

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RETREAT HOUSE, LLC, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-10767  
 )  
 PAMELA C. DAMICO AND DEPARTMENT )  
 OF ENVIRONMENTAL PROTECTION, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On July 6-8, 2011, an administrative hearing was held in this case in Islamorada before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

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For Respondent Department of Environmental Protection:

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For Respondent Pamela C. Damico:

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STATEMENT OF THE ISSUE

The issue in this case is whether the Department of Environmental Protection (DEP) should issue a letter of consent to use State-owned submerged lands (SL) and an environmental resource permit (ERP) (which are processed together as a SLERP) for the single-family dock proposed by Pamela C. Damico, which would extend 770 feet into the Atlantic Ocean from her property on Plantation Key in Monroe County (DEP Permit 44-0298211-001).

PRELIMINARY STATEMENT

On September 7, 2010, DEP gave notice of intent to issue Permit 44-0298211-001. On October 29, 2010, Petitioner filed an Amended Petition for Administrative Hearing, which was referred to DOAH. The case was scheduled for a final hearing and continued several times, the last time until July 6-8, 2011.

On June 28, 2011, the parties filed a Revised Prehearing Stipulation. At the final hearing, counsel for Mrs. Damico called: Sean Kirwan, P.E., a civil engineer and permitting agent; David Barrow, a bathymetric surveyor; Harry DeLashmutt, a biologist; and Casey Dooley. She also had her Exhibits 1-10

admitted in evidence. DEP called: Celia Hitchins, a DEP environmental specialist, who also is licensed as a captain by the United States Coast Guard (USCG); and Timothy Rach, a DEP Environmental Administrator for SLERPs. DEP had its Exhibits 3, 5, 11, 12, 13, 15, 17, 18, 22, 25, 30, 31, 35, 37, 38, 49, 59, and 83 admitted in evidence. Petitioner called: Bruce Franck, a DEP Environmental Manager; Dr. William Carter, Petitioner's owner and operator; Mark Johnson, a surveyor and mapper; and Dr. Paul Lin, P.E., a coastal engineer. Petitioner's Exhibits 1-26 and 28 were received in evidence. The objections to the admission of Petitioner's Exhibits 27 and 29 are sustained.

After presentation of evidence, a Transcript of the testimony and proposed recommended orders were filed. Counsel for Mrs. Damico also filed Final Argument. The post-hearing submissions have been considered.

#### FINDINGS OF FACT

1. Pamela C. Damico owns property at 89505 Old Highway on Plantation Key in the Upper Florida Keys in Monroe County. Her property includes submerged land extending between 212 and 233 feet into the Atlantic Ocean, which is an Outstanding Florida Water (OFW). She applied to DEP for a permit to build a dock and boat mooring at her property. In its final configuration, the proposed docking structure would have an access pier from the shoreline that would extend across her submerged land, and

then farther across State-owned submerged lands, for a total distance of 770 feet from the shoreline.

2. A primary goal of the application was to site the mooring area in water with a depth of at least -4 feet mean low water (MLW). Mrs. Damico's consultants believed that this was required for a SLERP in Monroe County. In addition, they were aware that -4 feet MLW would be required to get a dock permit from Islamorada, Village of Islands.

3. The beliefs of Mrs. Damico's consultants regarding the depth requirement for the mooring site were based in part on incorrect interpretations of DEP rules by certain DEP staff made both during Mrs. Damico's application process and during the processing of other applications in the past. Those incorrect interpretations were based in part on ambiguous and incorrect statements in guidance documents published by DEP over the years. (Similarly, certain DEP staff made incorrect interpretations of DEP rules regarding a supposedly absolute 500-foot length limit for any dock in Monroe County.) See Conclusions of Law for the correct interpretations of DEP rules.

4. Petitioner owns oceanfront property to the south and adjacent to Mrs. Damico's. As expressed by Petitioner's owner and operator, Dr. William Carter, Petitioner has concerns regarding impacts of the proposed docking structure on

navigation, boating safety, and natural resources, including seagrasses, stony corals, tarpon, and bonefish.

