

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FRIENDS OF FORT GEORGE, INC., et al., )  
)  
    Petitioners, )  
)  
and )  
)  
LOGAN DIVING, INC., )  
SOUTHEASTERN FISHERIES ASSOCIATION, INC., )  
THE FLORIDA AUDUBON SOCIETY, )  
THE DUVAL AUDUBON SOCIETY, and )  
FLORIDA WILDLIFE FEDERATION, )  
)  
    Intervenors, )  
)  
vs. )      Case No. 85-3537  
)  
FAIRFIELD COMMUNITIES, INC. and )  
ST. JOHN RIVER WATER MANAGEMENT DISTRICT, )  
)  
    Respondents. )  

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THE FLORIDA AUDUBON SOCIETY and )  
THE DUVAL AUDUBON SOCIETY, )  
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    Intervenors, )  
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vs. )      Case No. 85-3596  
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FAIRFIELD COMMUNITIES, INC. and )  
ST. JOHNS RIVER MANAGEMENT DISTRICT, )  
)  
    Respondents. )  

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RECOMMENDED ORDER

A final hearing was held in the above-styled consolidated cases before Donald D. Conn, a duly designated Hearing Officer of the Division of Administrative Hearings, in Jacksonville, Florida, on April 9-11 and May 19-23, 1986, and in Tallahassee, Florida on June 9, July 21-24 and August 4-6, 1986.

APPEARANCES

The parties were represented as follows:

- For Petitioners: Segundo J. Fernandez, Esquire  
Terry Cole, Esquire  
Douglas P. Manson, Esquire  
Post Office Box 6507  
Tallahassee, Florida 32314  
(Friends of Fort George, Inc.,  
et al., Logan Diving, Inc.  
and Southeastern  
Fisheries Association, Inc.)
- For Intervenors: Charles Lee  
Senior Vice President  
Florida Audubon Society  
1101 Audubon Way  
Maitland, Florida 32751  
(The Florida Audubon Society  
and Duval Audubon Society)
- For Intervenor: J. Stephen O'Hara, Jr., Esquire  
1500 American Heritage Life Building  
Jacksonville, Florida 32202  
(Florida Wildlife Federation)
- For Respondent: Thomas G. Pelham, Esquire  
William L. Hyde, Esquire  
Post Office Drawer 11300  
Tallahassee, Florida 32302  
(Fairfield Communities, Inc.)
- For Respondent: Kathryn L. Mennella, Esquire  
Post Office Box 1429  
Palatka, Florida 32078  
(St. Johns River  
Water Management District)

At the hearing, the parties called a total of 37 witnesses during their cases-in-chief and nine rebuttal witnesses. Including composite exhibits, Petitioners and Intervenors introduced a total of 26 exhibits, Respondent Fairfield Communities introduced a total of 71 exhibits, and the St. Johns River Water Management District introduced 11 separate exhibits in addition to adopting 22 exhibits introduced by Fairfield. The transcript of the hearing consists of 28 volumes and the last volume of the transcript was filed on August 14, 1986. The parties were allowed to submit posthearing proposed findings of fact, conclusions of law and recommended orders by August 29, 1986, and a ruling on each proposed finding of fact is included in the Appendix to this Recommended Order.

### Nature of the Controversy

Case Number 85-3537 involves a third-party challenge by Petitioner, Friends of Fort George, Inc., et al., to the District's proposed issuance of a conceptual approval with conditions for the surface water management system of a development which includes residential units, commercial space, and a 27-hole golf course on Fort George Island, Duval County, Florida. Petitioners and Intervenors, Southeastern Fisheries, Logan Diving, and Florida Wildlife Federation, assert that Fairfield Communities, Inc., as the permit applicant, bears the burden of proof of showing entitlement to the requested permit under all applicable rules. They further assert that Fairfield has failed to show entitlement to the requested permit. In particular, Petitioners assert that Fairfield has not demonstrated that the proposed management and storage of surface water (MSSW) permit will comply with the applicable rule criteria, and that furthermore, without such assurances, the water resources of the state are likely to be harmed. Intervenors, Florida Audubon Society and Duval Audubon Society, state that the applicant has failed to provide the required assurances that the requested conceptual approval of the management and storage of surface waters meets the requirements of Rule Chapters 40C-4, and 40C-42, Florida Administrative Code, and has further failed to demonstrate that the proposed MSSW will not impair, pollute, or injure the waters and natural resources of the State. It is in the position of Respondent Fairfield Communities that its proposed MSSW application is fully in accord with the applicable statutes, and rules of the St. John's River Water Management District, and therefore that the District should enter a Final Order granting to Fairfield conceptual approval of the MSSW permit.

After review of the application for conceptual approval submitted by Fairfield, as amended on April 7, 1986, staff of the St. Johns River Water Management District recommended approval of said application with conditions as set forth in a technical staff report entitled "Management and Storage of Surface Waters, May 1986."

