the number of members in the Association, the number who operate boats and their size, and the nature and purpose of the organization are not of record.⁵ It can be inferred from the record at the final hearing, however, that at least one member of the Association, Mr. Kowalski, who lives at 12228 Siesta Drive, operates a boat on the affected waterway.

3. Carlson Exhibits 10A and 10B are maps of the general area and reflect that Siesta Drive begins at an intersection with San Carlos Boulevard (also known as County Road 865) to the east and terminates a few hundred yards to the west. (County Road 865 is a major roadway which connects Fort Myers and Fort Myers Beach.) On the south side of Siesta Drive are three man-made, finger-shaped canals, which extend to the south and provide access for boaters to the Gulf of Mexico. According to one expert, the finger canals are between one-fourth and three-quarters of a mile in length. The canals run in a straight line south for perhaps two-thirds of their length, then bend slightly to the southwest at "elbows" located a few hundred feet north of their outlets. Basins are located at the northern end of each canal. The third canal is the western most of the three canals and is at issue here.

4. Carlson Exhibit 9 (an aerial photograph) reflects that a number of single-family residences, virtually all of whom have docks, are located on both sides of two peninsulas which lie between the three canals. Mr. Carlson owns property on the southern end of the peninsula between the second and third finger canals. It can be inferred from the record that Mr. Kowalski resides in or close to the basin in the third canal.

5. Boaters wishing to depart the third canal must travel south to the end of the canal, make a ninety-degree turn to the east, pass through a channel which lies directly south of Mr. Carlson's proposed dock, head slightly northeast for a short distance, and then make another ninety-degree turn to the south in order to gain access to a channel (directly south of the second finger canal) leading into Pelican Bay and eventually the Gulf of Mexico, approximately one mile away. Boaters entering the third finger canal would travel in a reverse direction.

6. At the point where the dock will be constructed, the channel appears to be around two-hundred fifty feet wide (from the applicant's shoreline to a cluster of mangrove trees to the south), but much of the channel, as well as the three canals themselves, have a soft bottom consisting of sand and silt, which limits the speed and accessibility of vessels.

7. The original application requested authorization to construct a floating dock anchored by concrete pilings at the southern end of the finger canal in front of Mr. Carlson's property. (The proposed dock replaces an older wooden dock which has now been removed.) That application represented that the dock is private and less than 1,000 square feet; it is not located in Outstanding Florida Waters; it will be used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; it is the

sole dock constructed pursuant to the requested exemption as measured along the shoreline for a minimum distance of sixty-five feet; no dredging or filling will occur except that which is necessary to install the pilings necessary to secure the dock in place; and based upon the depth of the water shown in accompanying documents and the dock's location, the dock will not substantially impede the flow of water or create a navigational hazard. These representations, if true, qualify the dock for an exemption from permitting by the Department. See § 403.813(2)(b), Fla. Stat.⁶; Fla. Admin. Code R. 40E-4.051(3)(b)1.-4.

8. Based upon the information supplied in Mr. Carlson's application, Mark R. Miller, Submerged Lands and Environmental Resource Program Manager in the Department's South District Office (Fort Myers), issued a letter on May 8, 2007, advising Mr. Carlson that his application qualified for an exemption from Department permitting requirements and that the letter was his "authorization to use state owned submerged land (if applicable) for the construction of [his] project."

9. After receiving the Department's first letter, Mr. Carlson elected not to publish notice of the Department's decision or provide notice by certified mail to any third parties.⁷ Therefore, third parties were not barred from challenging the Department's decision until after they received

actual notice. The parties no longer dispute that after the Association received actual notice of the construction activities, it filed a request for a hearing within twenty-one days, or on December 26, 2007. Therefore, the request for a hearing is deemed to be timely.

10. Section 403.813(2)(b)3., Florida Statutes, and Florida Administrative Code Rule 40E-4.051(3)(b)3. are identical in wording and provide that in order to qualify for an exemption, a dock "[s]hall not substantially impede the flow of water or create a navigation hazard." In its Petition, the Association contended that this requirement had not been satisfied. It also contended that the documents used in support of the initial application may not be valid. In the parties' Joint Prehearing Stipulation, the Association clarified this objection by contending that the exemption may have expired because site conditions have materially changed from those initially reviewed by the Department. This allegation is presumably based on the fact that during the course of this proceeding, Respondent submitted two revisions to its original construction plans.

