

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**RONNIE E. YOUNG AND PAMELA C.  
YOUNG,** )  
 )  
 )  
 **Petitioners,** )  
 )  
**vs.** )  
 )  
**STEVEN HANSON AND DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,** )  
 )  
 )  
 **Respondents.** )  
 )  
\_\_\_\_\_ )

**OGC CASE NO. 09-3381  
DOAH CASE NO. 09-4908**

**FINAL ORDER**

On December 7, 2010, an Administrative Law Judge (“ALJ”) with the Division of Administrative Hearings (“DOAH”) submitted a Recommended Order (“RO”) to the Department of Environmental Protection (“DEP” or “Department”) in the above captioned proceeding. A copy of the RO is attached hereto as Exhibit A. The RO indicates that copies were sent to counsel for the Petitioners, Ronnie E. Young and Pamela C. Young (“Petitioners”) and to counsel for the Co-Respondents, Steven Hanson (“Hanson”) and the Department. No exceptions to the RO were filed by any party. This matter is now on administrative review before the Secretary for final agency action.

**BACKGROUND**

On July 24, 2009, the Department issued a coastal construction control line (“CCCL”) permit to Gabriel R. and Patricia Buky, Charles and Rebecca Buky, Dennis R.

Miller, Jr., Gabriel Buky, Jr., and David and Deborah Montgomery (collectively "Buky") to construct a single-family residence and associated structures at 107 Elm Avenue, Anna Maria Island in Manatee County (Permit No. ME-919). On August 19, 2009, the Petitioners, Ronnie E. Young, Pamela C. Young, and Blanton Homestead, LLC, filed a petition to contest the Department's decision to issue the CCCL permit. The Department referred the petition to DOAH to conduct an evidentiary hearing. In November 2009, the CCCL permit was transferred to Steven Hanson who became the sole permittee. On August 16, 2010, Blanton Homestead, LLC, withdrew its petition, leaving the Youngs as the remaining Petitioners.

The ALJ conducted the final hearing on August 17-19, 2010. The Hearing Transcript was filed with DOAH, the parties filed proposed recommended orders, and the ALJ subsequently issued the RO.

### **RECOMMENDED ORDER**

The ALJ recommended that the Department enter a final order granting the CCCL permit because the Respondent Hanson provided reasonable assurance that all CCCL regulatory criteria were met. (RO at page 24 and ¶ 82). The ALJ noted that to obtain a permit to construct major structures seaward of the CCCL, an applicant must demonstrate that adverse and other impacts associated with the construction are minimized and the construction will not result in a significant adverse impact. See Fla. Admin. Code R. 62B-33.005(2). (RO ¶ 73). The ALJ determined that the expected impacts to the beach and dune system in this area were small; that Hanson minimized these potential impacts and provided mitigation so that no significant adverse impact

would result; and that Hanson would further minimize potential impacts to the beach-dune system by adding 129 cubic yards of sand to the project site and planting native, salt-tolerant vegetation. (RO ¶¶ 42, 50, 53, 73).

An applicant must also provide mitigation for any adverse impacts in the form of “an action or series of actions taken by the applicant that will offset impacts caused by a proposed or existing construction project.” See Fla. Admin. Code R. 62B-33.005(3)(b). The ALJ found that Hanson provided reasonable assurance that the impacts associated with his proposed project were offset by existing and proposed mitigation actions. (RO ¶¶ 36, 37, 44, 48, 50, 53, 74).

The ALJ noted that in order to qualify for a permit to construct a major structure seaward of the CCCL, the proposed major structure must be landward of the 30-year erosion projection of long-term shoreline recession. See § 161.053(6)(b), Fla. Stat. (2009). (RO ¶ 77). The ALJ found that the Department’s determination of the 30-year erosion projection, using procedures set forth in Rule 62B-33.024, was reasonable, thus Hanson’s proposed major structure was landward of the 30-year erosion projection in this area. (RO ¶¶ 62, 63, 64, 77). The ALJ also found that the natural dune on the project site is not a frontal dune. Therefore, he rejected the Petitioners’ contention that the proposed project is not a sufficient distance landward of the beach and frontal dune to permit natural shoreline fluctuations and protect beach and dune system stability. (RO ¶¶ 54, 78).

The ALJ found that existing structures in the immediate area have established a reasonably continuous and uniform construction line and these structures have not

been unduly affected by erosion. Thus, the proposed project conforms to this existing line of construction and would not advance the line seaward. See § 161.053(4)(b), Fla. Stat. (2009). (RO ¶¶ 55 and 79).

The ALJ noted that Rule 62B-33.005(3)(a) requires the Department to deny an application for a CCCL permit that would result in a significant adverse impact "including potential cumulative effects." (RO ¶ 80). The Petitioners contended that the cumulative effects of this proposed project and the adjacent Brown project would cause a significant adverse impact to the natural dune that crosses these properties. However, the ALJ found that the more persuasive evidence showed that the portion of the dune on the Brown site remained stable and is even growing; and taken together, the effects of the proposed project and the Brown project would not significantly reduce the protective value of the dune. (RO ¶¶ 43, 56, 59, 80).

### **CONCLUSION**

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., *Comm'n on Ethics v. Barker*, 677 So.2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So.2d 77 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Env'tl. Coalition of Fla., Inc. v. Broward County*, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991); see also *Colonnade Medical Ctr.*,

*Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So.2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. See § 120.57(1)(l), Fla. Stat. (2010); *Barfield v. Dep't of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st DCA 1994).

Based on the findings and conclusions of the ALJ adopted in this Final Order I concur with his ultimate recommendation that the Department grant the CCCL permit under the applicable provisions of Section 161.053, Florida Statutes, and Rule 62B-33.005, Florida Administrative Code.

It is therefore ORDERED:

A. The Recommended Order (Exhibit A) is adopted and incorporated by reference herein.

B. The CCCL permit in File No. ME-919 is GRANTED to Steven Hanson.

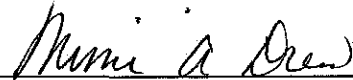
#### **JUDICIAL REVIEW**

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal.

The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 11 day of January, 2011, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



MIMI A. DREW  
Secretary

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.



CLERK



DATE

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing Final Order has been sent by United

States Postal Service to:

Mark A. Nelson, Esquire  
Ozark, Perron & Nelson, P.A.  
2816 Manatee Avenue West  
Bradenton, FL 34205

Ricinda Hope Perry, Esquire  
Ricinda H. Perry, P.A.  
1519 Riverview Lane  
Bradenton, FL 34209

Charles F. Johnson, III, Esquire  
Blalock, Walters, Held & Johnson, P.A.  
802 11th Street West  
Bradenton, FL 34205

by electronic filing to:

Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

and by hand delivery to:

Kelly Russell, Esquire  
Department of Environmental Protection  
3900 Commonwealth Blvd., M.S. 35  
Tallahassee, FL 32399-3000

this 11<sup>th</sup> day of January, 2011.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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