Case Number 85-3596 involves a third-party challenge brought by Petitioner Friends of Fort George, Inc., et al., to the District's proposed issuance to Fairfield of a consumptive use permit (CUP) for the use of groundwater from the middle water bearing zone (MWBZ) of the Floridan Aquifer to serve an estimated population of 1,649 people in seven years and for supplementary golf course irrigation. The proposed permit will also allow Fairfield to withdraw water from the surface water management system (which intercepts the surficial aquifer) on Fort George Island as the primary source of golf course irrigation. Petitioners assert that Fairfield Communities, Inc., as the permit applicant, bears the burden of proof of showing entitlement to the requested permit under all applicable rules. Petitioners further assert that Fairfield has failed to show entitlement to the requested permit. In particular, Petitioners assert that Fairfield has not demonstrated that the proposed consumptive use will comply with the applicable rule criteria, and that furthermore, without such assurances, that the water resources of the state are likely to be harmed. Intervenors, Florida Audubon Society and Duval Audubon Society state that the applicant has failed to provide the required assurances the requested consumptive use meets the requirements of Rule 40C-2.3C1, Florida Administrative Code, and has further failed to demonstrate that the proposed consumptive use will not impair, pollute or injure the waters and natural resources of the State. It is the position of Fairfield that its proposed CUP application is fully in accord with the applicable rules and regulations of the District, specifically Chapter 373, Florida Statutes (1985), and Rule 40C-2, Florida Administrative Code, and, therefore, that the District should enter a final order granting to Fairfield the CUP.

After review of the application for a consumptive use permit submitted by Fairfield Communities, Inc., as amended on March 11, 1986, staff of the St. Johns River Water Management District recommended approval of said application with conditions as set forth in a Consumptive Uses of Water Summary Sheet dated March 24, 1986.

## Evidentiary Matters

During the hearing, a ruling was reserved on the admissibility of Petitioners' exhibits 96 (Jacksonville Planning Department review of the Master Resource Management Plan and Conditions for Approval) and 120A (deposition of Daniel Ward). Fairfield and the District object to these exhibits on the grounds of relevance, and also object to exhibit 120A on the further ground that it does not present the testimony of an expert in accordance with Rule 1.330(e)(3)(F), Florida Rules of Civil Procedure. After having reviewed these exhibits and considering the issues and evidence presented in this case, the objections are overruled and these exhibits admitted.

## FINDINGS OF FACT

The following findings of fact are based on the evidence presented and relate both to Fairfield's MSSW and CUP applications:

1. Fort George Island is an approximately 900 acre island located northeast of the City of Jacksonville in Duval County, Florida. It is bounded to the north and east by the Fort George River, to the west by an extensive salt marsh, and to the south by Batten Island and the St. Johns River. The island is separated from the Atlantic Ocean by Little Talbot Island.

2. There are presently approximately 16 homes on Fort George Island, an existing 18-hole golf course with clubhouse, the Kingsley Plantation State Park in the north and the Rollins site surface waters on the northern two-thirds of the island are Class II waters, while the waters to the south are Class III.

3. The following factors concerning Fort George Island are of ecological significance:

- a) Existence of a large area of coastal hammock;
- b) Value of the coastal hammock for scientific research and as a food source for migrating song birds;
- c) Fact that the Island is located in an aquatic preserve;

- d) Salt marshes on the western side of the Island which are a food source for wading birds;
- e) State lands on the Island which are utilized as wildlife and plant preserve, as well as for historical purposes;
- f) Estuaries on the western side of the Island which function as primary nursery areas for commercial and sport fishery species, as well as for shrimp, oysters and crabs;
- g) Existence of commercial oyster leases on the western side of the Island; and
- h) Public use of the Island's shoreline for oystering and clamming.

4. Fairfield owns approximately 757.5 acres on Fort George Island which it proposes to develop into a "planned unit development" of 1,343 dwelling units, a 27 hole golf course, and approximately 80,000 square feet of commercial development. The approximate density of the development will be 1.8 units per acre. Approximately 80% of Fairfield's property is currently forested, and after development approximately 35% will remain undisturbed habitat. The City of Jacksonville approved the "planned unit development" on January 10, 1983.

5. Because the Department of Community Affairs had determined on August 11, 1982, that this development was a "development of regional impact," Fairfield submitted an Application for Development Approval to the Department, the Northeast Florida Regional Planning Council, and the City of Jacksonville, which subsequently approved the proposed development in an Amended Development Order. On January 25, 1984, the Florida Land and Water Adjudicatory Commission approved the Amended Development Order (ADO).