5. Several changes were made to the proposed docking structure to address concerns raised by Petitioner. In the earlier proposals, the access pier would have been supported by 10-inch square concrete piles, which must be installed using a construction barge and heavy equipment. In its final form, to reduce the direct impacts to the seagrasses and stony corals, it was proposed that the first 550 feet of the access pier from the point of origin on the shoreline would be installed using pin piles, which are made of aluminum and are 4.5 inches square inside a vinyl sleeve five inches square, and can be installed by hand. Instead of the planks originally proposed for the decking of the access pier, a grating material was substituted, which would allow greater light penetration to the seagrasses below. The orientation and length of the proposed docking structure was modified several times in an effort to achieve the optimal siting of the mooring platform. Handrails were proposed for the access pier, and no tie-up cleats are provided there. In combination with the elevation of the decking at five feet above mean high water (MHW), the handrails would discourage use of the pier for mooring by making it impractical if not impossible in most cases. Railing also was proposed for the north side of the mooring platform to discourage mooring there,

and a sign was proposed to be placed on the north side of the platform saying that mooring there is prohibited. These measures were proposed to restrict mooring to the south side of the mooring platform, where a boat lift would be installed, which would protect the large seagrass beds that are on the north side of the terminal platform. (Mooring an additional boat along the end of the 8-foot long mooring platform, which faces the prevailing oceanic waves, is impractical if not impossible.) To make the docking structure less of a navigation and boating safety hazard, it was proposed that a USCG flashing white light would be installed at the end of the terminal platform.

6. In its final configuration, the docking structure would preempt approximately 2,240 square feet of State-owned submerged land, plus approximately 200 square feet preempted by the proposed boat lift. In addition, it would preempt approximately 900 square feet of Mrs. Damico's privately-owned submerged land. Mrs. Damico's private property has approximately 352 linear feet of shoreline.

7. Dr. Lin testified for Petitioner that the proposed docking structure would preempt a total of 3,760 square feet. This calculation included 520 square feet of preemption by the boat lift, but the proposed boat lift is for a smaller boat that would preempt only approximately 200 square feet.

8. Intending to demonstrate that the proposed docking structure would wharf out to a consistent depth of -4 feet MLW, Mrs. Damico's consultants submitted a bathymetric survey indicating a -4 MLW contour at the mooring platform. In fact, the line indicated on the survey is not a valid contour line, and the elevations in the vicinity do not provide reasonable assurance that the mooring area of the docking structure in its final configuration is in water with a consistent depth of -4 feet MLW, or that there is water of that depth consistently between the mooring area and the nearest navigable channel. The evidence does, however, provide reasonable assurance that the proposed mooring platform is in water with a consistent depth of at least -3 feet MLW, and that there is water of that depth consistently between the mooring area and the nearest navigable channel, which would avoid damage to seagrass bed and other biological communities.

9. The evidence was not clear whether there is another possible configuration available to Petitioner to wharf out to a mooring area with a consistent depth of at least -3 feet MLW, not over seagrasses, and with water of that depth consistently between the mooring area and the nearest navigable channel, that would not require as long an access pier, or preempt as many square feet of State-owned submerged land.

10. A noticed general permit (NGP) can be used for a dock of 2,000 square feet or less, in water with a minimum depth of -2 feet MLW, and meeting certain other requirements. See Fla. Admin. Code R. 62-341.215 and 62-341.427. The evidence was not clear whether an NGP can be used in an OFW in Monroe County in water less than -3 feet FLW, according to DEP's interpretation of its rules. Cf. Fla. Admin. Code Ch. 62-312.400, Part IV.

11. Initially, mitigation for impacts to natural resources was proposed. However, DEP's staff determined that no mitigation was required because there would not be any adverse effects from the docking structure, as finally proposed. For the same reason, DEP staff determined that there would be no significant cumulative adverse impacts and that no further analysis of cumulative impacts was necessary.

12. Actually, there will be adverse impacts to natural resources. The biologist for Mrs. Damico determined that there are some seagrasses and numerous stony corals in the footprint of the access pier, in addition to other resources less susceptible to impacts (such as macro-algae and loggerhead sponges). These organisms will be disturbed or destroyed by the installation of the access pier. The biologist quantified the impacts to round starlet corals by assuming the placement of two supporting piles, four feet apart, every ten feet for the length of the pier, and assuming impacts to the stony corals in a



quadrat centered on each pile location and three times the diameter of the pile. Using this method, it was estimated that approximately 1,505 square centimeters of the stony corals would be destroyed by the installation of the docking structure.

