BEFORE THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Martin County and St. Lucie County,
Petitioners,

and

Town of St. Lucie Village,
Intervenor,

vs.

SFWMD No. 2017-084-FOF-ERP
DOAH Case Nos. 16-5718 & 17-2566

All Aboard Florida - Operations, LLC;
Florida East Coast Railway, LLC; and
South Florida Water Management District,

Respondents.
_____/

FINAL ORDER

On September 29, 2017, an administrative law judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), issued a Recommended Order to the South Florida Water Management District ("District") in this case. A copy of the Recommended Order is attached as Exhibit A. After review of the Recommended Order, exceptions and responses to exceptions filed by the parties, and the record of the proceeding before DOAH, this matter is now before the District for final agency action.

SUMMARY OF RECOMMENDED ORDER

The issue before the ALJ was whether All Aboard Florida - Operations, LLC and Florida East Coast Railway, LLC (collectively "Applicants") are entitled to the modification of an Environmental Resource Permit ("ERP") for construction and operation of a surface water management system to serve railway facilities, and an exemption verification

("2017 Exemption") for work to be done at 23 roadway crossings (collectively referred to as "the Project").

The ALJ concluded Petitioners, Martin County and St. Lucie County, ("Petitioners") and Intervenor, Town of St. Lucie Village, failed to meet their burden to prove the Project does not comply with all applicable permitting criteria. Applicants demonstrated compliance with all applicable permitting criteria and their entitlement to the ERP and 2017 Exemption. The ALJ recommended the District issue the ERP and 2017 Exemption.

STANDARD OF REVIEW FOR RECOMMENDED ORDERS

I. FINDINGS OF FACT

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2015); *Stokes v. Bd. of Prof'l Eng'rs*, 952 So. 2d 1224 (Fla. 1st DCA 2007); *see also Padron v. Dep't of Envtl. Prot.,* 143 So. 3d 1037, 1041 (Fla. 3d DCA 2014). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. *See Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

The ALJ's function in an administrative hearing is to consider all evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences

from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep't of Health,* 920 So. 2d 27, 30 (Fla. 1st DCA 2005) (citing *Aldrete v. Dep't of Health, Bd. of Medicine*, 879 So. 2d 1244, 1246 (Fla. 1st DCA 2004)). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991). These evidentiary-related matters are within the province of the ALJ, as the "fact-finder" in these administrative proceedings. *See, e.g., Tedder v. Fla. Parole Comm'n,* 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz*, 475 So. 2d at 1281.

It is the ALJ's function to draw permissible inferences from the evidence and make ultimate findings based thereon. An ultimate fact is a mixture of fact and law defined as "'[t]hose facts found in that vaguely defined field lying between evidential facts on the one side and the primary issue or conclusion of law on the other, being but the logical results of the proofs, or, in other words, mere conclusions of fact.'" *Tedder*, 697 So. 2d at 902 (*citing Black's Law Dictionary* 1365 (5th ed. 1979)). Ultimate findings of fact are necessary for proper review of administrative orders and are within the sole province of the ALJ to make. *Tedder,* 697 So. 2d at 903.

Agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are

not matters over which the agency has "substantive jurisdiction." *Heifetz*, 475 So. 2d at 1281. Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *Martuccio v. Dep't of Prof'l Regulation,* 622 So. 2d 607, 609 (Fla. 1st DCA 1993).

In addition, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.,* 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of Health & Rehabilitative Servs.*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985). An agency has no authority to make independent or supplemental findings of fact. *See, e.g.*, *City of North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994) ("The agency's scope of review of the facts is limited to ascertaining whether the hearing officer's factual findings are supported by competent substantial evidence."); *Manasota 88, Inc. v. Tremor*, 545 So. 2d 439, 441 (Fla. 2d DCA 1989) (*citing Friends of Children v. Dep't of Health & Rehabilitative Servs.*, 504 So. 2d 1345 (Fla. 1st DCA 1987) (a state agency reviewing an ALJ's proposed order has no authority to make independent and supplementary findings of fact to support conclusions of law in the agency final order).

II. CONCLUSIONS OF LAW

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." § 120.57(1)(l), Fla. Stat. (2015); *see also Barfield v. Dep't of Health, Bd. of Dentistry,* 805 So. 2d 1008 (Fla. 1st DCA 2001); *Deep Lagoon Boat Club,*

Ltd. v. Sheridan, 784 So. 2d 1140, 1143 (Fla. 2d DCA 2001). An agency's review of legal conclusions in a recommended order, are restricted to those that concern matters within the agency's field of expertise. *See, e.g., IMC Phosphates,* 18 So. 3d at 1089*; G.E.L. Corp. v. Dep't of Envtl. Prot.*, 875 So. 2d 1257, 1264 (Fla. 5th DCA 2004).

If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded and the item treated as though it were actually a conclusion of law. *See, e.g., Battaglia Properties v. Fla. Land & Water Adjudicatory Comm'n*, 629 So. 2d 161, 168 (Fla. 5th DCA 1993). However, an agency cannot label what is essentially an ultimate factual determination as a "conclusion of law" in order to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes*, 952 So. 2d at 1224.