6. In addition to approving the development of maximum of 1,343 units, 80,000 square feet of commercial area, two 18 hole golf courses (one already in existence), and a marina with not more than 50 slips, the ADO required Fairfield to conduct a 12 month study and prepare a Master Resource Management Plan prior to development. Specifically, Fairfield was required to demonstrate that there is a sufficient supply of potable ground

water to serve the entire development without adverse effects on the Floridan Aquifer and other existing legal users; establish the ambient conditions of the water surrounding Fort George Island and the ambient climatic conditions of the Island and Rollins Sanctuary through a 12 month monitoring program; identify all endangered, threatened, unique, rare, notable and "species of special concern" and determine their habitat requirements; address surface water quality and quantity, terrestrial and wetlands biology, and ground water quality and quantity for the entire project; and submit a revised Master Land Use Plan, consistent with the Master Resource Management Plan, to the City of Jacksonville's Planning Commission for its approval.

7. Further, the ADO required Fairfield to demonstrate that it could retain the 100 year, 24-hour storm (calculated to be 11.04 inches of rain in 24 hours), and prevent degradation of the established ambient conditions of the waters surrounding Fort George.

8. Finally, the ADO required Fairfield to submit its Master Resource Management Plan to the City, Regional Planning Council, Department of Community Affairs, Department of Environmental Regulation, Department of Natural Resources, Game and Fresh Water Fish Commission, and the District, for their, review, comment, and in some cases approval. After review and comment by these agencies, the City of Jacksonville Planning Commission approved the Master Resource Management Plan on January 29, 1986, from which no appeal was taken.

Case Number 85-3537 (MSSW)

The following findings of fact are based upon the stipulation of the parties and relate to Fairfield's MSSW application:

9. The District, a special taxing district and agency, created by Chapter 373, is charged with the statutory responsibility of the administration and enforcement of permitting programs pursuant to Sections 373.413 and 373.416, Florida Statutes, and Chapter 40C-4, Florida Administrative Code. The District is the agency involved in this proceeding. The District has assigned Fairfield's conceptual MSSW permit application the permit number 4-031-002AC.

10. Fairfield is a Delaware corporation authorized to do business in Florida. Its address is 3520 Piedmont Road, N.E.,

Atlanta, Georgia 30305. The proposed MSSW will serve Fairfield's development on Fort George Island, located in Duval County at Section 34, Township 15, Range 29 East.

11. Petitioner Friends of Fort George, Inc., is a not-for-profit Florida Corporation, whose principal office for the transaction of business is located at 11251 Fort George Road, East, Jacksonville, Florida 32226.

12. Petitioner in Intervention Southeastern Fisheries Association is a Florida not-for profit corporation whose address is 312 East Georgia Street, Tallahassee, Florida 32301.

13. Petitioner in Intervention Logan Diving, Inc., is a Florida corporation whose address is 5731 St. Augustine Road, Jacksonville, Florida 32207.

14. Petitioners in Intervention Florida Audubon Society and Duval Audubon Society are not-for-profit Florida corporations whose principal offices for the transaction of business are located at 1101 Audubon Way, Maitland, Florida 32751 and 2<sup>o</sup>65 Forest Circle, Jacksonville, Florida 32217.

15. Individual Petitioners William E. Arnold, Jr., William M. Bliss, Doris B. Chappelle, Leo E. Chappelle, Mr. & Mrs. Rhodes Gay, Dr. & Mrs. William J. Knauer, Jr., Camillus S. Lingle, Jr., and Mr. & Mrs. J. W. Lucas are natural persons and citizens of the State of Florida who are owners of real property on Fort George Island.

16. On August 27, 1985, the District gave Notice of its intent to deny MSSW application No. 4-031-002AC.

17. On September 23, 1985, the District determined to recommend issuance of MSSW Application No. 4-031-002AC, as then modified, with conditions.

18. Fairfield had originally contemplated in both its original Master Resource Management Plan (MRMP) and the referenced MSSW application that its proposed development for Fort George Island would have a 36-hole golf course facility. Fairfield subsequently reduced its proposed golf course facility from 36 holes to 27 holes. The City of Jacksonville's Planning Commission approved the MRMP with conditions, including the condition that the golf course be reduced, on January 29, 1986.

19. Because of the reduction in size of Fairfield's proposed golf course facility from 36 to 27 holes Fairfield's total requirements for water for irrigation were reduced.

20. By pleading dated April 7, 1986, Fairfield moved to amend its conceptual MSSW approval application. On April 10, 1986, the motion was granted pursuant to Stipulation of all the parties. The motion was granted by written Order of the Hearing Officer on April 17, 1986.

21. The Petitioners' original Petition for Formal Administrative Proceedings was timely filed within fourteen (14) days of receipt of the District's proposed agency action of September 23, 1985.

22. A number of the members of Friends of Fort George, Inc. own real property on Fort George Island, reside on the Island, and engage in recreational activities on the Island and its adjacent waters and environs.

