

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH MCCLASH,

Petitioner,

and

SIERRA CLUB, INC., AND SUNCOAST  
WATERKEEPER, INC.,

Intervenors,

vs.

Case No. 14-4735

LAND TRUST NO. 97-12 AND  
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT,

Respondents.

\_\_\_\_\_  
MANASOTA-88, INC.,

Petitioner,

and

SIERRA CLUB, INC., AND SUNCOAST  
WATERKEEPER, INC.,

Intervenors,

vs.

Case No. 14-5038

LAND TRUST NO. 97-12 AND  
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT,

Respondents.

\_\_\_\_\_

FLORIDA INSTITUTE FOR SALTWATER  
HERITAGE, INC.,

Petitioner,

and

SIERRA CLUB, INC., AND SUNCOAST  
WATERKEEPER, INC.,

Intervenors,

vs.

Case No. 14-5135

LAND TRUST NO. 97-12 AND  
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT,

Respondents.

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RECOMMENDED ORDER

The final hearing in these consolidated cases was held on February 17-19, 2015, in Tampa, Florida, before Bram D.E. Canter, Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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For Intervenor Suncoast Waterkeeper, Inc.:

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STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent Land Trust #97-12 ("Land Trust") is entitled to an Environmental Resource Permit ("ERP") for its proposed project on Perico Island in Bradenton, Florida.

PRELIMINARY STATEMENT

On August 21, 2014, Respondent Southwest Florida Water Management District ("District") issued a Notice of Intended Agency Action to issue an ERP to Land Trust to construct a building pad for four single-family homes, an access drive, and surface water management system.

On August 29, 2014, Petitioner Joseph McClash filed a petition for hearing to challenge the proposed ERP. On September 10, 2014, Petitioner Manasota-88, Inc., filed a petition for hearing. On September 18, 2014, Florida Institute for Saltwater Heritage, Inc. ("FISH"), filed a petition for hearing. The District referred the three petitions to DOAH and they were consolidated for final hearing.

On January 26, 2015, Sierra Club, Inc., moved to intervene in the proceeding. On January 27, 2015, Suncoast Waterkeeper, Inc., moved to intervene. The motions were granted.

At the final hearing, Land Trust presented the testimony of Jeb Mulock, P.E., an expert in engineering; and Alec Hoffner, an expert in soil science and wetland ecology. After the hearing, Land Trust was allowed to present the testimony of Anthony Janicki, Ph.D., through a transcript of his deposition. Land Trust Exhibits 1-3, 6-8, and 16 were admitted into evidence.

The District presented the testimony of David Kramer, P.E., an expert in surface water management system engineering;

Al Gagne, an expert in wetland science; and John Emery, an expert in wetland science. District Exhibits 4 and 6-7 were admitted into evidence.

Petitioners presented the testimony of Jacqueline Cook, an expert in wetland science; Sam Johnston, an expert in environmental assessment and wetland science; John Stevely, an expert in mangroves and marine habitat; Joseph McClash; Ed Sherwood; Robert Brown; and Jay Leverone. Petitioners' Exhibits 1-6, 31-32, 38-39, 41-43, 47, 53, 55, 74, 88, 88A, 91-104, 110, and 112 were admitted into evidence.

Members of the public were allowed to make comments at the final hearing. Comments were received from Mary Shepherd, Terry Wonder, Jan VonHahmann, and Sandra Ripberger.

The five-volume Transcript of the final hearing was filed with DOAH. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### The Parties

1. Petitioner Joseph McClash is a resident of Bradenton, Florida, who uses the waters in the vicinity of the project for fishing, crabbing, boating, and wildlife observation.

2. Petitioner Manasota-88, Inc., is an active Florida nonprofit corporation for more than 20 years. Manasota-88 has

approximately 530 members, most of whom (approximately 300) reside in Manatee County. The mission and goal of Manasota-88 includes the protection of the natural resources of Manatee County, including Anna Maria Sound and Perico Island.

