



St. Johns River Water Management District

Hans G. Tanzler III, Executive Director

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On the Internet at floridaswater.com.

April 15, 2015

Honorable Bram D.E. Canter
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

FILED
2015 APR 20 AM 11 15
DIVISION OF
ADMINISTRATIVE
HEARINGS

**RE: Friend, Turnbull Community & Friends of Spruce Creek Preserve v.
Pioneer Community Development District & SJRWMD**
DOAH Case # 14-003904

Dear Judge Canter:

As required by Section 120.57(1)(m) of the Florida Statutes, please find enclosed a copy of the Final Order for the above-styled case. No exceptions were filed.

Sincerely,

William Abrams
Sr. Assistant General Counsel
Office of General Counsel

WA/kp

Enclosure

cc: William H. Congdon, General Counsel

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ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

**TOMM FRIEND; DEREK LAMONTAGNE;
TURNBULL BAY COMMUNITY, INC.;
and FRIENDS OF SPRUCE CREEK
PRESERVE, INC.,**

Petitioners,

vs.

**PIONEER COMMUNITY DEVELOPMENT
DISTRICT and ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,**

Respondents.

FILED
2015 APR 20 AM 11 16
DIVISION OF
ADMINISTRATIVE
HEARINGS

DOAH CASE NO.: 14-3904

SJR FOR NO.: 2014-27

FINAL ORDER

1. Pioneer Community Development District ("Pioneer") applied for an environmental resource permit (ERP) to construct a stormwater management system for the 2.3 mile extension of Williamson Boulevard through pine forest uplands and cypress swamp wetlands in Volusia County. The road project impacts just over 79 acres of undeveloped land, including a little more than 22 acres of wetlands. The St. Johns River Water Management District (District") issued the permit on July 2, 2014.

2. Tomm Friend, Derek LaMontagne, Turnbull Bay Community, Inc., and Friends of Spruce Creek Preserve, Inc., ("Petitioners") requested an administrative hearing to challenge the issuance of the permit. The primary issue, as framed by the parties and the Administrative Law Judge (ALJ), is whether Pioneer's ERP application No. IND-127-134174 for a stormwater management system is consistent with the standards and criteria for issuance of a permit as set forth in Part IV

of Chapter 373, Florida Statutes, Chapter 40C-41, and Rules 62-330.301 and 62-330.302, Florida Administrative Code.

3. On November 18 and 19, 2014, the Honorable Bram D. E. Carter, an Administrative Law Judge from the Division of Administrative Hearings ("ALJ"), conducted a hearing on the petition. And on March 12, 2015, he submitted to the District and all the parties to this proceeding a Recommended Order, a copy of which is attached as "Exhibit A."

4. The recommended order advised the parties that they had 15 days to file exceptions to the recommended order with the District. On March 13, 2015, the District sent all the parties a letter advising them of their right to file exceptions to the recommended order. Neither the Petitioners, the District, nor Pioneer submitted exceptions to the recommended order and have therefore waived the right to challenge the ALJ's findings. *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So. 2d 77, 81 (Fla. 5th DCA 2007); *Worster v. Dep't of Health*, 767 So. 2d 1239, 1240 (Fla. 1st DCA 2000).

5. Pursuant to section 373.079(4), Florida Statutes, the Governing Board of the District has delegated all of its authority to take final action approving permit applications under part IV chapter 373, Florida Statutes to specific staff, including the District's Director of the Division of Regulatory, Engineering, and Environmental Services. Because both the ALJ and counsel for the Governing Board of the District recommend approval of the permit, this matter now comes before me as the District's Director of the Division of Regulatory, Engineering, and Environmental Services for final agency action.

6. The ALJ's recommended order concluded that the application was consistent with the standards and criteria for issuance of a permit and therefore recommended that the District enter

a final order approving Pioneer's application and issuing the permit subject to the conditions set forth in the November 3, 2014, Technical Staff Report.

7. Upon review, I note a scrivener's error in conclusion of law 49 that states the issuance of an ERP requires reasonable assurance from the applicant that the activities authorized will meet the applicable criteria in Florida Administrative Code Rule 40C-2.301, when the applicable criteria are in Florida Administrative Code Rules 62-330.301 and 62.330.302, as stated throughout the balance of the recommended order. Rule 40C-2.301 pertains to the conditions for issuance of consumptive use permits, not ERPs. Therefore, conclusion of law 49 is modified as follows:

49. Issuance of an ERP requires reasonable assurance from the applicant that the activities authorized will meet the applicable criteria in Florida Administrative Code Rules 62-330.301 and 62-330.302.

8. I otherwise concur with the recommended order.

Accordingly, **IT IS ORDERED** that:

The March 12, 2015, Recommended Order (as modified by paragraph 7, above) is **ADOPTED** as the Final Order in this matter. Environmental resource permit application IND-127-134174 is **APPROVED** with the conditions set forth in the technical report dated November 3, 2014.

DONE AND ORDERED this 10th day of April, 2015, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: 

Michael A. Register, Director
Division of Regulatory, Engineering,
and Environmental Services

RENDERED this 10th day of April, 2015.

BY: Sandra Bertram
Sandra Bertram, District Clerk

Copies to:

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