An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *Pub. Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So. 2d 987, 989 (Fla. 1985); *see also Duke's Steakhouse Ft. Myers, Inc. v. G5 Props., LLC*, 106 So. 3d 12, 15 (Fla. 2d DCA 2013); *Fla. Audubon Soc'y v. Sugar Cane Growers Coop. of Fla.*, 171 So.3d 790 (Fla. 2d DCA 2015). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless "clearly erroneous." *Dep't of Envtl. Regulation v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985); *Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Envtl. Prot.,* 668 So. 2d 209, 212 (Fla. 1st DCA 1996). However, an agency is

prohibited from using the rejection or modification of a conclusion of law to form the basis for rejection or modification of findings of fact. § 120.57(1)(l), Fla. Stat. (2015).

Pursuant to Part IV of Chapter 373, Florida Statutes, and associated rules of the Florida Administrative Code, the District has the administrative authority and substantive expertise to exercise regulatory jurisdiction over the administration and enforcement of the ERP program. Therefore, the District has substantive jurisdiction over the ALJ's conclusions of law and interpretations of administrative rules, and is authorized to reject or modify the ALJ's conclusions or interpretations if it determines that its conclusions or interpretations are "as or more reasonable" than the conclusions or interpretations made by the ALJ.

RULINGS ON EXCEPTIONS

I. GENERALLY

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. *See, e.g., Comm'n on Ethics v. Barker,* 677 So. 2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing,* 954 So. 2d 77, 81 (Fla. 5th DCA 2007). If a party does not file exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Envtl. Coalition of Fla., Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Medical Ctr., Inc. v. State of Fla., Agency for Health Care Admin.,* 847 So. 2d 540, 542 (Fla. 4th DCA 2003).

In reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." § 120.57(1)(k), Fla. Stat. (2015). However, the agency need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

II. RULINGS ON PETITIONERS' EXCEPTIONS

Petitioners' Exceptions Generally

Petitioners raise seventeen exceptions to the Recommended Order. Some of the exceptions fail to comply with the requirements of Section 120.57(1)(k), Florida Statutes, because they either do not include a legal basis for the exception or do not clearly explain the disputed portion of the Recommended Order. Although the District is not required to include an explicit ruling on exceptions that do not comply with Section 120.57(1)(k), Florida Statutes, the District has tried to determine what Petitioners' exceptions are and, where possible, rule on each, despite their failure to comply with those statutory requirements. Additionally, in some instances Petitioners take exception to findings of fact to support their argument, but do not state that the finding is incorrect. Although this is an improper exception as to those findings of fact under Section 120.57(1)(k), Florida Administrative Code, in an abundance of caution, the District has explained its ruling why those findings of fact are supported by competent substantial evidence which is the standard of review for findings of fact.

Exception 1
(Findings of Fact 20, 21, 22, and 23; Conclusions of Law 134 and 135)

In Exception 1 Petitioners maintain that the District cannot segment its review and consider each authorization independently. Applicants submitted and the District approved four items: 1) an ERP Modification, 2) a 2017 Exemption, 3) a 2015 General Permit, and 4) a 2013 Exemption. Petitioners argue that:

- Applicant's Handbook section 1.5.2 requires Applicants to submit a master plan and get conceptual approval for all activities together in one agency action and Applicants did not do that.
- If Applicants do not get conceptual approval of a master plan then Applicants must show the Project can be constructed, operated, and maintained totally independent of future phases and there is no competent substantial evidence they can be.
- The activities authorized by the ERP, exemptions, General Permit and other future District authorizations constitute separate phases and cannot be constructed, operated, and maintained separately from each other.
- The District's failure to review all activities together undermined a complete evaluation of the impacts of the Project, and specifically the analysis of cumulative impacts.

The parties stipulated that the proceeding involves Segment D09 which is part of Phase II of the train system from West Palm Beach to Orlando. Jt. Prehrg. Stip. at pg. 16, ¶12; FOF 11. Therefore, each of the authorizations are part of the same phase. The ALJ agreed with the District's interpretation of section 1.5.2 of the Applicant's Handbook that it does not prohibit separate review of related activities. The District has the primary

responsibility to interpret the statutes and rules within its regulatory expertise and jurisdiction. *Duke's Steakhouse*, 106 So. 3d at 15 (finding the District properly construed the statutes, rules and criteria it is charged with implementing in rejecting an ALJ's contrary conclusion of law) (citing *Pub. Emps.*, 467 So. 2d at 989), and Petitioners have failed to demonstrate the District's interpretation is clearly erroneous. *Goldring*, 477 So. 2d at 534.

Furthermore, Petitioners do not dispute the following parts of the findings of fact and conclusions of law included in their exception.

1. Finding of Fact 20 and the part of Finding of Fact 21 which describes Petitioner's argument alleging improper segmentation;
2. That part of Finding of Fact 21 where the ALJ describes the requirements of section 1.5.2 of the Applicant's Handbook;
3. The statement in Finding of Fact 23 that portions of Phase II are outside the District's boundaries and therefore cannot be regulated by the District. (Petitioners conceded that the All Aboard Project extends from Miami to Cocoa Beach and then from Cocoa Beach to Orlando because they did not take exception to Findings of Fact 10 and 11 which set forth this information. (*See also,* § 373.069(2)(e), Fla. Stat.));
4. That part of Conclusion of Law 135 which identifies the authority under which the 2013 Exemption and the 2015 General Permit were issued. (Petitioners did not challenge Findings of Fact 14 and 15 and therefore have conceded the correctness of these findings that describe the authority under which the 2013 and 2015 authorizations were issued).