11. Sometime after the first letter was issued, new information came to light and on May 16, 2008, Mr. Miller issued a Revised Letter which stated that the Department had "determined that the proposed project as described in the above referenced application . . . does not involve the use of

sovereignty submerged lands[,]" and that "no further authorization will be required from the Submerged lands and Environmental Resources Program." See Department Exhibit 2, which is a disclaimer for the relevant waters issued by the Board of Trustees of the Internal Improvement Trust Fund. The effect of the disclaimer was to render Florida Administrative Code Rule Chapter 18-21 inapplicable to this proceeding.

12. By the time the Revised Letter had been issued, the original application had been revised twice, the last occurring sometime prior to the issuance of the Revised Letter. Among other things, the size of the dock has been increased to 997 square feet, and the dock will be placed nineteen feet landward and westward (or twenty-five feet east of Mr. Carlson's western property boundary) of the initial dock design for the purpose of improving navigation and creating less of an inconvenience to other boaters. The dock will now be located twenty-five feet from the seawall and is approximately seventy feet long and eight feet, five inches wide. A gangplank and floating platforms provide a walkway from the seawall to the proposed dock. On the western edge of the dock, running perpendicular to the seawall, will be pilings that will accommodate a boat lift for one of Mr. Carlson's boats. (The record reflects that Mr. Carlson intends to moor a forty-eight-foot Viking with a width of approximately sixteen feet, six inches, on the outside

of the dock, parallel to the seawall, while a second boat will be stored in the boat lift.) A floating platform is located seaward of the main dock to allow access to the boat on the boat lift. After reviewing these changes, Mr. Miller reaffirmed his earlier determination and concluded that all criteria had still been met.

13. In conjunction with the initial application, a Specific Purpose Survey of the channel dimensions was prepared by a professional surveyor, Mr. Timothy Mann, which reflects the bottom elevations of the channel in front of Mr. Carlson's property. The bottom elevations were calculated by taking manual and electronic readings using the national geodetic vertical datum (NGVD) of 1929. This method is accepted in the surveying and mapping industry to calculate bottom elevations. The survey was signed and sealed by Mr. Mann. The updated applications relied upon the same survey.

14. In calculating the water depth, Mr. Mann subtracted the mean low tide in the Pelican Bay area from the bottom elevation survey. Mean low tide is an elevation of the average low tide over a nineteen year period. Mr. Mann obtained these average low tide records from the State. Mean low tide for the Pelican Bay area was determined to be approximately -0.5 NGVD. Therefore, if Mr. Mann's survey showed a depth of -7.77 feet, the water depth would be -7.27 feet. The survey reflects that

there is at least a sixty-foot wide area beyond the proposed dock with depths at mean low water of between four and five feet. See Carlson Exhibits 7A and 7B. The mean low water survey adds further justification for the Department's determination because it is not required by the Department, and applicants do not normally submit one. It should be noted that although the Department has no rule for how deep a channel needs to be, a three-foot depth is typically used.

15. To satisfy the navigation concern raised by Petitioner, Mr. Carlson engaged the services of two long-time licensed boat captains, both of whom were accepted as experts. Besides reviewing the dock design, on May 13, 2008, Captain Joe Verdino navigated the entire length of the third finger canal using a thirty-foot boat with a five-foot beam and twenty-four inch draft. The boat was equipped with a GPS sonar calibrated at the hull of the craft to verify the depth of the water shown in the Specific Purpose Survey. Based upon his measurements, Captain Verdino determined that there is at least another sixty feet beyond the proposed dock for other vessels to safely travel through the channel and that vessels with a draft of four to five feet would be able to safely navigate the area. Therefore, he concluded that a fifty-five-foot boat with a sixteen to eighteen-foot beam could safely navigate on the channel. Even though the measurements were taken when the canal was closer to

high tide than low tide, the witness stated that this consideration would not alter his conclusions. He further opined that wind is not a major factor in this area because the channel is "well-guarded" by Fort Myers Beach, which essentially serves as a large barrier island to the southwest. He discounted the possibility of navigational concerns during nighttime hours since boats have lights for night travel. Significantly, he noted that the tightest navigable area in the third canal is at an elbow located several hundred feet north of Mr. Carlson's property, where a dock extends into the canal at the bend. Therefore, if vessels could navigate through a narrower passageway further north on the canal, then vessels would have no difficulty navigating safely in front of Mr. Carlson's proposed dock.