13. The impacts assessed by Mrs. Damico's biologist and DEP assume that construction would "step out" from shore and, as construction proceeds, from already-built segments of the pier, until water depths allow for the use of a construction barge without unintended damage to the natural resources in the area. This construction method is not required by the proposed SLERP. It would have to be added as a permit condition.

14. Petitioner did not prove that the impacts to a few seagrasses and approximately 1,505 square centimeters of the stony corals would damage the viability of those biological communities in the vicinity of the proposed docking structure.

15. Direct and indirect impacts to other species from the installation and maintenance of the docking structure would not be expected. Impacts to listed species, including manatees and sawfish, would not be anticipated. Manatees sometimes are seen in the vicinity but do not rely on the area for foraging or breeding. Sawfish are more likely to frequent the bay waters than the ocean. Migratory tarpon and bonefish use the area and might swim out around the docking structure to avoid passing

under it. Resident tarpon and some other fish species might congregate under the docking structure.

16. The proposed docking structure does not block or cross any marked navigation channel and is in a shallow area near the shore where boats are supposed to be operated at reduced speeds. Nonetheless, the proposed structure poses more than a casual navigation hazard, especially due to its length, which is significantly greater than any docking structure in the vicinity.

17. In conducting its staff analysis of the impacts on navigation and boating safety, DEP understood that the closest marked navigation channel is at least two miles away from the proposed docking structure. Actually, there also is a marked channel at the Tavernier Creek, which is less than half a mile north of the site. It is not uncommon for boaters to leave the marked Tavernier Creek channel to motor south in the shallow water closer to shore; they also sometimes cut across the shallow waters near the site to enter the Tavernier Creek channel when heading north. There also are other unmarked or unofficially-marked channels even closer to the proposed docking structure. In good weather and sea conditions, the proposed docking structure would be obvious and easy to avoid. In worse conditions, especially at night, it could be a serious hazard.

18. To reduce the navigational hazard posed by the dock, reflective navigation indicators are proposed to be placed every 30 feet along both sides of the access pier, and the USCG flashing white light is proposed for the end of terminal platform. These measures would help make the proposed docking structure safer but would not eliminate the risks entirely. The light helps when it functions properly, it can increase the risk if boaters come to rely on it, and it goes out. Both the light and reflective indicators are less effective in fog and bad weather and seas. The risk increases with boats operated by unskilled and especially intoxicated boaters.

19. It is common for numerous boaters to congregate on weekends and holidays at Holiday Isle, which is south of the proposed docking structure. Alcoholic beverages are consumed there. Some of these boaters operate their boats in the vicinity of the proposed docking structure, including "cutting the corner" to the Tavernier Creek pass channel, instead of running in deeper water to enter the pass at the ocean end of the navigation channel. This increases the risk of collision, especially at night or in bad weather and sea conditions.

20. DEP sought comments from various state and federal agencies with jurisdiction over fisheries and wildlife. None of these agencies expressed any objection to the proposed docking

structure. No representative from any of those agencies testified or presented evidence at the hearing.

21. Area fishing guides and sports fishermen fish for bonefish and tarpon in the flats in the vicinity of the proposed docking structure. If built, the proposed docking structure would spoil this kind of fishing, especially bonefishing, or at least make it more difficult. The more similar docking structures installed in the area, the greater the difficulties in continuing to use the area for this kind of fishing. On the other hand, resident tarpon and some other fish species could be attracted by such docking structures.

22. Mrs. Damico's application initially offered a money donation to the Florida Keys Environmental Restoration Trust Fund if mitigation was required. The proposed permit includes a requirement to donate \$5,000 to the Florida Keys National Marine Sanctuary (FKNMS), before construction begins, for the maintenance of mooring buoys to reduce recreational boater impacts at the coral reef areas. The reefs are miles from the site of the proposed docking structure, and the donation does not offset project impacts. Rather, as stated in the proposed permit, its purpose is to "satisfy public interest requirements."