Therefore, Petitioners' exception to these portions of the contested findings and conclusions is improper because they failed to provide any legal basis for the exception. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra.

The ERP, 2013 Exemption, 2015 General Permit, and 2017 Exemption authorized activities for parts of Phase II. Because these authorizations were not themselves separate phases of the Project, section 1.5.2 does not require Applicants to prove they can be operated, constructed, and maintained totally independent of future phases. The District's rules and criteria allow exemptions and general permits within a phase of a project when the proposed activities meet the criteria associated with an exemption or general permit. The District did not require the cumulative impacts analysis for the ERP to include impacts from the exemptions and general permit because the District determined that the activities covered by the exemptions and general permit have minimal or insignificant individual or cumulative adverse impacts on the water resources. Petitioners did not take exception to Findings of Fact 14, 15, and 76 that found the 2013 Exemption and 2015 General Permit were based on determinations they would have minimal or insignificant adverse impacts on water resources. Therefore, Petitioners have conceded the correctness of these findings and cannot now argue a contrary position.

Where there is competent substantial evidence to support a finding of fact, the District may not disturb it. *See* Standard of Review section, supra.

Finding of Fact 20 is supported by competent substantial evidence. Jt. Prhrg. Stip. at pg. 3; TR. 360:17-23, 403:5-408:8, 410:19-411:10, 447:9-450:5. Finding of Fact 21 is supported by competent substantial evidence. Jt. Prhrg. Stip. at pg. 16, ¶¶12, 13, 16, pg. 17 ¶24; TR. 359:12-360:23, 1881:21-1882:1. Finding of Fact 22 is supported by

competent substantial evidence. TR. 2206:19-2207:9. Finding of Fact 23 is supported by competent substantial evidence. TR. 594:9-596:10.

Conclusions of Law 135 and 136 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 1 is denied.

Exception 2
(Findings of Fact 34, 35, 36, 37, 38, and 39; Conclusions of Law 138 and 139)

In Exception 2 Petitioners argue that the ALJ was wrong in his determinations that the Project will not cause adverse impacts related to water quantity, flooding, or surface water storage and conveyance. Petitioners contend that the record does not contain calculations required to demonstrate a lack of impacts offsite or site specific conditions at the discharge points. However, both the Applicants' and the District's experts testified on this point and the ALJ credited their testimony over Petitioners' expert.

Petitioners do not dispute the ALJ's description of their argument regarding the alleged absence of calculations or the District's criteria regarding water quantity impacts set forth in Findings of Fact 34, 35, and 36 and Conclusion of Law 138.

The District cannot reweigh the evidence or judge the credibility of the witnesses. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Finding of Fact 34 is supported by competent substantial evidence. Rule 62-330.301(1)(a), (b), and (c), Fla. Admin. Code; Petitioners' Proposed Rec. Order ¶116. Finding of Fact 35 is supported by competent substantial evidence. Jt. Exh. 25 at pg. 3 of 17; §§3.3 and 3.3.1, Applicant's Handbook Vol. II; TR. 944:17-945:22, 2270:17-20, 2272:8-2273:2, 2335:17-24, 2352:1-12. Finding of Fact 36 is supported by competent

substantial evidence. Petitioners' Proposed Rec. Order ¶56; TR. 898:20-906:17. Finding of Fact 37 is supported by competent substantial evidence. TR. 2051:7-19, 2066:24-2068:24, 2274:13-2277:18. Finding of Fact 38 is supported by competent substantial evidence. Petitioners' Proposed Rec. Order ¶58; TR. 2071:21-2073:6, 2364:25-2365:24. Finding of Fact 39 is supported by competent substantial evidence. TR. 903:4-12, 2049:25-2050:12, 2075:24-2078:22, 2272:8-2274:12, 2352:13-2365:24.

Conclusions of Law 138 and 139 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 2 is denied.

Exception 3
(Findings of Fact 69, 70, 71, 75, and 77[1]; Conclusions of Law 143, 144, and 145)

In Exception 3 Petitioners dispute portions of the Recommended Order concerning secondary impacts of the Project. Petitioners state that their experts testified that wetland-dependent, endangered, threatened wildlife species and species of special concern were observed in the area of the Project and that testimony was unrebutted. Petitioners also argue there is no competent substantial evidence that species are adapted to higher speed and more frequent trains.

However, the "area" addressed in Petitioners' expert testimony is the State Parks in general, and not just the railway corridor or adjacent to the corridor. Nonetheless, the ALJ weighed the testimony of the parties' witnesses and credited the testimony of Applicants' and District's witnesses over Petitioners' on these two points. The District

[1] Petitioners quote Finding of Fact 107 in this exception but do not reference it within the discussion of the exception. Nonetheless, the ruling on this exception includes Finding of Fact 107 in an abundance of caution

cannot reweigh the evidence or judge the credibility of the witnesses. *See* Standard of Review section, supra.

Petitioners discuss at length the potential impacts to the gopher tortoise. However, they did not take exception to Finding of Fact 72 that, notwithstanding that the gopher tortoise is not aquatic or wetland-dependent as required by the District's criteria, the impacts to the species would be insignificant. Therefore, Petitioners have conceded the correctness of this finding and cannot now argue a contrary position.