23. The subject matter of the proposed agency action challenged by Petitioners and Intervenors concerns the natural resources on Fort George Island. Protection of this resource falls within the general purpose and objectives of Friends of Fort George, Inc., namely, the preservation, conservation, and restoration of Fort George Island and surrounding environs.

24. The relief requested in this proceeding by Petitioners and Intervenors is denial of the conceptual management and storage of surface waters permit.

25. The water storage ponds proposed in the project will intersect with the surficial aquifer on Fort George Island.

26. Petitioners, Friends of Fort George, Inc. and Intervenors, Florida Audubon Society and Duval Audubon Society have standing pursuant to Section 403.412(5), Florida Statutes, to bring this action.

27. During the hearing, the parties stipulated that Logan Diving, Inc., has standing in this proceeding since it is the holder of oyster and clam harvesting leases from the Department of Natural Resources for beds located in Class II waters adjacent to Fort George Island and it derives substantial income from harvesting of these beds. Closure or reclassification of these waters to limit or preclude shellfish harvesting would

impair the value of Logan Diving's shellfish leases, or render them worthless.

The following findings of fact relating to Fairfield's MSSW application are based upon the evidence presented, including the demeanor and credibility of witnesses who testified:

28. Southeastern Fisheries Association, Inc., established at the hearing that it is a not-for-profit incorporated association of seafood producers, packers, canners, processors, wholesalers, retailers and others substantially involved in the seafood and fishing industries. Based upon the testimony of Robert P. Jones, 200 to 250 of the Association's 350 members shrimp in waters in the vicinity of Fort George Island, 26 of its members are residents of Duval or Nassau Counties and 6 are residents of Fort George Island. Thus, a significant number of the Association's members harvest and transport seafood from the waters in the area of Fort George Island, and others also pack and process seafood from these waters. They would be substantially affected if the quality of these waters was degraded, or if the waters were closed to shellfish harvesting as a result of destruction to the nursery areas or reduction in quality or quantity of fish or shellfish which are harvested in these waters, or which utilize these waters as nursery areas. The objectives and purposes of the Association include promoting the general welfare of the fisheries industry and enhancing its economic progress. In contrast, the Florida Wildlife Federation was allowed to participate in this hearing but failed to offer any evidence in support of its verified Petition at the hearing.

29. Fairfield's MSSW application is for conceptual approval, pursuant to District rule, and if conceptual approval is obtained Fairfield will then have to re-apply for construction, operation and maintenance MSSW permits. Although this is an application for conceptual approval, the documentation and information submitted by Fairfield to the District in support of its application is more thorough and complete than almost any other application for conceptual approval received by the District, and is actually superior to the documentation and information received from most applicants for construction permits. According to District staff, more sampling and testing results are presented in this conceptual application than they ever get.

30. After initial review of its MSSW application by District staff following submission on January 5, 1984, Fairfield received a request for additional information. In

responding to this request, Fairfield developed a plan of study which was approved by District staff and which focused on the water supply potential of the surficial aquifer, and the ability of a stormwater management and control system to retain stormwater on-site in compliance with the ADO and the District's permitting rules.

31. Fairfield's study was comprehensive, and was completed in a very competent, professional manner. It included the collection of data through soil borings, installation of monitoring wells, conducting permeability and percolation tests, collecting rainfall data' and sampling of water quality.

32. A water budget model was developed, and approved by the District, to compare existing conditions to proposed developed conditions and to specifically determine the water supply potential of the surficial aquifer, assess the availability of water for irrigation after development, assess changes in recharge to the surficial aquifer after development, and generally to determine how the development would impact the existing hydrologic cycle on the Island. Considering all of the evidence presented, it is specifically found that Fairfield utilized correct and appropriate input parameters in its water budget model to determine that currently 17.5 inches per year of freshwater is flowing from the Island to the surrounding estuary under average annual rainfall conditions, and after development approximately 16 inches per year of freshwater will flow from the Island to the estuary--less than a 10% change in ground-water flowing to the estuary.

33. Therefore, the subject development will not adversely impact the overall water balance on Fort George Island. Utilizing the water budget model, under developed conditions it is shown that in a one-in-ten dry year there will be slightly more fresh water flow from the Island, and in a one-in-ten wet year there will be slightly less freshwater flow to the estuary than currently exists. This further demonstrates that overall water balance will be maintained. Total recharge will be greater post-development in average, wet and dry years.

34. Fairfield's stormwater management system consists of a series of golf course fairway retention areas, and also includes four ponds in the north of the island which are interconnected, and one in the south, into which storm water will flow. The retention ponds comprise an area of approximately 32 acres. The fairway retention areas maximize percolation or infiltration, and water that remains to enter these ponds will be used for

golf course irrigation through pumping. Generally, 95% of golf course need will be met by such pumping from the ponds, with the remaining need being met by withdrawals from the Floridan Aquifer. Under dry conditions, the need to withdraw from the Floridan Aquifer will be greater and could approach 49% of golf course irrigation requirements.