23. As a federal agency, the FKNMS does not accept donations directly. Donations would have to be made to the

Sanctuary Friends of the Florida Keys (SFFK) for use by the FKNMS for buoy maintenance. A condition would have to be added to the ERP to ensure that the donation would be used for the intended purpose.

24. In a bid to defeat Mrs. Damico's attempt to satisfy public interest requirements, Petitioner offered to donate \$10,000 to SFFK for the buoy maintenance if DEP denied the permit. Petitioner's offer should not affect the evaluation of the proposed docking structure under the public interest criteria.

25. DEP staff evaluated the proposed ERP under the public interest criteria to be essentially neutral and determined that the \$5,000 donation would make it clearly in the public interest. This analysis was flawed.

26. With or without the \$5,000 donation, the proposed docking structure would have an adverse effect on the public health, safety, and welfare; an adverse effect on navigation; an adverse effect on fishing or recreational values in the vicinity; and an adverse effect on the current condition and relative value of functions being performed by areas affected by the proposed activity. It would not have any positive public interest effects. Its effects would be permanent.

CONCLUSIONS OF LAW

27. The proposed docking structure requires both regulatory and proprietary authorization. Regulatory authorization is governed by chapters 403 and 373, Florida Statutes, and chapter 62-312, Florida Administrative Code. Proprietary authorization (the authorization to preempt and use State-owned submerged land) is governed by chapter 253, Florida Statutes, and chapter 18-21, Florida Administrative Code.

28. Under newly-enacted section 120.569(1) (p), Florida Statutes, Mrs. Damico has the burden to present a prima facie case demonstrating entitlement to the regulatory authorization, and Petitioner "has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition . . . ." Mrs. Damico has the burden to prove entitlement to the proprietary authorization. See J.W.C. Co., Inc., v. Dep't of Transp., 396 So. 2d 778 (Fla. 1st DCA 1981).

Letter of Consent

29. Rule 18-21.0041 applies to multi-slip docking structures in Monroe County. It does not apply to Mrs. Damico's proposed docking structure. If it did, it would require a minimum water depth of -4 feet MLW in the boat mooring, turning basin, access channels, and other such areas to accommodate the proposed boat use. See Fla. Admin. Code R. 18-21.0041(1) (b) 3.a. It also would be necessary for DEP to determine that the

proposed dock would not be contrary to the public interest. See Fla. Admin. Code R. 18-21.0041(1)(b)4.a.

30. The form of authorization proposed to be issued for Mrs. Damico's docking structure is a letter of consent under rule 18-21.005(c). The rule describes several activities that can be authorized by a letter of consent.

31. Under subsection 1., a letter of consent can be issued for a minimum-sized private residential single-family dock or pier per parcel. Mrs. Damico's proposed docking structure is not minimum-sized. A smaller dock could have been designed that would terminate in water with a depth of -3 feet MLW.

32. Under subsection 2., a letter of consent can be issued for "[p]rivate residential single-family or multi-family docks, piers, boat ramps, and similar existing and proposed activities that cumulatively preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's riparian shoreline, along sovereignty submerged land on the affected waterbody within a single plan of development . . . ."

33. Petitioner contends that subsection 2. does not apply to Mrs. Damico's docking structure because she does not have "riparian shoreline, along sovereignty submerged land on the affected waterbody." DEP's contrary interpretation of subsection 2. is more reasonable. Mrs. Damico has riparian

shoreline along the affected waterbody (as opposed to some other waterbody). Her privately-owned submerged land does not preclude her from making use of subsection 2.

34. Petitioner also contends that, if Mrs. Damico has riparian shoreline so as to make subsection 2. applicable, a letter of consent can be used only if no more than 10 square feet of submerged land, whether private or State-owned, is preempted for each linear foot of the applicant's riparian shoreline. DEP's contrary interpretation of subsection 2. is more reasonable. The rule's focus is preemption of State-owned submerged land. (Even if Petitioner were correct, no more than 10 square feet of submerged land, whether private or State-owned, is preempted for each linear foot of Mrs. Damico's riparian shoreline.)

35. Under rule 18-21.004(1)(a), all activities on State-owned submerged lands "must be not contrary to the public interest . . . ." Except for sales, the rule does not require an applicant to establish that all proposed activities are clearly in the public interest. It was proven that the proposed docking structure is not contrary to the public interest.