In addition, Petitioners do not dispute Finding of Fact 69 and Conclusions of Law 143 and 144 that state the District's criteria on these issues. Therefore, Petitioners' exception to these contested findings and conclusions is improper because they failed to provide any legal basis for the exception to those portions of the Recommended Order. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra.

Finding of Fact 69 is supported by competent substantial evidence. §10.2.7, Applicant's Handbook Vol. I. Finding of Fact 70 is supported by competent substantial evidence. Jt. Prhrg. Stip. at pg. 15, ¶8; Jt. Exh. 25 at pg. 4 of 17; TR. 2130:11-2131:12, 2207:10-2212:1. Finding of Fact 71 is supported by competent substantial evidence. Jt. Exh. 25 at pg. 7 of 17, Jt. Exh. 9 at pgs. 7, 13-15, and 17 of 560; TR. 345:13-17, 362:19-364:7, 612:9-613:12, 617:22-24, 623:6-625:10, 2124:3-2126:6, 2130:11-2131:12, 2158:7-17, 2211:7-2212:1. Finding of Fact 75 is supported by competent substantial evidence. TR. 2208:21-2209:7. Finding of Fact 77 is supported by competent substantial evidence. Jt. Exh. 25 at pg. 7 of 17, Jt. Exh. 9 at pgs. 7, 13-15, and 17 of 560; TR. 2125:3-2131:12, 2158:7-23, 2207:10-2212:1. Finding of Fact 107 is supported by competent

substantial evidence. Petitioners' Exh. 157 82:21-25; TR. 2111:17-2113:8, 2140:15-2141:8.

Conclusions of Law 143, 144, and 145 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 3 is denied.

Exception 4
(Findings of Fact 78 and 79; Conclusions of Law 146, 147, and 148)

In Exception 4 Petitioners dispute that the Project complied with the criteria for the elimination and reduction of adverse impacts to wetlands and other surface water functions. Petitioners contend that 1) Applicants failed to consider practicable design modifications, specifically alternative alignments outside the existing rail corridor and 2) the "opt out" provision is not applicable to the Project because Applicants have not mitigated for potential impacts from work at the St. Lucie River Bridge.

First, Petitioners did not take exception to Findings of Fact 80 and 81 which found Applicants implemented certain practicable design modifications even though they were not required to do so because the Project qualified under both criteria for the "opt out" provision. Therefore, Petitioners have conceded the correctness of these findings and cannot now argue a contrary position.

Next, Petitioners' argue that the Project does not qualify for the "opt out" provision because the St. Lucie River Bridge impacts were not mitigated. Their argument is flawed because this application does not include proposed work at the St. Lucie River Bridge. TR. 1944:21-1945:13, 1988:18-22, 2213:20-22. The District cannot consider impacts for works not included in the ERP application.

Finally, Petitioners argue that Applicants were required to consider alternative alignments outside the existing rail corridor. However, because the Project met the "opt out" criteria Applicants did not have to implement any design modifications to reduce or eliminate impacts to wetlands and other surface water functions including alternative alignments, whether inside or outside the rail corridor. In essence, Petitioners' exception reargues their position on this issue and requests the District to reweigh the evidence and make additional findings which the District may not do. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Petitioners' exception to Finding of Fact 78 and Conclusion of Law 146 is improper because they failed to provide any legal basis for the exception to these paragraphs. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra. Nevertheless, Finding of Fact 78 and Conclusion of Law 146 are accurate statements of the District's requirements to implement practicable design modifications and the "opt out" provision and Petitioners do not expressly dispute that.

Finding of Fact 78 is supported by competent substantial evidence. §10.2.1.1, Applicant's Handbook Vol. I. Finding of Fact 79 is supported by competent substantial evidence. Petitioners' Proposed Rec. Order ¶¶101,102, and 126; Jt. Prhrg. Stip. at pg. 35 ¶¶84 and 85; TR. 309:20-24, 2185:5-2186:4.

Conclusions of Law 146, 147, and 148 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 4 is denied.

Exception 5
(Findings of Fact 85, 86, and 87; Conclusions of Law 149 and 150)

In Exception 5 Petitioners dispute portions of the Recommended Order concerning mitigation for the Project. Petitioners contend that Applicants agreed at the final hearing to provide 0.29 additional freshwater herbaceous mitigation credits from the Bluefield Ranch Mitigation Bank. Petitioners argue that the ALJ determined that the mitigation was adequate because of these additional credits and therefore a permit condition should be added to require them.

Petitioners are mistaken. The 0.29 mitigation credits were included in the Proposed Corrected Amended Staff Report as part of the mitigation evaluated during the permitting process and have already been purchased. Jt. Exh. 25 at pg. 5 of 17, Jt. Exh. 14 at pg. 7. Therefore, the credits are already part of the permit under consideration and no additional permit condition is needed.

Petitioners' exception to Findings of Fact 85, 86, and 87 is improper because their exception does not dispute these findings. Their only issue, as explained above, is to require a permit condition. Petitioners' exception to Conclusions of Law 149 and 150 is improper because they failed to provide any legal basis for the exception to these conclusions. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra. Nevertheless, Conclusion of Law 149 is an accurate statement of the District's mitigation requirements and Petitioners do not expressly dispute that. Petitioners' exception to Conclusion of Law 150 is improper because their exception does not dispute the adequacy of the mitigation.