35. The fairway retention areas and the five storage ponds comprise an on-line treatment system which will retain the first one-half inch of runoff, as well as additional runoff. Fairfield's on-line system is equivalent to an off-line system required by Rule Chapter 40C-42, Florida Administrative Code, for discharges to Outstanding Florida Waters (OFW) such as those that surround Fort George Island. Thus, the "first flush" containing a higher level of pollutants will be received by the retention areas and ponds in this on-line system and will primarily be removed through percolation in the retention areas. Pollutants should not be discharged into the estuaries, even in emergencies or when conditions exceed design capacity. Pond retention time will be approximately two months and surficial runoff will account for 5%-10% of the water in the ponds, with the rest coming from ground-water in-flow.

36. Fairfield's storm water management system is operational and maintainable. It will be able to retain the 100 year, 24 hour storm event and otherwise meet the District's requirement that post-development discharge not exceed pre-development peak discharge. Surface discharges from the system will occur infrequently, perhaps every 80 years. Currently there is about one-half inch of direct surface runoff annually. Since surface runoff is a primary source of pollutant transport, the elimination of this runoff will have a beneficial effect on the estuary. The system will not degrade the quality of surrounding estuaries or the OFW since discharges to the estuaries will not occur from the ponds except under extreme conditions, and also because of the high level of treatment which will be provided by the ponds. Reasonable assurance has been given that water in the ponds will meet Class III standards, as well as the "free from" standards in Chapter 17-3, Florida Administrative Code, in the immediate future. The proposed ponds will be an improvement over existing borrow pits and bogs on the Island which have drastic side slopes and very long residence times, such as the Osmunda Bog, and will be a better habitat for fish and drinking water source for wildlife than the existing pits. It will also result in an improvement to Blue Pond, with better vegetation and habitat than currently

exists, and with wildlife access being insured through preservation areas.

37. A recognized and accepted ground-water flow model was used by Fairfield, and was approved by the District for use in this situation. The surficial aquifer system was correctly modeled as a single layer unit. Clay which underlies the Island is not a significant feature since, at minus 18 feet mean sea level, it is well into the saturated zone of the surficial aquifer and well below the surface water table, and since water levels actually observed in test wells could not be predicted when the top of the clay layer was used in the model as the bottom of the surficial aquifer. When the depth of the surficial aquifer was set at the top of the Hawthorne layer, the model accurately predicted water levels, as correlated against actual measured levels.

38. Surface waters around Fort George Island have been classified as OFW since 1979. No significant development has taken place on the Island since 1979, and therefore ambient water conditions in 1978 and 1979 could reasonably be expected to have been what they are today.

39. The stormwater management system will create a ground-water divide around the retention ponds. Any water falling inside the divide will flow toward the ponds; water falling outside the divide will percolate to the water table and then flow to the estuary. While under existing conditions nutrient pollutants that reach the water table simply flow to the estuary, after development half of the water falling on the golf course will be inside the divide and will therefore flow to the ponds. Therefore, after development there will be less nutrients and other pollutants reaching the estuary than under current conditions.

40. Fairfield's stormwater management system is designed in a manner to ensure that the first 1 1/2 inches of rainfall will be retained or detained from an OFW. In fact, it appears that the system will actually retain runoff from the first 11 inches of rainfall.

41. After analyzing data for metals, nutrients and coliform bacteria, it is found that the ambient water quality of the estuary will not be degraded by Fairfield's proposed development, and in fact there will actually be a net improvement in the quality of water reaching it from the Island. As a result of pollutant removal through filtration,

sedimentation, absorption, precipitation, biological activity and dilution, it can reasonably be expected that ground-water seepage from the fairways and ponds to the OFW will meet primary and secondary drinking water standards, as well as Class II standards, and will not degrade the ambient water quality of the estuary. Infrequent surface discharges to the estuary also will not violate Class III standards. Total loading of nutrients to the OFW under developed conditions will be less than under existing conditions, and coliforms reaching the OFW via ground-water will be eliminated.

42. Freshwater surface flow from the developed areas of the Island to the sloughs on the western side of the Island will be virtually eliminated. This elimination will not be detrimental to either salinities or particulate flows to these sloughs. Since there is an average of 50 inches of rainfall on the estuary per year, as opposed to less than 1/2 inch of freshwater runoff, and since the tidal flow is the forcing function in the estuary and not fresh surface water runoff, the salinity levels in the estuary will be largely unchanged. Particulate material will continue to be readily available to the sloughs from the marshlands, and from perimeter buffers which will be preserved by Fairfield around the Island.