36. A letter of consent for the proposed docking structure is appropriate.



## Regulatory Authorization

37. Entitlement to a regulatory authorization is based on statutory and rule criteria. See Council of the Lower Keys v. Charley Toppino & Sons, Inc., 429 So. 2d 67 (Fla. 3d DCA 1983). Petitioner must prove that reasonable assurance of compliance with those criteria has not been provided. See § 120.569(1)(p), Fla. Stat. Reasonable assurance does not mean an absolute guarantee and does not require the elimination of speculation as to what might occur if a project is developed as proposed. Rather, it means a "substantial likelihood that the project will be successfully implemented." Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992).

38. Section 373.414(1) applies to the proposed ERP. It requires reasonable assurance that applicable state water quality standards will be met. It also requires, in the case of OFWs, "reasonable assurance that the proposed activity will be clearly in the public interest." This is determined by considering and balancing 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.

§ 373.414(1)(a), Fla. Stat.

39. In 1800 Atlantic Developers v. Department of Environmental Regulation, 552 So. 2d 946 (Fla. 3d DCA 1989), DEP's predecessor agency (DER) denied an application for a dredge and fill project to renourish a private beach. There was reasonable assurance that there would be no state water quality violations. Under the public interest criteria, the court held that the applicant was "not obligated to show a need or necessity for the dredging and filling in the sense of benefiting the public or the environment." Id. at 957. In other words, the applicant "need not show any particular need or net public benefit as a condition of obtaining the permit." Id. Rather, the applicant was "only required to show that the

dredging and filling required by the project would be carried out in a manner that would not materially degrade water quality and in a manner that was clearly in the public interest.” Id. It was error for DER to make “1800 Atlantic prove the absence of negative impacts from the project and demonstrate the creation of a net environmental or societal benefit to meet the public interest test. Suggestions in the final order that this showing is necessary simply because the project is in Outstanding Florida Water go beyond the statutory provisions and have no basis in the law.” Id.

40. Regarding DOAH’s role, the decision in 1800 Atlantic Developers stated: “As the hearing officer’s function was only that of a fact finder, it was the hearing officer’s function to make findings of fact regarding disputed factual issues underlying the conditions set by DER and the implementation of and compliance with the mitigative conditions set by DER. The hearing officer was not vested with power to review DER’s discretion in setting acceptable mitigative conditions in the sense of passing on their sufficiency to meet the statutory criteria.” Id. at 955.

41. In the course of the application process, Mrs. Damico through her consultants made changes to reduce the adverse effects of her proposal, but the final version still has adverse impacts on public interest criteria. The proposed ERP is not

positive or even neutral under the statutory public interest criteria. It is negative under the first criterion (specifically, adverse effect on the public health, safety, or welfare). It is negative on the third criterion (specifically, adverse effect on navigation). It is negative under the fourth criterion (specifically, adverse effect on fishing or recreational values in the vicinity). It is slightly negative on the seventh criterion (current condition and relative value of functions being performed by areas affected by the proposed activity). It is permanent under the fifth criterion. It is neutral on the other criteria.

42. The changes made to the initial proposal to reduce adverse effects does not qualify as mitigation under section 373.414(1)(b), which is defined as a measure "to mitigate adverse effects that may be caused by the regulated activity." Cf. Fla. Admin. Code R. 62-312.450 (DEP "shall consider mitigation pursuant to Section 373.414(1)(b), F.S., . . . ."). Likewise, the \$5,000 donation to maintain buoys at a coral reef miles away does not qualify as mitigation for the adverse effects. Neither the changes to the initial proposal nor the \$5,000 donation makes the proposed ERP clearly in the public interest.

43. DEP has adopted by reference rule 40E-4.302 (1995) and the 1995 version of the South Florida Water Management District

(SFWMD) Basis of Review (BOR) for use in evaluating applications like Mrs. Damico's. Those criteria prohibit unacceptable cumulative impacts, which BOR section 4.2.8.1 defines as cumulative impacts that would result in significant adverse impacts to functions of wetlands or other surface waters. BOR section 4.2.8.2 allows mitigation for unacceptable cumulative impacts as provided for in BOR sections 4.3 through 4.3.8.