Finding of Fact 85 is supported by competent substantial evidence. Jt. Exh. 25 at pg. 5 of 17, Jt. Exh. 14 at pg. 7. Finding of Fact 86 is supported by competent substantial

evidence. Jt. Exh. 15 at pg. 4, Applicants' Exh. 157 at pgs. 82:20-84:23. Finding of Fact 87 is supported by competent substantial evidence. Jt. Exh. 25 at pgs. 4 and 5 of 17; TR. 345:18-346:16, 2114:24-2115:9, 2124:3-2125:2, 2127:10-2128:5, 2135:21-2136:14, 2140:15-2141:8.

Conclusions of Law 149 and 150 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 5 is denied.

Exception 6
(Findings of Fact 108, 109, 110, 111, and 116; Conclusion of Law 166)

In Exception 6 Petitioners dispute the ALJ's determinations regarding the third public interest factor concerning navigation, the flow of water, and harmful erosion or shoaling.

Petitioners claim that the Project will increase bridge closures resulting in 1) more boat traffic churning up the river and causing adverse impacts to aquatic life and marine habitats and 2) impeding navigability in crossing under the St. Lucie River Bridge. Petitioners argue that more trains necessarily mean an additional hazard to the boating public. The ALJ found however that, "Evidence regarding hazards of boaters waiting for passage of freight trains was anecdotal and speculative as to the expected increase in the hazard if shorter and faster passenger trains are added." FOF 106. Petitioners did not take exception to Finding of Fact 106, but they mischaracterize portions of it to support this exception. Petitioners have conceded the correctness of Finding of Fact 106 and cannot now argue a contrary position.

Petitioners contend that because the ALJ was not persuaded by their argument that more bridge closings would necessarily increase boat traffic and cause harmful

erosion or shoaling or adversely affect the flow of water that there was no competent substantial evidence to support the ALJ's Finding of Fact 111. Finding of Fact 111 is supported by competent substantial evidence. Jt. Exh. 19 at pgs. 4 and 5; TR. 2078:15-2079:11, 2274:08-12. Petitioners are asking the District to reweigh the expert testimony on this subject which it cannot do. That is within the sole province of the ALJ as the fact-finder. *See*, Standard of Review section, supra.

In addition, Petitioners challenge Findings of Fact 108 and 109 regarding the Coast Guard's authority to regulate the opening and closing of moveable bridges and the review of the bridges for the Project. Petitioners do not dispute the Coast Guard's authority to regulate bridge operations. Rather, Petitioners argue there is "absolutely no evidence" of the Coast Guard's review of the Project bridges or the status of such a review. However, these findings are supported by competent substantial evidence. Jt. Prhrg. Stip. at pgs. 38-40 ¶¶116-118 and 128; Petitioners' Proposed Rec. Order ¶¶76-88 and 124; Jt. Exh. 19 at pg. 4; TR. 1414:14-1415:5, 1416:4-11, 1423:22-1424:18, 1610:24-1612:10, 1613:12-1615:20, 1640:20-1641:1, 1946:11-1949:23, 2212:20-22.

Petitioners take exception to Finding of Fact 116 and Conclusion of Law 166 that the Project is not contrary to the public interest even if Petitioners' non-environmental issues are considered. This finding of fact is supported by competent substantial evidence and the conclusion of law is consistent with the facts and the District's interpretation of its rules and criteria.

Petitioners do not dispute Finding of Fact 110 rejecting Petitioners' argument that section 10.2.3.3 of the Applicant's Handbook applies to the train bridges. Therefore, Petitioners' exception is improper because they failed to provide any legal basis for the

exception to this finding. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra. Nevertheless, Finding of Fact 110 is a correct characterization of Petitioners' argument and the District's criteria and is supported by competent substantial evidence. Petitioners' Proposed Rec. Order at ¶¶89 and 124; §10.2.3.3 Applicant's Handbook Vol. I; TR. 2213:23-2214:2.

Petitioners also want the District to impose permit conditions to "address expected adverse impacts to marine resources, recreation, and navigation [sic] (including impacts [to] navigational safety and navigational impacts such as significantly increased wait times which impede navigability in crossing un the St. Lucie River Bridge)." For the reasons stated above, such conditions are not appropriate.

Finding of Fact 116 is supported by competent substantial evidence. Jt. Exh. 19, Jt. Exh. 25 at pg. 8 of 17; TR. 2215:25-2219:19.

Conclusion of Law 166 is consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 6 is denied.

Exception 7
(Finding of Fact 118; Conclusions of Law 167 and 168)

In Exception 7 Petitioners dispute that Applicants demonstrated sufficient real property interests for the Project, specifically for the St. Lucie River Bridge. As part of their application, Applicants submitted a 2012 letter from Florida Department of Environmental Protection ("FDEP") stating that consent is provided under Florida law and no additional proprietary authorization is required. Jt. Exh. 18 at pg. 1. Petitioners contend that Applicants do not have sufficient real property interests because a 2014 letter to

Martin County stating that there is no record of an easement for the St. Lucie River Bridge supersedes the 2012 FDEP letter.

