

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE E. YOUNG AND PAMELA C. )  
YOUNG, )  
 )  
 Petitioners, )  
 )  
vs. ) Case No. 09-4908  
 )  
STEVEN HANSON AND DEPARTMENT OF )  
ENVIRONMENTAL PROTECTION, )  
 )  
 Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

The final hearing in this case was held on August 17, 18,  
and 19, 2010, in Bradenton, Florida, before Bram D. E. Canter,  
Administrative Law Judge of the Division of Administrative  
Hearings ("DOAH").

APPEARANCES

For Petitioners: Mark A. Nelson, Esquire  
Ozark, Perron & Nelson, P.A.  
2816 Manatee Avenue West  
Bradenton, Florida 34205

For Respondent Department of Environmental Protection:

Kelly L. Russell, Esquire  
Department of Environmental Protection  
3900 Commonwealth Boulevard,  
Mail Station 35  
Tallahassee, Florida 32399-3000

For Respondent Steven Hanson:

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

Ricinda H. Perry, Esquire  
117 3rd Street, South  
Bradenton Beach, Florida 34217

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether Respondent Steven Hanson is entitled to a coastal construction control line ("CCCL") permit to construct a single-family residence and associated structures seaward of the CCCL on Anna Maria Island, Manatee County, Florida.

PRELIMINARY STATEMENT

On July 24, 2009, the Department of Environmental Protection ("Department") issued a 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 on Anna Maria Island. On August 19, 2009, 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 and prepare a Recommended Order.

In November 2009, the CCCL permit was transferred to Steven Hanson. Hanson became the sole permittee.

On August 16, 2010, Petitioner Blanton Homestead, LLC, withdrew its petition, leaving Ronnie and Pamela Young as the remaining Petitioners.

At the final hearing, Hanson presented the testimony of: Robert Whitehead; Steven Hanson; Michael Walther, accepted as an expert in coastal engineering; Tony McNeal, accepted as an expert in coastal engineering; and Emmett Foster, accepted as an expert in coastal engineering. The testimony of Kimberly Colstad Hefty was presented through her deposition. Hanson Exhibits 4, 5, 7 through 18, 20 through 33, 35 through 39, 41 through 53, 56 through 61, 65, 83, 91 through 93, 95 through 97, 99, 101, 105, and 106 were admitted into evidence.

The Department presented the testimony of Tony McNeal and Emmett Foster. Department Exhibits 1 through 4, 6 through 12, and 17 were admitted into evidence.

Petitioners presented the testimony of: Ronnie Young; Pamela Young; Karyn Erickson and Melvin Rector. Petitioners' Exhibits 5, 7 through 15, 17 through 19, 25, 27, 28, 30, 33, 34, 37, 39, 47, 52, 58, 59, and 62 were admitted into evidence.<sup>1/</sup>

The four-volume Transcript of the final hearing was filed with DOAH. All parties filed proposed recommended orders that

were carefully considered in the preparation of this Recommended Order.

### FINDINGS OF FACT

#### The Parties

1. Respondent Hanson owns an undeveloped lot located at 107 Elm Avenue in Anna Maria, Florida ("the project site"), upon which he proposes to construct a residence and related structures that are authorized by the CCCL permit challenged by Petitioners.

2. Petitioners Ronnie E. and Pamela Young own a single-family residence at 110 Pine Avenue in Anna Maria. The Young property is about 60 feet landward of the project site.

3. Blanton Homestead, LLC, owns a single-family residence at 109 Elm Avenue in Anna Maria, which is contiguous to the Hanson Property. Blanton entered into a settlement agreement with Hanson and withdrew its petition and opposition to the CCCL permit.

4. The Department is the agency responsible for regulating construction activities seaward of the CCCL pursuant to Part I of Chapter 161, Florida Statutes, and Florida Administrative Code Rule 62B-33.

#### The Project Site

5. The project site is seaward of the CCCL established in accordance with Section 161.053, Florida Statutes.

6. The shoreline in this area has experienced relatively large fluctuations. It is included in the State's Strategic Beach Management Plan, which means that it has been prioritized for beach restoration.