3. Petitioner FISH is an active Florida nonprofit corporation in existence since 1991. FISH owns real property in unincorporated Cortez in Manatee County and maintains a Manatee County mailing address. FISH has more than 190 members and more than 150 of them own property or reside in Manatee County. The mission and goal of FISH includes protection of the natural resources of Manatee County, including Anna Maria Sound and Perico Island.

4. Intervenor Suncoast Waterkeeper, Inc., is an active Florida nonprofit corporation in existence since 2012. The mission of Suncoast Waterkeeper is "to protect and restore the Suncoast's waterways through enforcement, fieldwork, advocacy, and environmental education for the benefit of the communities that rely upon coastal resources." Suncoast Waterkeeper provided the names and addresses of 25 members residing in Manatee County. A substantial number of the members of Suncoast Waterkeeper use the area and waters near the proposed activity for nature-based activities, including nature observation, fishing, kayaking, wading, and boating along the natural shorelines of Anna Maria Sound and Perico Island.

5. Intervenor Sierra Club, Inc., is a national organization that is a California corporation registered as a foreign nonprofit corporation in Florida. Sierra Club has been permitted to conduct business in Florida since 1982. The mission of Sierra Club includes protection of the natural resources of Manatee County, which include Anna Maria Sound and Perico Island. Sierra Club provided the names and addresses of 26 members who live in Manatee County. A substantial number of the members of Sierra Club use the area and waters near the proposed project for nature-based activities, including observing native flora and fauna, fishing, kayaking, wading, and boating along the natural shorelines of Anna Maria Sound and Perico Island.

6. Respondent Land Trust is the applicant for the challenged ERP and owns the property on which the proposed project would be constructed.

7. Respondent District is an independent special district of the State of Florida created, granted powers, and assigned duties under chapter 373, Florida Statutes, including the regulation of activities in surface waters. The proposed project is within the boundaries of the District.

#### The Project Site

8. The project site is 3.46 acres of a 40.36-acre parcel owned by Land Trust. The parcel includes uplands, wetlands, and submerged lands, on or seaward of Perico Island, next to Anna

Maria Sound, which is part of Lower Tampa Bay. Anna Maria Sound is an Outstanding Florida Water.

9. The project site is adjacent to a large multi-family residential development called Harbour Isles, which is currently under construction. Access to the Land Trust property is gained through this development.

10. The Land Trust parcel contains approximately seven acres of high quality mangroves along the shoreline of Anna Maria Sound. They are mostly black and red mangroves, with some white mangroves. The mangroves on the project site amount to a total of 1.9 acres.

11. Mangroves have high biological productivity and are important to estuarine food webs. Mangroves provide nesting, roosting, foraging, and nursery functions for many species of wildlife.

12. Mangroves also provide a buffer from storm surge and help to stabilize shorelines.

13. Wildlife species found on the project site include ibises, pelicans, egrets, spoonbills, mangrove cuckoos, bay scallops, fiddler crabs, mangrove tree crabs, horseshoe crabs, marsh rabbits, raccoons, mangrove bees, and a variety of fish.

14. No endangered species have been observed on the project site, but mangroves are used by a number of listed species.



### The Proposed Project

15. The proposed project is to construct a retaining wall, place fill behind the wall to create buildable lots for four single-family homes, construct an access driveway, and install a stormwater management facility.

16. The stormwater management facility is a "Stormtech" system, which is an underground system usually used in situations where there is insufficient area to accommodate a stormwater pond.

17. Riprap would be placed on the waterward side of the retaining wall. The retaining wall would be more than 35 feet landward of the mean high water line in most areas.

18. Petitioners contend the proposed retaining wall is a vertical seawall, which is not allowed in an estuary pursuant to section 373.414(5). "Vertical seawall" is defined in section 2.0(a)(111), Volume I, of the Environmental Resource Permit Applicant's Handbook ("Applicants Handbook") as a seawall which is steeper than 75 degrees to the horizontal. It further states, "A seawall with sloping riprap covering the waterward face to the mean high water line shall not be considered a vertical seawall."