None of that matters because the ERP application does not include work at the St. Lucie River Bridge. TR. 1944:21-1945:13; 1988:18-22; 2213:20-22. Therefore, Applicants are not required to demonstrate a real property interest in that area. In addition, there is nothing in the record to support Petitioners' contention that FDEP's first letter to Applicants has been superseded or that Applicants must obtain an easement from FDEP. The District cannot reweigh the evidence or judge the credibility of the witnesses. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Finding of Fact 118 is supported by competent substantial evidence. Jt. Exh. 25 at pg. 8 of 17, Jt. Exh. 18; TR. 2016:6-11.

Conclusions of Law 167 and 168 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 7 is denied.

Exception 8
(Findings of Fact 120 and 121; Conclusions of Law 169 and 170)

In Exception 8 Petitioners complain that the ALJ completely ignored their analysis that Applicants were not entitled to the 2017 Exemption for minor roadway safety construction and road resurfacing and grading under rules 62-330.051(4)(c) and (4)(d). Petitioners argue that Applicants do not qualify for the exemptions because they propose to install additional rails. Petitioners' argument is not supported by the record. In fact, Petitioners did not take exception to Findings of Fact 18 and 19 where the ALJ explained that the new track work is covered in the ERP Modification (not the 2017 Exemption).

Therefore, Petitioners have conceded the correctness of these findings and cannot now argue a contrary position. District staff testimony supports the ALJ's findings. TR. 2282:6-2283:11.

Petitioners also argue that Applicants do not qualify for an exemption for recreational paths under rule 62-330.051(10) because Applicants are not proposing any of the activities listed in the exemption. However, Joint Exhibit 24, the 2017 Exemption Determination Package, includes a multi-use trail. Jt. Exh. 24 at Application Exhibit 3 pgs. 32 and 34 of 54. In addition, District staff testified the exemption applies. TR. 2283:2-5.

Petitioners' exception does not dispute Finding of Fact 120. Petitioners acknowledge that Applicants claimed the District determined that certain activities were exempt as described in Finding of Fact 120, they just disagree with the District's determination. Therefore, Petitioners' exception to this finding is improper because they failed to provide any legal basis for the exception. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra.

Petitioners only dispute the last sentence of Conclusion of Law 169 and not the remainder of it. Therefore, the exception to those parts of Conclusion of Law 169 is improper because it does not provide any legal basis for the exception. *See*, Standard of Review and Petitioners' Exceptions Generally sections, supra.

In summary, the ALJ did not ignore Petitioners' argument but rather found that it was unpersuasive. The District may not reweigh evidence presented at a DOAH final hearing. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Finding of Fact 120 is supported by competent substantial evidence. §5.5.3.4 Applicant's Handbook Vol. I, rule 62-330.051(4)(c), (4)4(d), and (10); Jt. Exh. 25 at page 2 of 17, Jt. Exh. 24; TR.2282:6-2283:11. Finding of Fact 121 is supported by competent substantial evidence. Jt. Exh. 25 at page 2 of 17, Jt. Exh. 24; TR. 1860:8-19, 1981:13-25, 2089:7-12, 2143:23-2144:12, 2282:6-2283:11.

Conclusions of Law 169 and 170 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 8 is denied.

Exception 9
(Finding of Fact 10)

In Exception 9 Petitioners take exception to Finding of Fact 10 because they argue the ALJ relied on Applicants commitment to install Positive Train Control systems (providing remote operation) in determining that the Applicant met the public interest test, but the ALJ's ultimate recommendation does not require it as a permit condition.

This Finding of Fact is contained in the "Background" section of the Recommended Order and substantively conforms with admitted facts in the Joint Prehearing Stipulation. Jt. Prhrg. Stip. at pg. 15, ¶11. Petitioners do not dispute the content of Finding of Fact 10, but rather challenge what they contend the ALJ relied upon when he determined the Project met the first factor of the public interest test. However, the ALJ clearly determined this was a non-environmental factor that could not be considered relative to the first factor of the public interest test. FOF 100, COL 165. Nonetheless, the ALJ chose to briefly address the non-environmental issues raised by Petitioners through evidence at the final hearing, including Positive Train Control. *Id.*, FOF 102, COL 154. It is evident the ALJ

correctly limited his analysis of the public interest test to environmental factors. FOFs 99, 100, 116; COLs 158, 165, 166.

Petitioners did not take exception to Findings of Fact 99 and 100 and therefore have conceded the correctness of these findings limiting the first factor of the public interest test to environmental factors and cannot now argue a contrary position. Petitioners also did not take exception to Conclusion of Law 158 that the District's criteria clearly evidence the District's interpretation that factor 1 of the public interest test is limited to environmental issues. Therefore, Petitioners have conceded the correctness of this conclusion.

Petitioners' suggestion to add a permit condition to require installation of Positive Train Controls seeks to interject matters into the ERP program it is not designed to address. The District does not have regulatory authority over train safety. Finding of Fact 101 found the Federal Railroad Administration has the responsibility for train safety and Petitioners did not take exception to that finding. Therefore, Petitioners have conceded the correctness of this finding and cannot now argue a contrary position.

Finding of Fact 10 is supported by competent substantial evidence. Jt. Prhrg Stip. at pg. 15, ¶11; Jt. Exh. 25 at pg. 2 of 17; TR 1934:20-1937:7.

Therefore, Petitioners' Exception 9 is denied.

Exception 10
(Finding of Fact 33)

In Exception 10 Petitioners contend that 1) unconnected emergency access ways must be connected to be useful and 2) Applicants are likely to unlawfully use unpermitted connections thereby creating the potential for impacts. Petitioners do not argue that there

is any District rule requiring that access ways must be connected and they are speculating about Applicants' future plans to use unpermitted connections.