7. This area was included in a 2002 beach nourishment project. In the eight years since the nourishment, the project has "performed" well and the shoreline in front of the project site has accreted since the completion of the nourishment project. The shoreline is now 331 feet more seaward than its position in 1998.

8. A permit was issued in July 2010 for a renourishment project in this area.

9. The project site is approximately 350 feet landward of the mean high water line of the Gulf of Mexico.

10. The project site is densely vegetated and includes sea grapes and sea oats.

11. One or two active gopher tortoise burrows may exist on the project site.

12. On each side of the project site are platted road rights-of-way that run perpendicular to the shoreline. On the northwest side of the project site is Elm Avenue, a 50-foot-wide public asphalt street, at the seaward end of which is a wooden walkway to the beach. On the southeast side of the project site is a ten-foot-wide platted alley.

13. Adjacent to the project site on the southeast is the Brown property and residence, which was the subject of a CCCL permit issued in 2005. Continuing southeast from the Brown property is Pine Avenue.

#### Dunes in the Area

14. Florida Administrative Code Rule 62B-33.002(17) defines "dune" as "a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by natural or artificial mechanism, which may be bare or covered with vegetation and is subject to fluctuations in configuration and location."

15. A "frontal dune" is defined as "the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity and configuration to offer protective value." See § 161.053(6) (a)1., Fla. Stat. (2009).<sup>2/</sup>

16. "Protective value" is defined as "the measurable protective level" afforded by the dune system to upland property and structures from erosion and storm surge. See Fla. Admin. Code R. 62B-33.002(50).

17. A "significant dune" is defined as having "sufficient height and configuration or vegetation to offer protective value." See Fla. Admin. Code R. 62B-33.002(17) (a).

18. A "primary dune" is defined as "a significant dune which has sufficient alongshore continuity to offer protective value to upland property." See Fla. Admin. Code R. 62B-33.002(17)(b). A primary dune may be the frontal dune if it is located immediately landward of the beach. Id.

19. The parties disputed the proper classification of the dunes in the area of the proposed project. Their dispute is not surprising because all three types of dunes are defined as offering protective value to upland property. To state, for example, that a primary dune is a significant dune (one that offers protective value) with sufficient alongshore continuity to offer protective value, sounds circular.

20. It is apparently the practice of the Department to treat the term "continuity" in the definitions of "frontal dune" and "primary dune" as a paramount factor. The Department does not consider a dune to qualify as a frontal dune or a primary dune unless it offers a high degree of protection because of its continuity.

21. The most seaward dune from the project site was described by Tony McNeal, administrator of the Department's CCCL program, as a "dune system," consisting of scattered, vegetated mounds with peak elevations of about 7 feet.<sup>3/</sup> This dune system spans the entire width of the project site and is about 180 feet

wide. In recent years, the mounds have grown in size and the amount of vegetation on the mounds has increased.

22. These mounds offer some protective value and, therefore, qualify as significant dunes. Hanson's coastal engineer, Michael Walther, believes the mounds qualify as a frontal dune, but he conceded that they would only provide protection for relatively high-frequency (e.g., 10-year) storm events.

23. The public's pedestrian access from Elm Avenue and Pine Avenue has resulted in wide, denuded, and flattened paths through the dune system to the shoreline. Because the mounds do not create a continuous dune, but have these and other "flow lanes" through which storm surge could pass and reach upland areas, Mr. McNeal does not think they qualify as a frontal dune.

24. Landward of the mounds is a manmade dune constructed by the applicant pursuant to a "field permit" from the Department which Hanson is offering as part of the mitigation for the impacts of the proposed project. The manmade dune spans the length of the project site (110 feet), is about 15 feet wide, and is 7 feet high. It is planted with sea oats. It was constructed with 109 cubic yards of sand.

25. The manmade dune offers little protective value because of its small size. The primary benefits of the manmade



dune are that it increases the volume of sand in the system and is vegetated.

