

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM B. SWAIM,

Petitioner,

vs.

Case No. 15-0001RU

SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT,

Respondent.

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FINAL ORDER OF DISMISSAL

This cause came before the Administrative Law Judge on Respondent's motion to dismiss. A response in opposition to the motion was filed by Petitioner.

The statement which Petitioner alleges is an unadopted rule is Respondent's interpretation of section 373.4136(6)(d)2. as not being applicable to Petitioner's proposed private driveway. The statute states that "linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports" are eligible to use a mitigation bank, regardless of whether they located within the mitigation service area. Petitioner believes his driveway should be considered a linear facility.

Respondent raises a number of grounds, not all of which appear to have merit, but this case can be determined without a discussion of all of the grounds raised. The case can be dismissed on the ground that the alleged statement is not a rule. The alleged statement is not a rule because it is consistent with the plain meaning of the statute. A statement of how a statute is applied that is consistent with the plain meaning of the statute does not require rulemaking. See State Bd. of Admin. v. Huberty, 46 So. 3d 1144, 1147 (Fla. 1st DCA 2010) citing St. Francis Hospital, Inc. v. Dep't. of Health & Rehab. Servs., 553 So. 2d 1351, 1354 (Fla 1st DCA 1989) (An agency interpretation of a statute that does not place upon the statute an interpretation that is not readily apparent is not an unpromulgated rule.). Such a statement does not have any effect

of its own on regulated persons. It is the statute that has the effect. The plain meaning of section 373.4136(6)(d)2. is that it is limited to long, public facilities. It clearly is not meant to include short, private facilities. Furthermore, a driveway is not a roadway. No rule is needed to tell a permit applicant that the statute does not apply to a private driveway.

The deficiency in the petition cannot be cured by amendment. Accordingly, it is

ORDERED that the motion is GRANTED and the petition is DISMISSED with prejudice.

DONE AND ORDERED this 16th day of February, 2015, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 16th day of February, 2015.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.