Petitioners' exception does not actually dispute the challenged finding of fact. Petitioners acknowledge that the access ways are not presently continuous or proposed to be continuous. Instead they argue there is no competent substantial evidence of the access ways' usefulness or purpose. Petitioners did not take exception to Finding of Fact 30 that found the access way is a private dirt road for railroad-related vehicles and sometimes used for maintenance activities. Therefore, Petitioners have conceded the correctness of this finding and cannot now argue a contrary position.

Petitioners' exception asks the District to make additional findings of fact and reweigh the evidence which the District cannot do. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Finding of Fact 33 is supported by competent substantial evidence. TR. 306:10-14, 1199:9-18, 1917:2-1918:24.

Therefore, Petitioners' Exception 10 is denied.

Exception 11
(Findings of Fact 48 and 49)

In Exception 11 Petitioners complain that the ALJ did not address the issue they raised about water quality impacts from construction of access ways.

Petitioners do not actually dispute Finding of Fact 48 which 1) describes Petitioners' expert witness testimony on the effect of compaction of previously undisturbed soils in the access ways and 2) explains that the ALJ found Petitioners' expert unpersuasive because he did not calculate pre- and post-construction infiltration rates to prove his point.

Finding of Fact 49 is an ultimate fact based upon the prior Findings of Fact 40 through 48 which address water quality impacts of the Project and finds the Project complies with the District's criteria and will not cause water quality violations and Petitioners failed to meet their burden of proof to prove otherwise.

Petitioners' exception simply asks the District to reweigh the evidence presented and make additional findings of fact which it cannot do. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Finding of Fact 48 is supported by competent substantial evidence. TR. 1158:19-1161:3, 1174:24-1175:14, 1176:5-13, 1189:1-1193:1. Finding of Fact 49 is supported by competent substantial evidence. FOFs 40, 41, 42, 43, 44, 45, 46, 47, and 48; Jt. Exh. 25 at pgs. 3 and 4 of 17; TR. 2049:7-2050:7, 2270:17-2271:15, 2272:17-2273:2, 2279:15-2280:15, 2324:13-2326:6.

Therefore, Petitioners' Exception 11 is denied.

Exception 12
(Finding of Fact 104)

In Exception 12 Petitioners dispute that train service would cease when a hurricane is approaching. Petitioners contend the ALJ relied on this unsupported finding as part of the analysis of the first factor of the public interest test related to public health, safety, and welfare, and therefore it should be made a permit condition. Petitioners also argue that at the hearing Applicants' counsel assured closer coordination between Petitioners and the Florida East Coast Railway during emergencies and therefore a permit condition requiring that coordination should be added.

The ALJ did not make any findings regarding Petitioners' argument for closer coordination between Petitioners and the Florida East Coast Railway. Petitioners are thus

requesting the District to make additional findings of fact, which the District has no authority to do. The District may not reweigh evidence presented at a DOAH final hearing. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra.

Petitioners' suggestion to add these permit conditions seeks to interject matters into the ERP program it is not designed to address. The District does not have regulatory authority over train operations and therefore cannot add a permit condition about it.

Finding of Fact 104 is supported by competent substantial evidence. TR. 1786:2-1788:1, 1796:13-18, 1799:5-8, 1854:8-1855:18.

Therefore, Petitioners' Exception 12 is denied.

Exception 13
(Finding of Fact 105)

In Exception 13 Petitioners contend that the ALJ's statement that Applicants do not propose or want to stage trains at the bridges is not supported by competent substantial evidence yet the ALJ relied on that premise in determining that Applicants met the public interest test. This finding of fact is supported by competent substantial evidence and the District is not entitled to reweigh it. Petitioners' Proposed Rec. Order ¶¶88 and 128; Jt. Prhrg. Stip. at pg. 40 ¶127; TR. 1940:3-1941:10, 1957:20-1960:17. The ALJ stated that he did not rely on any non-environmental factors in making his determination on the public interest test. FOF 100; COL 165.

Petitioners also want the District to impose a permit condition to prohibit train staging at the bridges. The District does not have regulatory authority over train operations or safety. Finding of Fact 101 found the Federal Railroad Administration has the responsibility for train safety and Petitioners did not take exception to that finding.

Therefore, Petitioners have conceded the correctness of this finding and cannot now argue a contrary position.

Therefore, Petitioners' Exception 13 is denied.

Exception 14
(Conclusion of Law 168)

In Exception 14 Petitioners dispute the ALJ's conclusion that Applicants are entitled to the ERP. Petitioners argue that based upon all of their arguments in all preceding exceptions, the District must deny the ERP.

Contrary to Petitioners' assertion, Conclusion of Law 168 is consistent with the District's interpretation of its rules and criteria and the findings of fact regarding issuance of the ERP. Those findings of fact are supported by competent substantial evidence, as explained in the rulings denying Petitioners' preceding exceptions. The rulings on the preceding exceptions are incorporated in response to this exception.

Therefore, Petitioners' Exception 14 is denied.

Exception 15
(Conclusion of Law 170)

In Exception 15 Petitioners dispute the ALJ's conclusion that Applicants are entitled to the 2017 Exemption. Petitioners argue that based upon all of their arguments in all preceding exceptions concerning the 2017 Exemption, the District must deny the 2017 Exemption.