26. Landward of the manmade dune is a natural dune on the project site that is about 220 feet long (shore parallel), 5.0 to 8.3 feet in height, and 35 to 60 feet wide. Petitioners' coastal engineer, Karyn Erickson, believes this dune qualifies as a frontal dune. Mr. Walther thinks it is a primary dune. All the coastal engineers agreed that it was a significant dune because it provides some protective value to upland properties.

27. However, despite this dune's height and vegetation, it lacks continuity, being interrupted on the north side by Elm Avenue, and flattening to some extent on the southeast on the Brown property and then terminating before it reaches Pine Avenue. The dune would not prevent storm surge from passing around it to inundate upland properties. Therefore, it does not provide sufficient protective value to qualify as a frontal dune. For the same reason, it does not qualify as a primary dune. It is probably most accurate to describe this dune as a remnant of what was once a primary dune.

#### The Proposed Project

28. The CCCL permit authorizes the construction of a single-family dwelling, slab, storage enclosure, entry foyer, shell driveway, and landscaping. The Department's permit file number is ME-919.

29. In July 2007, the project site was conveyed from Buky to Hanson. In November 2009, the Department approved a request to transfer the CCCL permit from Buky to Hanson.

30. The exterior dimensions of the dwelling are 58 feet by 29.3 feet, which is about 30 percent of the project site.

31. The proposed dwelling would have two habitable floors elevated above the ground on pilings. The lower floor would be 17.5 feet above sea level, which is the elevation necessary to protect the structure from the 100-year storm surge.

32. Underneath the dwelling would be a concrete slab or pad for parking, a storage enclosure, and a stairway.

33. The proposed project would be located on top of the natural dune located on the project site. The height of the dune underneath the slab varies, but would have to be made level for the slab. Hanson would add 20 cubic feet of sand to the dune. The finished slab would be at a minimum height of 6.5 feet.

34. The building would be constructed in a manner to prevent the creation of wind- or water-borne debris in the event of a hurricane.

35. The proposed driveway and slab would eliminate some natural vegetation, including some sea oats and two sea grape trees.

36. To mitigate for the proposed project's impact to the dune and vegetation, Hanson placed 100 cubic yards of sand on the project site to create the manmade dune and planted it with sea oats. In addition, Hanson would install sea oats, sea grapes, and cabbage palms seaward of the dwelling.

37. The dwelling has been moved as far landward as is allowed under the local government building code.

38. The proposed project would comply with the lighting guidelines of the Florida Fish and Wildlife Conservation Commission for the protection of sea turtles.

39. Hanson obtained a letter of no objection from the City of Anna Maria for the proposed project.

#### Permit Criteria

40. Criteria for issuance of a CCCL permit are found in Florida Administrative Code Rule 62B-33.005(4):

The Department shall issue a permit for construction which an applicant has shown to be clearly justified by demonstrating that all standards, guidelines, and other requirements set forth in the applicable provisions of Part I, Chapter 161, F.S., and this rule chapter are met, including the following:

(a) The construction will not result in removal or destruction of native vegetation which will either destabilize a frontal, primary, or significant dune or cause a significant adverse impact to the beach and dune system due to increased erosion by wind or water;

(b) The construction will not result in removal or disturbance of in situ sandy soils of the beach and dune system to such a degree that a significant adverse impact to the beach and dune system would result from either reducing the existing ability of the system to resist erosion during a storm or lowering existing levels of storm protection to upland properties and structures;

(c) The construction will not direct discharges of water or other fluids in a seaward direction and in a manner that would result in significant adverse impacts. For the purposes of this rule section, construction shall be designed so as to minimize erosion induced surface water runoff within the beach and dune system and to prevent additional seaward or off-site discharges associated with a coastal storm event.

(d) The construction will not result in the net excavation of the in situ sandy soils seaward of the control line or 50-foot setback;

(e) The construction will not cause an increase in structure-induced scour of such magnitude during a storm that the structure-induced scour would result in a significant adverse impact;

(f) The construction will minimize the potential for wind and waterborne missiles during a storm;

(g) The activity will not interfere with public access, as defined in Section 161.021, F.S.; and

(h) The construction will not cause a significant adverse impact to marine turtles, or the coastal system.