19. The retaining wall is vertical, but it would have riprap covering its waterward face and installed at a slope of 70 degrees. The retaining wall is not a vertical seawall under the District's definition.

## Stormwater Management

20. Stormwater in excess of the Stormtech system's design capacity would discharge into Anna Maria Sound. Because Anna Maria Sound is an Outstanding Florida Water, District design criteria require that an additional 50 percent of treatment volume be provided.

21. The Stormtech system meets the District's design criteria for managing water quality and water quantity. Projects which meet the District's design criteria are presumed to provide reasonable assurance of compliance with state water quality standards. Petitioners' evidence was not sufficient to rebut this presumption.

22. Petitioners contend the District waiver of water quality certification for the proposed project means that Land Trust was not required to meet water quality standards. However, that was a misunderstanding of the certification process. All state water quality criteria are applicable.

23. Petitioners contend water quality monitoring should be imposed for this project. However, section 4.7 of the Applicant's Handbook, Volume II, provides that if the applicant meets the District's design criteria, water quality monitoring is not required.

24. Petitioners failed to prove the proposed stormwater management system cannot be constructed, operated, or maintained in compliance with applicable criteria.

Wetland Impacts

25. In order to create buildable lots, 1.05 acres of the 1.9 acres of mangroves on the project site would be removed and replaced with fill. A swath of mangroves approximately 40 feet wide would remain waterward of the retaining wall.

26. The proposed direct and secondary impacts to the functions provided by wetlands were evaluated using the Uniform Mitigation Assessment Method ("UMAM") as required by Florida Administrative Code Chapter 62-345. UMAM is used to quantify the loss of functions performed by wetlands considering: current condition, hydrologic connection, uniqueness, location, fish and wildlife utilization, time lag, and mitigation risk.

27. The District determined the filling of 1.05 acres of wetlands would result in a functional loss of 0.81 units and the secondary impacts resulting from installation of the retaining wall would result in a loss of 0.09 units for a total functional loss of 0.9 units. Petitioners contend the functional loss would be greater.

28. Petitioners contend the wetland delineation performed by Land Trust and confirmed by the District did not extend as far landward as the hydric soils and, therefore, the total acreage of

affected wetlands would be greater. However, Petitioners did not produce a wetland delineation for the project site, and their evidence was not sufficient to rebut Land Trust's prima facie evidence on this issue.

29. Petitioners' experts believe the secondary impacts caused by the proposed project would be greater than calculated, including fragmentation of the shoreline mangrove system, damage to the roots of mangroves near the retaining wall, and scouring effects caused by wave action associated with the retaining wall. Respondents assert that the analysis by Petitioners' expert Jacqueline Cook relied on federal methodology and that "the science used in her analysis is not contained in the state or district rule criteria."

30. Reliance on science is always appropriate. However, Ms. Cook's use of a federal impact assessment methodology creates doubt about whether her scoring is consistent with UMAM. Despite the unreliability of Ms. Cook's UMAM score, it is found that Respondents' UMAM score under-calculated secondary impacts due to scour and other effects of changed water movement that would be caused by the retaining wall.

31. It was not explained how the loss of storm buffering and erosion prevention functions of wetlands are accounted for in the UMAM score.

## Elimination or Reduction of Impacts

32. Section 10.2.1 of the Applicant's Handbook, Volume I, states that in reviewing a project the District is to consider practicable design modifications to eliminate or reduce impacts to wetland functions. Section 10.2.1.1 explains:

The term "modification" shall not be construed as including the alternative of not implementing the activity in some form, nor shall it be construed as requiring a project that is significantly different in type or function. A proposed modification that is not technically capable of being completed, is not economically viable, or that adversely affects public safety through the endangerment of lives or property is not considered "practicable." A proposed modification need not remove all economic value of the property in order to be considered not "practicable." Conversely, a modification need not provide the highest and best use of the property to be "practicable." In determining whether a proposed modification is practicable, consideration shall also be given to cost of the modification compared to the environmental benefit it achieves.