Contrary to Petitioners' assertion, Conclusion of Law 170 is consistent with the District's interpretation of its rules and criteria and the findings of fact regarding entitlement to the 2017 Exemption. Those findings of fact are supported by competent substantial evidence, as explained in the rulings denying Petitioners' preceding

exceptions. The rulings on the preceding exceptions are incorporated in response to this exception.

Therefore, Petitioners' Exception 15 is denied.

Exception 16
(Conclusion of Law 153)

In Exception 16 Petitioners contend that construction and operation of new rails is a "regulated activity" and should be considered under the public interest test. Petitioners take issue with the ALJ's Conclusion of Law 153 that the "regulated activities" consist of the construction and operation of a stormwater management system and certain culvert and bridge modifications. "Regulated activity" is defined in section 2.1 of the Applicant's Handbook Volume II and the ALJ's conclusion is consistent with that definition. The District does not consider train operations a regulated activity that is within the scope of its ERP review.

Conclusion of Law 153 is consistent with the District's interpretation of its rules and permit criteria

Therefore, Petitioners' Exception 16 is denied.

Exception 17
(Findings of Fact 42 and 43;
Conclusions of Law 152, 156, 157, 159, 160, 161,162, 163, and 165)

In Exception 17 Petitioners take issue with the ALJ's rulings on 1) whether the Project must be shown to be "clearly in" the public interest and 2) the scope of the factors that may be considered under the public interest test.

Petitioners first contend that the Project will directly discharge to an Outstanding Florida Water ("OFW") and therefore Applicants must show that the Project is "clearly in"

the public interest. The ALJ found that the proposed activity will not discharge to either impaired waters or OFWs so it does not have to be "clearly in" the public interest, and only needs to meet the "not contrary to" the public interest test. FOF 97. Petitioners did not take exception to Finding of Fact 97. Petitioners also did not take exception to the ALJ's Conclusions of Law 140, 141, and 142 that the Project complies with all applicable District requirements to protect water quality, including the anti-degradation standards and special standards for OFWs. Therefore, Petitioners concede these findings and conclusions and cannot now argue a contrary position. Petitioners are asking the District to reweigh the evidence ruled on by the ALJ and make a contrary finding of fact which the District cannot do. That is within the sole province of the ALJ as the fact-finder. *See* Standard of Review section, supra. Findings of Fact 42 and 43 are supported by competent substantial evidence. TR. 2087:12-2088:2, 2277:23-2282:5.

Second, Petitioners assert that the District should look at non-environmental factors when considering the public interest test. Petitioners take exception to the ALJ's Conclusions of Law 156, 157, 159-163, and 165, where the ALJ explained the statutory scheme setting forth the public interest test as well as appellate case law, DOAH Orders, and a Florida Senate report, primarily describing the scope of what the agency may consider for the first public interest factor addressing public health, safety, and welfare. Petitioners contend there are two different tests and that the controlling test in this case is contained in the anti-degradation rules, rules 62-4.242 and 62-302.300, which allow consideration of non-environmental issues. Petitioners also state that 1) previous District Orders contain examples of non-environmental considerations and 2) the case law cited by the ALJ stating that the District cannot consider non-environmental factors is

distinguishable from this case. None of that matters because the ALJ determined in Conclusion of Law 166 that even if Petitioners' non-environmental factors are considered the Project is not contrary to the public interest.

Finally, Petitioners also adopt and incorporate their Exception 16 in this exception. Therefore, the ruling on Exception 16 is incorporated in response to this exception.

Conclusions of Law 152, 156, 157, 159, 160, 161,162, 163, and 165 are consistent with the ALJ's findings of fact and consistent with the District's interpretation of its rules and permit criteria.

Therefore, Petitioners' Exception 17 is denied.

RULING ON REQUEST FOR ORAL ARGUMENT

Petitioners requested oral argument. All parties have had an opportunity to file written exceptions and responses. Petitioners filed 47 pages of exceptions and challenged 63 paragraphs of the Recommended Order. It does not appear that oral argument is necessary to clarify issues in this case. Therefore, the request for oral argument is denied.

ORDER

Having reviewed the Recommended Order, the exceptions and responses to exceptions, and the record of the proceeding before DOAH, and having considered the applicable law and being otherwise duly advised, it is ORDERED that:

A. Petitioners' exceptions are denied for the reasons set forth above.

B. The Recommended Order (Exhibit A) is adopted in its entirety, and incorporated herein by reference.

C. Issuance of ERP Modification No. 13-05321-P to Applicants on the terms

and conditions set forth in the Staff Report, as modified in the District's Corrected Proposed Amended Staff Report dated May 11, 2017, and the complete Application for the Permit, is approved.

D. The Exemption Determination dated March 31, 2017 is approved.

E. Petitioners' request for oral argument is denied.

F. A Notice of Rights is attached as Exhibit B.

Pursuant to Section 373.079(4)(a), Florida Statutes, the Governing Board delegated to the Executive Director its authority to take final action on permit applications under Part IV of Chapter 373.

DONE AND ORDERED this 16th day of November 2017, in West Palm Beach, Florida.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

Ernie Marks, Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 16th day of November 2017, to all counsel of record listed below.

SERVICE LIST

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NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.