41. Rule 62B-33.002(33) defines "impacts" for purposes of CCCL permitting:

"Impacts" are those effects, whether direct or indirect, short or long term, which are expected to occur as a result of construction and are defined as follows:

(a) "Adverse Impacts" are impacts to the coastal system that may cause a measurable interference with the natural functioning of the coastal system.

(b) "Significant Adverse Impacts" are adverse impacts of such magnitude that they may:

1. Alter the coastal system by:

a. Measurably affecting the existing shoreline change rate;

b. Significantly interfering with its ability to recover from a coastal storm;

c. Disturbing topography or vegetation such that the dune system becomes unstable or suffers catastrophic failure or the protective value of the dune system is significantly lowered; or

2. Cause a take, as defined in Section 379.2413(1), F.S., unless the take is incidental pursuant to Section 379.2413(1)(f), F.S.

(c) "Minor Impacts" are impacts associated with construction which are not adverse impacts due to their magnitude or temporary nature.

(d) "Other Impacts" are impacts associated with construction which may result in damage to existing structures or property or interference with lateral beach access.

42. The proposed project involves the destruction of some native vegetation, but it will not destabilize the natural dune on the project site or cause a significant adverse impact to the beach and dune system. Removing vegetation can destabilize a dune because the vegetation prevents the loss of sand, primarily by wind erosion. However, in this case, the structure would block the wind and prevent the loss of sand. The more persuasive evidence shows that the amount of remaining vegetation, the additions of new sand and plantings, and other project conditions provide reasonable assurance that the dune would not be destabilized.

43. This finding is further supported by the evidence that the portion of the dune that is on the Brown property has not been destabilized by the Brown project and is growing.

44. The proposed project would not involve the removal or disturbance of in situ sandy soils to such a degree that a significant adverse impact to the beach and dune system would result. The total volume of sand associated with the dune upon which the house would be constructed would be increased by 20 cubic yards.

45. Petitioners made much of the fact that the peak height of the natural dune on the project site would be reduced. However, Petitioners did not show this would change the functional or effective height of the dune. Common sense

indicates that a dune with a peak that is over 8 feet high will not block an 8-foot storm surge if most of the dune is only 6 feet high. In this example, the effective height of the dune would be 6 feet, and an 8-foot storm surge would pass over the dune.

46. The more persuasive evidence shows that the proposed project would not reduce the existing ability of the system to resist erosion and protect upland properties and structures.

47. The proposed project would not direct discharges of water or other fluids in a seaward direction or in a manner that would result in significant adverse impacts.

48. The proposed project would not result in the net excavation of the in situ sandy soils seaward of the control line. When the manmade dune is included, the proposed project would add about 129 cubic yards of sand to the project site.

49. The proposed project would not cause an increase in structure-induced scour of such magnitude during a storm as to result in a significant adverse impact.

50. The proposed project would minimize the potential for wind and waterborne missiles during a storm. The dwelling would be elevated above the 100-year storm surge to allow the waves to move under the structure and minimize structural damage.

51. The proposed project would not interfere with public access.

52. The proposed project would not interfere with marine turtle nesting. The permit contains conditions to assure that the proposed activities would not disturb nesting turtles or cause a significant adverse impact to marine turtles or the coastal system.

#### Minimization of Impacts

53. The expected impacts to the beach and dune system in this area are small. Hanson has minimized these potential impacts and provided mitigation so that no significant adverse impact would result. The proposed dwelling is smaller than the adjacent Brown house and would be located as far landward as the local government setback requirements will allow. 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.

#### Frontal Dune

54. The natural dune on the project site is not a frontal dune. Therefore, 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, is rejected.

#### Line of Construction

55. 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. The proposed project conforms to this existing line of construction and would not advance the line seaward.

#### Cumulative Effects

56. Petitioners contend 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 more persuasive evidence shows that the portion of the dune on the Brown site remains stable and is even growing.

57. Petitioners claimed that the Department acted inconsistently by treating the dune on the Brown property as "removed" by the Brown project, but treating the dune on the Hanson property as unaffected by Hanson's proposed project. However, neither Petitioners' Exhibit 17 nor any other evidence in the record establishes what changes, if any, occurred to the dune on the Brown property. It was not shown that part of the dune on the Brown property was physically removed.