33. Land Trust originally proposed constructing a surface water retention pond. The Stormtech stormwater management system would cause less wetland impact than a retention pond.

34. Land Trust contends the use of a retaining wall reduces wetland impacts because, otherwise, more mangroves would have to be removed to account for the slope of the waterward side of the fill area. However, this proposition assumes the appropriateness of the size of the fill area.

35. Land Trust also contends wetland impacts are reduced by using the adjacent development to access the proposed project site, rather than creating a new road. However, the evidence did not establish that Land Trust had a practicable and preferred alternative for access.

36. Unlike the Stormtech system, the retaining wall and access driveway were not shown to be project modifications.

37. The proposed project would cause fewer impacts to wetlands if the fill area was reduced in size, which was not shown to be impracticable. Reducing the size of the fill area would not cause the project to be significantly different in type or function.

38. Land Trust did not demonstrate that it implemented reasonable design modifications to eliminate or reduce impacts to wetland functions.

#### Mitigation

39. Land Trust proposes to purchase credits from the Tampa Bay Mitigation Bank, which is 17 miles north of the proposed project site. The Tampa Bay Mitigation Bank is in the Tampa Bay Drainage Basin. The project site is in the South Coastal Drainage Basin.

40. Pursuant to section 10.2.8 of the Applicant's Handbook, Volume I, if an applicant mitigates adverse impacts within the same drainage basin, the agency will consider the regulated

activity to have no unacceptable cumulative impacts upon wetlands and other surface waters. However, if the applicant proposes to mitigate impacts in another drainage basin, factors such as "connectivity of waters, hydrology, habitat range of affected species, and water quality" will be considered to determine whether the impacts are fully offset.

41. The parties disputed whether there was connectivity between the waters near the project site and the waters at the Tampa Bay Mitigation Bank. The more persuasive evidence shows there is connectivity.

42. There was also a dispute about the habitat range of affected species. The evidence establishes that the species found in the mangroves at the project site are also found at the mitigation bank. However, local fish and wildlife, and local biological productivity would be diminished by the proposed project. This diminution affects Petitioners' substantial interests.

43. The loss or reduction of storm buffering and erosion prevention functions performed by the mangroves at Perico Island cannot be mitigated for at the Tampa Bay Mitigation Bank.

44. Cumulative impacts are unacceptable when the proposed activity, considered in conjunction with past, present, and future activities would result in a violation of state water quality standards, or significant adverse impacts to functions of

wetlands or other surface waters. See § 10.2.8.1, Applicant's Handbook, Vol. I.

45. Section 10.2.8(b) provides that, in considering the cumulative impacts associated with a project, the District is to consider other activities which reasonably may be expected to be located within wetlands or other surface waters in the same drainage basin, based upon the local government's comprehensive plan. Land Trust did not make a prima facie showing on this point.

46. Land Trust could propose a similar project on another part of its property on Perico Island. Anyone owning property in the area which is designated for residential use under the City of Bradenton's comprehensive plan and bounded by wetlands could apply to enlarge the buildable portion of the property by removing the wetlands and filling behind a retaining wall.

47. When considering future wetland impacts in the basin which are likely to result from similar future activities, the cumulative impacts of the proposed project would result in significant adverse impacts to wetland functions in the area.

#### Public Interest

48. For projects located in, on, or over wetlands or other surface waters, an applicant must provide reasonable assurance that the project will not be contrary to the public interest, or if such activities significantly degrade or are within an



Outstanding Florida Water, are clearly in the public interest, as determined by balancing the criteria set forth in rule 62-330.302(1)(a), and as set forth in sections 10.2.3 through 10.2.3.7 of the Applicant's Handbook. Rule 62-330.302, which is identical to section 373.414, Florida Statutes, lists the following seven public interest balancing factors to be considered:

1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activities will be of a temporary or permanent nature;
6. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and
7. The current condition and relative value of functions being performed by areas affected by the proposed regulated activity.