44. In this case, DEP did not perform a cumulative impacts analysis because it was assumed that the proposed ERP would have no adverse impacts. Not believing that any cumulative impacts analysis was required, DEP did not evaluate the possibility that unacceptable cumulative impacts could be mitigated.

45. Chapter 62-312.400, Part IV, adds criteria for dredging and filling in OFWs in Monroe County because the Environmental Regulation Commission has found these waters to be "an irreplaceable asset which require special protection." Fla. Admin. Code R. 62-312.400(2)(a). "Further, the Florida Legislature in adopting Section 380.0552, F.S., recognized the value of the Florida Keys to the State as a whole by designating the Keys an Area of Critical State Concern. This rule implements Section 403.061(34), F.S., and is intended to provide the most stringent protection for the applicable waters allowable by law." Fla. Admin. Code R. 62-312.400(2)(b). "Pursuant to Section 380.0552(7), Florida Statutes (1986 Supp.),

the specific criteria set forth in this section are intended to be consistent with the Principles for Guiding Development as set forth in Chapter 28-29, Florida Administrative Code (August 23, 1984), and with the principles set forth in that statute." Fla. Admin. Code R. 62-312.400(3). Contrary to Petitioner's argument, the rule does not make section 380.0552 and chapter 28-29 ERP criteria in addition to chapter 62-312.400, Part IV.

46. Under rule 62-312.410(1), the proposed docking structure may not be issued an ERP if, alone or in combination with other activities, it damages the viability of a living stony coral community, soft coral community, macro marine algae community, sponge bed community, or marine seagrass bed community. While some individual organisms will be impacted and destroyed by the installation of the proposed docking structure, Petitioner did not prove that the viability of existing communities of those organisms will be damaged.

47. Under rule 62-312.420(2)(b), water depths at the mooring site of the proposed docking structure must be at least -3 feet MLW. The proposed docking structure meets this requirement.

48. Rule 62-312.420(2)(c) requires an affirmative demonstration that adequate depths exist for ingress and egress of boats to the mooring site, and in no case less than necessary to avoid damage to a seagrass bed community or other biological

communities listed in rule 62-312.410(1)(a). At least -3 feet MLW exists for ingress and egress to the mooring site of the proposed docking structure. Reading subsections (b) and (c) in pari materia, this is adequate and enough to avoid damage to existing communities of seagrass beds and the other listed communities of organisms.

49. For various reasons, including rule 62-312.420(2)(a), Petitioner contends that -4 feet MLW at the mooring site and for ingress and egress is required. Rule 62-312.420(2)(a) requires -4 feet MLW but only for piers designed to moor three or more boats. It does not apply to Mrs. Damico's proposed docking structure. Islamorada, Village of Islands, requires -4 feet MLW and has a 100-foot length limit for dock permits, but its permitting requirements are not DEP ERP criteria.

50. Rule 62-312.420(2)(d) requires that proposed construction techniques protect the viability of a seagrass bed community and the other communities of organisms listed in rule 62-312.410(1)(a). The proposed construction techniques would protect the viability of those communities, assuming a condition is added to require construction to "reach out" from shore and, as construction proceeds, from already-built segments of the pier, until water depths allow for the use of a construction barge without unintended damage to the natural resources in the area.

51. Rule 62-312.420(2)(e) prohibits the location of mooring sites over a seagrass bed community at depths less than -5 feet MLW or over a coral reef. The proposed mooring site is not prohibited by this rule.

52. Rule 62-312.420(2)(f) requires that “[a]ll portions of the pier facility other than the specific mooring sites shall be designed in a manner which will prevent the mooring of watercraft other than at the specific mooring sites.” The proposed docking structure is designed in accordance with this rule.

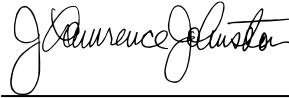
#### RECOMMENDATION

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

RECOMMENDED that DEP enter a final order denying a permit for the proposed docking structure; if granted, there should be a condition requiring construction to “reach out” from shore and, as construction proceeds, from already-built segments of the pier, until water depths allow for the use of a construction barge without unintended damage to the natural resources in the area.



DONE AND ENTERED this 14th day of October, 2011, in  
Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of October, 2011.

COPIES FURNISHED:

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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.