43. An undeveloped, preserved buffer zone is retained between the project and the surrounding waters as well as Rollins Sanctuary. This buffer zone is not intruded upon by the retention ponds contouring or berms associated with the development. In addition to the buffer zone, an undisturbed area will also be retained in the development, and the total acreage of the buffer and undisturbed areas will be 226 acres. The buffer and undisturbed areas will be more than adequate to protect the rare, notable, endangered or threatened plant and wildlife species identified on the Island when these areas are considered in relation to Rollins Sanctuary and other properties on the Island in state ownership. There will also be no construction activity in the saltmarsh off the western side of the Island.

44. Extensive surveys conducted by Fairfield identified 26 species of plants and 16 species of wildlife on the Island. The habitat for all but one wildlife species, the gopher tortoise, is the saltmarsh to the west of the Island which will be undisturbed. Two national champion trees were identified and will be preserved. There will be no adverse impacts on notable plants in Rollins Sanctuary or other preservation areas since a 30 meter buffer is provided on the northern boundary of the

Sanctuary and no development at all will take place to the west of the Sanctuary.

45. Woodstorks, the only endangered species identified in the survey, have been observed resting in trees at the western side of the Island in the saltmarsh. They are not nesting on Fort George Island, but return to the D-Dot Ranch south of Jacksonville every night to nest. The western area of the Island will remain undisturbed habitat in a buffer area from 250 to 450 feet wide, as will the southwestern portion of the Island. Woodstorks appear to be using the tidal sloughs for feeding, and development should have no adverse impact on these sloughs.

46. A heron and egret rookery exists on the northern side of the Island, primarily off of Fairfield's property. Approximately 20 nesting pairs of great blue herons and great egrets use this rookery, which appears to be a satellite of regional rookeries. These are not notable species, but Fairfield will provide up to a 600 foot buffer.

47. The gopher tortoise is the only notable terrestrial species on the Island and is a "species of special concern." The undisturbed natural habitat of a major concentration of gopher tortoise on Fairfield's property will be preserved.

48. While the habitat for non-notable species such as bobcat, grey fox, owls and songbirds will be reduced, they will not be extirpated.

49. Significant archaeological sites on Fairfield's property will be preserved and protected, including Mission San Juan del Puerto, the Grave Robbers Mound, the Sugar Mill site, and the Crypt site. If additional sites are found during development, a mitigation plan will be developed for approval by the State Division of Archives, with an evaluation by a professional archaeologist. Indian middens, or trash piles, have been deemed insignificant and will not be preserved.

50. Surface water table draw-downs which will result from Fairfield's system due to pumping from the surficial aquifer will have no adverse impact on either wildlife or plant life on the Island. Such draw-downs will be limited and localized primarily around the ponds. In fact, the water table on the western side of the Island may increase slightly. The draw-down within Rollins Sanctuary or at Rollins Creek will be less than one foot and therefore should not have any adverse impact.

51. Rollins Creek is approximately five feet wide. A fifty foot buffer around the Creek is provided.

52. Only EPA approved chemicals will be used for weed control associated with the ponds, and aeration will be used to assist the production of oxygen in the ponds. Nutrients, nitrates and phosphorous, will be continually analyzed so that immediate corrective action in fertilizer application can be taken if necessary.

53. Fairfield will utilize an integrated pest management program under a plan which must be approved by the District and which will actually reduce the need for chemical pesticides. Only EPA approved pesticides will be used. As for fertilizers, Fairfield will apply fertilizers more frequently, but in lesser amounts, than on the existing golf course. This ensures a better uptake of nitrates and phosphates, thereby reducing unabsorbed nutrients that might flow to the ponds or estuary.

54. A full-time resource manager will be employed to ensure proper operation of the entire stormwater management system.

55. Once the system is in place, Fairfield will conduct a long-term monitoring program of the water quality in the MWBZ, surficial aquifer, the ponds, and any surface water discharges to ensure permit compliance and also to provide a data base for further activities. Such a data base will represent a positive public benefit.

56. Additional beneficial results of the project, after construction permits are obtained, include stabilization of the northern shoreline of the Island which has had notable marshland erosion, and re-aligning a road on the western side of in the Island to eliminate a point where it crosses Big Slough and thereby open the Slough up to additional sheetflow. Middle and Northern Sloughs will be preserved. Mitigation will be required for any disturbance of a small wetland area on the west side of the Island which is approximately 3/4 of an acre in size. Eliminating marsh erosion, and removing vehicle traffic and flow restrictions in the area of Big Slough are clearly in the public interest, as is the preservation of other wetland areas.