49. The Parties stipulated that the proposed project would not have an adverse impact on public health, navigation, historical resources, archeological resources, or social costs.

50. Land Trust proposes to give \$5,000 to the City of Palmetto for an informational kiosk at the City of Palmetto's public boat ramp. A District employee testified that this contribution made the project clearly in the public interest.

51. Reasonable assurances were not provided that the proposed project is clearly in the public interest because of the adverse cumulative effects on the conservation of fish and wildlife, fishing and recreational values, and marine productivity of Anna Maria Sound, an Outstanding Florida Water.

#### CONCLUSIONS OF LAW

##### Standing

52. Standing to participate in a proceeding under section 120.57(1), Florida Statutes, is afforded to persons whose substantial interests will be affected by the proposed agency action. See § 120.52(13)(b), Fla. Stat. (2014) (definition of "party.")

53. For organizational standing under chapter 120, it must be shown that a substantial number of an association's members, but not necessarily a majority, have a substantial interest that would be affected, that the subject matter of the proposed activity is within the general scope of the interests and

activities for which the organization was created, and that the relief requested is of the type appropriate for the organization to receive on behalf of its members. Fla. Home Builders Ass'n v. Dep't of Labor and Emp't Servs., 412 So. 2d 351 (Fla. 1982); Fla. League of Cities, Inc. v. Dep't of Env'tl. Reg., 603 So. 2d 1363 (Fla. 1st DCA 1992).

54. Section 403.412(6), Florida Statutes, provides standing to any Florida corporation not for profit which has at least 25 current members residing within the county where the activity is proposed, and which was formed for the purpose of the protection of the environment, fish and wildlife resources, and protection of air and water quality, to initiate an administrative hearing, provided the corporation was formed at least one year prior to the date of the filing of application for the permit that is the subject of the notice of proposed agency action.

55. Section 403.412(5) provides standing to any citizen to intervene in an administrative, licensing, or other proceeding for the protection of the air, water, or other natural resources of the state from pollution, impairment or destruction, upon the filing of a verified pleading.

56. Respondents stipulated to Petitioner McClash's substantial interests in using the waters near the proposed project, but did not stipulate to his alleged injury and contend he failed to prove an injury to his interests. A petitioner can

establish standing by offering evidence to prove that its substantial interests could be affected by the agency's action. St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011). Petitioner McClash offered evidence to prove his interests could be adversely affected by the proposed project. He has standing.

57. Respondents stipulated to the standing of Petitioners FISH, Manasota-88, and Suncoast Waterkeeper to intervene in an ongoing proceeding pursuant to section 403.412(5).

58. Sierra Club claims associational standing to intervene under chapter 120. Respondents stipulated that a substantial number of Sierra Club members have substantial interests in the use of the waters near the project site, but assert that Sierra Club failed to demonstrate injury to these interests. Sierra Club offered evidence to prove the interests of its members could be adversely affected by the proposed project. Sierra Club has standing under chapter 120.

59. Sierra Club also claims standing to intervene pursuant to section 403.412(5), but Sierra Club is not a citizen of the state; it is a foreign nonprofit corporation. Legal Envtl. Assistance Found. v. Dep't of Envtl. Protection, 702 So. 2d 1352 (Fla. 1st DCA 1997). Sierra Club does not have standing under section 403.412(5).

Burden and Standard of Proof

60. This is a de novo proceeding designed to formulate final agency action, not to review action taken preliminarily. See Capeletti Bros. v. Dep't of Gen. Servs., 432 So. 2d 1359, 1363-64, (Fla. 1st DCA 1983); Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

61. Because Petitioners challenge a permit issued by the District under chapter 373, section 120.569(2)(p) is applicable. This statute provides that the permit applicant must present a prima facie case demonstrating entitlement to the permit, but the challenger has the burden of ultimate persuasion.

62. The standard of proof is a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

63. Entitlement to an ERP requires reasonable assurance from the applicant that the activities authorized will meet the applicable conditions for issuance as set forth in rules 62-330.301 and 62-330.302 and related provisions of the Applicant's Handbook.