58. Furthermore, Petitioners did not show that, because the Brown project was on the dune, the Department determined that the affected portion of the dune was "removed" or ceased to function as a dune. There was no evidence presented of the existence of a coastal engineering principle that, when a

structure is located on a dune, it is equivalent to removing the affected portion of the dune.

59. Taken together, the effects of the proposed project and the Brown project would not significantly reduce the protective value of the dune.

#### 30-Year Erosion Projection

60. Before issuing a permit to construct major structures seaward of the CCCL, the Department is required to make a thirty-year erosion projection in the area. See § 161.053(6)(b), Fla. Stat. The 30-year erosion projection "is the projection of long-term shoreline recession occurring over a period of 30 years, based on shoreline change information obtained from historical measurements. See Fla. Admin. Code R. 62B-33.024(1).

61. Generally, major structures seaward of the CCCL must be landward of the 30-year erosion projection. See § 161.053(5)(b), Fla. Stat. The proposed project is a major structure.

62. The 30-year erosion projection in this area of Anna Maria Island was produced and recommended to the Department by Emmett Foster, an employee of the Beaches and Shores Resource Center at Florida State University. Mr. Foster was the principal author of the latest version of Rule 62B-33.024.

63. Rule 62B-33.024(2) describes several procedures for determining the 30-year erosion projection, which can be used in combination. Mr. Foster's projection made use of the rule procedure that allows "credit" for beach nourishment projects. Mr. Foster assigned a 10-year credit to the nourishment project based on the history and performance of the nourishment projects in the area and the likelihood of continuing nourishments. His 30-year erosion projection is seaward of Hanson's proposed project.

64. Petitioners disputed the procedure used by Mr. Foster. Their coastal engineer, Ms. Erickson, believes that a beach nourishment credit should not have been included in the analysis. Using an alternative procedure in the Rule 62B-33.024, Ms. Erickson placed the 30-year erosion projection three feet landward of the most seaward edge of the proposed project ( $\pm$  30 feet).<sup>4/</sup> However, Petitioners failed to show that Mr. Foster's analysis was professionally unsound.

#### CONCLUSIONS OF LAW

65. Based on the sale of the project site and the transfer of the CCCL permit to Steven Hanson, Gabriel R. Buky and Patricia Buky, Charles Buky and Rebecca Buky, Dennis R. Miller, Jr., Gabriel Buky, Jr., David Montgomery, and Deborah Montgomery are dismissed as Respondents. Based on the withdrawal of the

petition of Blanton Homestead, LLC, it is dismissed as a Petitioner. The style of the case has been changed accordingly.

66. Although not identified as an issue in the parties' Joint Pre-Hearing Stipulation, Hanson contends that Petitioners lack standing to challenge the CCCL permit. Hanson asserts that Petitioners would not be affected by the proposed project because their property is at a higher elevation than the project site and is not contiguous to the project site.

67. It was not disputed that the natural dune on the project site provides protective value to upland properties. Petitioners claimed that construction of the proposed project on the dune would destabilize the dune and destroy its protective value. Petitioners failed to prove this claim, but standing and the merits of a claim are different concepts. See, e.g., St. Martin's Episcopal Church v. Prudential-Bache Securities, 613 So. 2d 108, 109, n. 4 (Fla. 4th DCA 1993); Village Park Mobile Home Ass'n., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 433 (Fla. 1st DCA 1987).

68. Petitioners' interest in the protection of their property is a substantial interest and is affected by the proposed project because the project is located on a dune that provides protection to Petitioners' property. Petitioners have standing to initiate this proceeding.

69. This is a de novo proceeding designed to formulate final agency action rather than to review the Department's decision to issue the CCCL permit, and the preliminary agency action is not entitled to a presumption of correctness. See Capaletti Bros., Inc. v. Dept. of General Services, 432 So. 2d 1359, 1363 (Fla. 1st DCA 1983).