57. The District staff originally recommended that Fairfield's MSSW application be denied but after modifications

to the application were made, the District staff has recommended approval with conditions to ensure generally that Fairfield:

- a) Monitors water quality in the five ponds in accordance with a plan approved by the District, as well as the quantity and quality of all surface water discharges.
- b) Monitors water levels in surficial aquifer wells and reports such data to the District
- c) Recalibrates its surficial aquifer and water budget models every five years using the actual monitoring data it has collected and reported to the District in the preceding years, and if such recalibration indicates more than a 50% increase in the volume or frequency of surface water discharges, the stormwater management system must be altered, with District approval, to prevent such increases
- d) Submits a pesticide management plan for District approval.
- e) Submits a mitigation plan for District approval, at the time of application for construction permits, that will mitigate for any loss to off-site aquatic and wetland dependent species associated with project development in the area of the tidal sloughs on the west coast of the Island.

A total of fourteen specific conditions which the District staff recommends be placed on the conceptual approval of the MSSW permit are contained in the Management and Storage of Surface Waters Summary Sheet, dated May 1986, which is hereby incorporated by reference and found to be reasonable in its entirety.

Case Number 85-3596 (CUP)

The following findings of fact are based upon the stipulation of the parties and relate to Fairfield's CUP application:

58. The District, a special taxing district and agency, created by Chapter 373, is charged with the statutory responsibility for the administration and enforcement of permitting programs pursuant to Sections 373.219 and 373.223, Florida Statutes, and Chapter 40C-2, Florida Administrative Code. The District is the agency involved in this proceeding. The District has assigned Fairfield's CUP application the permit number 2-031-0021AN.

59. Findings of Fact 10, 11, 14 and 15 which are set forth above are hereby readopted and incorporated herein.

60. On December 1, 1983, Fairfield, through its then-agent George Register, III, submitted to the District the subject CUP application. The application was assigned No. 2-031-0021AN.

61. On August 23, 1985, the District gave notice of its intent to deny CUP application No. 2-031-0021AN.

62. On September 23, 1985, the District determined to recommend issuance of CUP application No. 2-031-0021AN, as then modified, with conditions.

63. Fairfield had originally contemplated in both its original Master Resource Management Plan (MRMP) and the referenced CUP application that its proposed development for Fort George Island would have a 36-hole golf course facility. Fairfield subsequently reduced its proposed golf course facility from 36 holes to 27 holes. The City of Jacksonville's Planning Commission approved the MRMP with conditions, including the condition that the golf course be reduced, on January 29, 1986.

64. Because of the reduction in size of Fairfield's proposed golf course facility from 36 to 27 holes, Fairfield's total requirements for irrigation water were reduced.

65. By pleading dated February 28, 1986, Fairfield moved to amend its application. The motion was granted by the Hearing Officer on March 11, 1986.

66. In light of this amended application, the District issued a revised "Consumptive Uses of Water Summary Sheet," dated March-24, 1986, to reflect this amended request and to recommend issuance of the CUP.

67. The Petitioners' original Petition For Formal Administrative Proceedings was timely filed within fourteen (14) days of receipt of the District's proposed agency action of September 23, 1985.

68. A number of the members of Friends of Fort George, Inc. own real property on Fort George Island, reside on the Island, and possess drinking water wells on the Island and engage in recreational activities on the Island and its adjacent waters and environs.

69. The subject matter of the proposed agency action challenged by Petitioners and Intervenors concerns the water resources on Fort George Island, including its drinking water supply. Protection of this resource falls within the general purpose and objectives of Friends of Fort George, Inc., namely, the preservation, conservation and restoration of Fort George Island and surrounding environs.

70. The relief requested in this proceeding by Petitioner and Intervenor is denial of the proposed consumptive use permit.

71. The water storage ponds proposed in the project will intersect with the surficial aquifer on Fort George Island.

72. The residential value of Petitioners' property on Fort George Island would decrease if the property had absolutely no access to potable water.

73. Petitioners and Intervenors have standing pursuant to Section 403.412(5), Florida Statutes, to bring this action.

The following findings of fact relating to Fairfield's CUP application are based upon the evidence presented, including the demeanor and credibility of witnesses who testified:

74. Following review of Fairfield's CUP application, District staff requested additional information on January 11, 1984; Fairfield developed a plan of study to supply the requested additional information, and the plan of study was approved by District staff. The plan of study sought to find out the nature and characteristics of an anomaly in the northeastern part of the Island, and also to determine if Fairfield's proposed usage would have any affect on existing legal users. As part of the study, Fairfield conducted a well inventory and survey, water quality survey, water level measurements, and vertical investigations. The study also

examined three alternatives to obtaining water from the various water bearing zones under Fort George Island, including drilling a test well (TP-2) into the Middle Water Bearing Zone after obtaining appropriate permits.