16. After reviewing the plans for the proposed dock, Captain Michael Bailey also navigated the third canal and concluded that the canal can be safely traversed by a fifty-two-foot boat. This is the largest boat presently moored on the third canal. After Mr. Carlson's dock is constructed, he opined that there is at least "fifty plus" feet and probably sixty feet of width for other boats to navigate the channel, even if a forty-eight-foot boat is moored at Mr. Carlson's dock. In reaching these conclusions, Captain Bailey used a PVC pipe and staked out depths in the channel beyond the proposed dock to

verify the figures reflected in the Specific Purpose Survey. PVC pipes provide the most accurate measurement of the actual distance from the water's surface to the bottom of the channel. Like Captain Verdino, he noted that the narrowest point on the canal was at the elbow several hundred feet north of the proposed dock where boats must navigate between a private dock on one side and mangrove trees on the other. Captain Bailey discounted the possibility of navigational hazards during nighttime hours since a prudent mariner always travels slowly and would not enter a finger canal at nighttime unless he had lights on the boat.

17. Mr. Mark Miller also deemed the navigation issue to be satisfied. He did so after reviewing the Specific Purpose Survey, the aerial photograph, the location of the dock, the results of a site inspection, and other dock applications for that area that had been filed with his office. Based upon all of this information, Mr. Miller concluded that there is an approximate sixty-foot distance to the south, southeast, and southwest beyond Mr. Carlson's dock before the waters turn shallow (less than four to five feet deep), and that the dock would not pose a navigational hazard.

18. In response to Petitioner's contention that the third set of drawings was not signed and sealed by a professional surveyor, Mr. Miller clarified that drawings for dock

applications do not have to be signed and sealed. (The third set of drawings was based on the first set submitted to the Department, and which was signed and sealed by a professional surveyor.) He also responded to an objection that the Department's review did not take into account the size of the boat that Mr. Carlson intended to dock at his facility. As to this concern, Mr. Miller pointed out that the Department's inquiry is restricted to the installation of the dock only, and not the size of the boat that the owner may intend to use. Finally, even though the County requires that a building permit be secured before the dock can be constructed, and has its own standards, that issue is not a statutory or rule concern in the Department's exemption process.⁸

19. Petitioner further alleged that site conditions have materially changed since the original application was filed and that the exemption determination should automatically expire. (This allegation parrots boilerplate language used in the Rights of Affected Parties portion of the Department's two letters.) As to this contention, the evidence shows that the applicant revised its dock plans twice after its initial submission. The Association does not contend that it was unaware of these changes or that it did not have sufficient time to respond to them prior to final hearing. The third (and final) revision is attached to Respondents' Joint Exhibit 2 (the Revised Letter)

and indicates that the dock will be 997 square feet, which is larger than that originally proposed, but is still "1000 square feet or less of surface area," which is within the size limitation allowed by the rule and statute. It will also be further west and closer to Mr. Carlson's seawall. These revisions do not constitute a substantial change in site conditions, as contemplated by the Department in its exemption process. In order to have materially changed site conditions, Mr. Miller explained that there must be an event such as a hurricane that substantially alters the nature of the channel. Therefore, there is no basis to find that a material change in site conditions has occurred and that the original determination of exemption, as revised, should automatically expire.

20. Petitioner presented the testimony of Captain Marcus Carson, a licensed boat captain, who moved to the Fort Myers area in 2000. He noted that the three canals (known as "the three finger area") have always been a "little hazardous" and because of this he cautioned that only residents familiar with the waters should use them. On May 12, 2008, he accompanied Mr. Kowalski on a "brief trip" in Mr. Kowalski's boat up and down the third canal. Using a dock pole to measure depths, he found the deepest areas of the channel below Mr. Carlson's home to be between 4.6 and 5.0 feet. However, he conceded that a dock pole is not as accurate as a PVC pipe, which Captain Bailey

used to take the same type of measurements. Based upon the first set of plans, which he used in formulating his opinions, Captain Carson criticized the dock as being "out of place," "overbearing," and not aesthetically pleasing. He also opined that once the dock is constructed, the channel would be too small for two fifty-foot boats to pass through the channel at the same time. However, these conclusions are based upon the assumption that the original dock plans and pilings would be used. The witness agreed that if the original plans have been modified, as they have, and the dock moved further west and closer to the seawall, he would have to reevaluate his opinions.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

22. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. See, e.g., Balino v. Department of Health & Rehabilitative Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Therefore, Mr. Carlson has the burden of proving by a preponderance of the evidence that the proposed activity is exempt from Department permitting requirements.