64. Reasonable assurance that a proposed activity is clearly in the public interest does not require a demonstration of need or net public benefit. See 1800 Atlantic Developers v. Dep't of Env'tl. Reg., 552 So. 2d 946, 957 (Fla. 1st DCA 1989).

65. Whether assurances are reasonable will depend on the circumstances involved, especially with respect to the potential

harm that could be caused. See Angelo's Aggregate Materials, Ltd. v. Dep't of Env'tl. Protection, DOAH Case No. 09-1543 (Recommended Order, June 28, 2013, adopted in its entirety by the Department of Environmental Protection). The potential to harm an Outstanding Florida Water requires greater assurances than for waters without this special designation.

66. Land Trust presented a prima facie case of entitlement to the permit except with regard to the cumulative impacts of the proposed project. Petitioners then presented their case in opposition to the permit and demonstrated that Land Trust was not entitled to the permit for the reasons stated below.

Compliance with Applicable Criteria

67. The Stormtech system meets the District's design criteria for managing water quality and water quantity. Projects which meet the District's design criteria are presumed to provide reasonable assurance of compliance with state water quality standards. Land Trust's proposed project complies with all stormwater management requirements.

68. Section 10.2.1 of the Applicant's Handbook requires an applicant to eliminate or reduce adverse impacts to the functions of wetlands or other surface waters caused by a proposed project by implementing practicable design modifications. Land Trust's proposed project fails to comply with this requirement.

69. Pursuant to rule 62-330.301(d) and 62-330.301(f), an applicant must provide reasonable assurance that the regulated activity will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters. Land Trust's proposed project fails to comply with this requirement.

70. Section 373.414(1)(b) provides that if an applicant is unable to otherwise meet the criteria, the District shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity, including the purchase of mitigation credits from a mitigation bank.

71. The proposed mitigation must fully offset the expected impacts. Land Trust did not provide reasonable assurance that the adverse impacts caused by the proposed project would be fully offset by purchasing mitigation credits from the Tampa Bay Mitigation Bank.

72. Section 10.2.8 of the Applicant's Handbook states that cumulative impacts are considered unacceptable when the proposed activity, considered in conjunction with the past, present, and future activities, would result in significant adverse impacts to functions of wetlands or other surface waters within the same drainage basin when considering the basin as a whole. The cumulative impacts that would result from the proposed project

would result in significant adverse impacts to functions of wetlands in the basin.

73. Determinations as to the sufficiency of mitigation for adverse wetland impacts are within the jurisdiction of the District. See Save Anna Maria, Inc. v. Dep't of Transp., 700 So. 2d 113, 116 (Fla. 2nd DCA 1997).

74. The District rules state that "protection of wetlands and other surface waters is preferred to destruction and mitigation." The proposed permit does not reflect that preference.

75. Although not acknowledged by the District, this is an unusual project. It resembles the kind of project that was common in the 1960s and 1970s in Florida, before the enactment of environmental regulatory programs, when high-quality wetlands were destroyed by dredging and filling to create land for residential development. In all the reported DOAH cases involving ERPs and mitigation of wetland impacts, the circumstances have involved impaired wetlands and/or the restoration or permanent protection of other wetlands on the project site. No case could be found where an applicant simply paid for authorization to destroy almost an acre of high-quality wetlands and convert it to uplands.

76. The District should determine that the proposed mitigation is insufficient.



77. Land Trust's proposed project is not clearly in the public interest as required by section 373.414(1) and rule 62-330.302(1) because it would cause significant adverse cumulative effects on the conservation of fish and wildlife, fishing and recreational values, and marine productivity of Anna Maria Sound.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law set forth above, it is

RECOMMENDED that the Southwest Florida Water Management District issue a final order that denies the Environmental Resource Permit.

DONE AND ENTERED this 25th day of June, 2015, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
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Filed with the Clerk of the  
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this 25th day of June, 2015.

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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.