70. A permit applicant bears the ultimate burden of providing reasonable assurance that that all applicable permitting criteria and standards will be met. See Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 789 (Fla. 1st DCA 1981).

71. "Reasonable assurance," in this context means a demonstration that there is a substantial likelihood of compliance with standards, or "a substantial likelihood that the project will be successfully implemented." Metropolitan Dade County v. Coscan Florida, Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). It does not mean absolute guarantees. See Save our Suwannee v. Florida Dep't of Env'tl. Protection and Piechocki, 18 F.A.L.R. 1467, 1472 (DEP 1996).

72. Hanson must prove the facts necessary to show his entitlement to the CCCL permit by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

73. To obtain a permit to construct major structures seaward of the coastal construction control line, 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). Hanson demonstrated that the impacts associated with his proposed project are minimized and the project will not result in significant adverse impact.

74. 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). Hanson provided reasonable assurance that the impacts associated with his proposed project have been offset by existing and proposed mitigation actions.

75. Hanson provided reasonable assurance that the CCCL permit criteria set forth in Rule 62B-33.005(4) would be met.

76. As interpreted and applied by the Department, the requirement of Rule 62B-33.005(4) that an applicant show that proposed activity is "clearly justified" is satisfied by a demonstration that all CCCL permitting criteria will be met.

77. In order to qualify for a permit to construct a major structure seaward of the coastal construction control line, 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. The Department's determination of the 30-year erosion projection, using procedures set forth in

Rule 62B-33.024, was reasonable. Hanson proved by a preponderance of the evidence that the proposed major structure is landward of the 30-year erosion projection in this area.

78. Rule 62B-33.005(8) requires that major structures be located a sufficient distance landward of the beach and frontal dune to permit natural shoreline fluctuations, preserve and protect beach and dune system stability, and allow natural recovery to occur following storm-induced erosion. The preponderance of the evidence shows that the proposed project complies with this requirement.

79. Section 161.053(4)(b), Florida Statutes, generally prohibits the issuance of a CCCL permit for a proposed structure if it would be located more seaward than the line of construction established by existing structures in the area. Hanson provided reasonable assurance that the proposed project would conform to the existing line of construction.

80. 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." Hanson provided reasonable assurance that, taking into account potential cumulative effects, the proposed project would not result in a significant adverse impact.

81. Petitioners failed to show that, under the CCCL statutes and rules, the presence of a potentially active gopher

tortoise burrow on the project site requires that the CCCL permit be denied. The regulation of activities that might affect gopher tortoises or their habitat is within the jurisdiction of the Florida Fish and Wildlife Conservation Commission. The Department's CCCL permit does not authorize Hanson to disturb gopher tortoises or their habitat.

82. Hanson provided reasonable assurance that all CCCL regulatory criteria have been met.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department issue a final order granting the CCCL permit to Hanson.

DONE AND ENTERED this 7th day of December, 2010, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of December, 2010.



ENDNOTES

1/ Petitioners' Exhibits 59 and 62, admitted at the final hearing, are not the documents with those designations in the Joint Pre-Hearing Stipulation. Petitioners' Exhibit 59, introduced at the final hearing, is a photograph. Petitioners' Exhibit 62, introduced at the final hearing, is the August 12, 2010, deposition of Kimberly Colstad Hefty.

2/ All references to the Florida Statutes are to the 2010 codification.

3/ All findings of fact related to heights are in reference to sea level.

4/ When Mr. Foster used the rule procedure that does not give credit for nourishment projects, he located the 30-year erosion projection closer to, but still seaward of, the proposed structure.

COPIES FURNISHED:

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

Ricinda Hope Perry, Esquire  
Ricinda H. Perry, P.A.  
1519 Riverview Lane  
Bradenton, Florida 34209-1442

Kelly L. Russell, Esquire  
Department of Environmental Protection  
The Douglas Building, Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

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

Mimi Drew, Secretary  
Department of Environmental Protection  
The Douglas Building, Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Tom Beason, General Counsel  
Department of Environmental Protection  
The Douglas Building, Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Lea Crandall, Agency Clerk  
Department of Environmental Protection  
The Douglas Building, Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

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.