23. Florida Administrative Code Rule 40E-4.051(3)(b)

provides in relevant part that no permit shall be required for the following type of docking facility:

(b) The installation or repair of private docks . . . of which docks have 1000 square feet or less of surface area over wetlands or other surface waters, or 500 square feet or less of surface area over wetlands or other surface waters for docks which are located in Outstanding Florida Waters. . . . To qualify for this exemption, any such structure:

1. Shall be used for recreational, non-commercial activities;
2. Shall be constructed or held in place by pilings, including floating docks, so as not to involve filling or dredging other than that necessary to install the pilings;
3. Shall not substantially impede the flow of water or create a navigational hazard; and
4. Shall be the sole dock constructed pursuant to this exemption as measured along shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot

See also § 403.813(2)(b), Fla. Stat.

24. By a preponderance of the evidence, Mr. Carlson has established that the project will not create a navigational hazard within the meaning of the statute and rule.⁹ The remaining criteria are not in dispute, and they are deemed to have been satisfied. The evidence further supports a conclusion that there has not been a material change in site conditions so as to warrant the automatic expiration of the exemption. This

being so, the Department's determination that the project is exempt from permitting requirements should be sustained.

RECOMMENDATION

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

RECOMMENDED that the Department of Environmental Protection enter a final order determining that Mr. Carlson's project is exempt from its permitting requirements.

DONE AND ENTERED this 27th day of June, 2008, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of June, 2008.

ENDNOTES

1/ By Order dated May 19, 2008, the matter was continued with the specific condition that no further discovery would be conducted, and absent an agreement by all parties, no party could supplement its witness and exhibit lists set forth in the parties' Joint Prehearing Stipulation. By that time, the parties had conferred and agreed upon their respective witnesses and exhibits. The actual stipulation was later filed on May 23,

2008. The DVD was not on the exhibit list.

2/ By agreement of the parties, Mr. Stephen Miller, also a non-attorney and President of the Association, was allowed to question two witnesses at the hearing.

3/ According to the Association's proposed recommended order, the video reflects the "actual conditions at the site" and the difficulties encountered when a 52-foot vessel was navigated through the passage near Mr. Carlson's dock. At hearing, it was described as being a composite of three videos lasting a total of six minutes, two of which were taken by Mr. Kowalski and one by a Mr. McGuigan, who is not a party to this proceeding.

4/ Because Mr. Kowalski did not have extra copies of the video (marked as Petitioner's Exhibit 2 for proffer purposes) at the hearing, he was given five days in which to submit a copy to the undersigned and all parties. A copy was filed on June 23, 2008. On June 24, 2008, Mr. Carlson filed a Motion to Object to Video Evidence on the grounds (a) the video provided is a single video lasting one minute twenty-six seconds and is not a composite of three videos lasting six minutes as described at hearing; (b) Petitioner has not indicated who filmed the proffered video or provided the name of the person speaking on the video; and (c) the video was not listed on the Pre-Hearing Stipulation or otherwise timely disclosed as an exhibit prior to hearing. A Response to Motion on Video Evidence was filed by Petitioner on April 25, 2008, essentially arguing that the exhibit should not be excluded for technical reasons and if it not admitted, it will be provided to members of the Legislature, Congress, and major news media.

5/ In his deposition taken on May 15, 2008, which was attached to Mr. Carlson's Second Motion to Dismiss but was not made a part of this record at the hearing, Mr. Kowalski indicated that in order to join the Association, one needed "to own property in the association," "pay your quarterly dues," and "register" one's boat with the Association.

6/ All references to Florida Statutes are to the 2007 version.

7/ The Department's letter stated in part that "[t]he Department will not publish notice of this determination. Publication of this notice by you is optional and is not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity

before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit."

8/ In its proposed recommended order, the Association cites the case of Rosenblum v. Zimmet and Department of Environmental Protection, DOAH Case No. 06-2859, 2007 Fla. Div. Adm. Hear. LEXIS 577 (DOAH Oct. 23, 2007; DEP Dec. 11, 2007), for the proposition that evidence of a local government regulation has been used "in referencing a navigational hazard." A review of the Recommended and Final Orders in that case, however, reveals no such language. Instead, the exemption was denied because the location of the dock would not provide "a reasonable amount of clearance for navigating," and not because of a local government regulation. Id. at *7.

9/ Even if the dock created a slight inconvenience for other mariners, including Mr. Kowalski, that would not constitute the type of navigational hazard contemplated by the rule. See, e.g., Scully v. Patterson and Department of Environmental Protection, DOAH Case No. 05-0058 (DOAH April 14, 2005, DEP May 23, 2005), 2005 Fla. Div. Adm. Hear. LEXIS 948 at *12, and cases cited therein.

COPIES FURNISHED:

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NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.