75. The Floridan Aquifer below Fort George Island consists of three zones--The Upper Water Bearing Zone (UWBZ), Middle Water Bearing Zone (MWBZ) and Lower Water Bearing Zone (LWBZ). The bottom of the Hawthorne formation separating the surficial and Floridan aquifers occurs at about 400 feet below mean sea level. The UWBZ exists from a depth of approximately 520 feet to 1000 feet. Below the UWBZ is an upper semiconfining zone from a depth of approximately 1000 to 1200 feet. The MWBZ is generally 100 feet thick and exists from a depth of approximately 1200 to 1700 feet, below which is a lower semiconfining zone from a depth of approximately 1700 to 2000 feet. The MWBZ is a single water producing zone with interconnected channels or flow zones. The LWBZ exists from a depth of approximately 2000 to 2100 feet, below which is a lower confining unit. The confining zones are saturated with water but are less permeable than any of the water bearing zones. Regional ground-water flow in the Floridan Aquifer at Fort George Island is from the west to the east, northeast and southeast.

76. Water quality to a depth of approximately 1900 feet is generally good, with chloride concentrations of less than 50 milligrams per liter (mgl). In the UWBZ chloride concentrations are generally 10-15 mgl. However, in the north eastern part of the Island chloride concentrations are approximately ten times higher, although still considered potable, due to an anomaly which exists in this area with a radius of approximately 1000 feet, and which allows the flow of water directly from the LWBZ to the MWBZ and LWBZ. While the potentiometric surface or pressure for most of the Island is 39 feet, at the anomaly it is 43 feet above mean sea level. The anomaly was caused either by a sinkhole or fault and acts as a localized conduit or source of lower quality water from the LWBZ to the UWBZ. No other point sources of lower quality water exist on the island. The Hawthorne formation was found to exist approximately fifty feet deeper in the area of the anomaly than on the rest of the Island.

77. Existing users on Fort George Island draw water from the UWBZ. Fairfield proposes to draw its water from the MWBZ at a rate of 101.11 million gallons per year in an average year, and 181.04 million gallons per year in a 1 in 10 dry year, and

will be the only user of water from the MWBZ on the Island. Household use consumption is projected to be 129.3 gallons per capita which is below the District average of 150 gallons per capita. Based upon pump tests already conducted by Fairfield, the MWBZ will produce more than enough water to meet Fairfield's needs for its project and such pumping will have no adverse impact on the UWBZ or existing users. Pumping from the MWBZ will also have no adverse impact on the MWBZ. Specifically, salt water intrusion from the surrounding estuary or from the tWBZ to the MWBZ will not significantly increase, chloride levels will not increase and potentiometric levels will not decrease in the MWBZ due to this pumping. The MWBZ will produce an adequate Supply of potable water for 15 to 30 years. Fairfield does propose to use well P-1 in the UWBZ in emergency situations but such usage will have no adverse impact on the quality of the UWBZ or its existing users. Use of the MWBZ will be minimized by maximum utilization of the surface water management system ponds for irrigation needs.

78. Well TP-2 is approximately a mile from the anomaly in a south-southwesterly direction. It was constructed by Fairfield, after obtaining necessary permits, with casing to a depth of 771 feet all the way through the UWBZ and into the underlying confining bed. Pump tests were conducted on the MWBZ using TP-2, which is the only well on the Island in the MWBZ. No separate monitoring well in the MWBZ was required by the District, and none was utilized by Fairfield because the flow off 2,000 gallons per minute from TP-2 was so strong that a separate monitoring well was not necessary. When TP-2 was pumped, there was no measurable change in nearby UWBZ wells. This confirms that the MWBZ is hydrologically separate from the UWBZ, other than at the anomaly, and pumping from one will not affect wells in the other.

79. In response to a request from the District, Fairfield utilized conservative factors in applying a mathematical model to determine the effects of its proposed pumping on the Floridan Aquifer. Using the USGS contaminant transport model, which is professionally accepted and appropriate for use in this case, and after proper calibration to reproduced observed conditions, it was determined that chloride concentrations in the MWBZ will not be adversely affected, nor will potentiometric surfaces of the UWBZ or MWBZ when pumping is conducted from TP-2 in the MWBZ over a thirty year period. At most, pumping from TP-2 could result in a slight increase of flow from the anomaly into the MWBZ, with a minimal increase in chloride concentrations.

80. Fairfield has agreed to install a monitoring well in the MWBZ and to monitor several wells in the UWBZ in order to constantly test and monitor chloride levels. Currently chloride levels in the MWBZ are 25 mg/l and the limit for potable water is 250 mg/l. The monitoring well will be approximately 550 feet northeast of well TP-2, and will detect any changes in chloride levels with sufficient lead time for Fairfield to initiate action to drill another well into the MWBZ further from the chloride source. It is estimated that such lead time could reasonably be as much as ten years.

81. Even without Fairfield's pumping from the MWBZ, water quality in the UWBZ would be expected to degrade, as it has historically, as a result of regional pumping which has caused a regional decline in water quality and 37 SO as a result of flow from the anomaly. Existing users may actually benefit from Fairfield's pumping from the MWBZ and the decline in the quality of the UWBZ may be slowed due to Fairfield's elimination of golf course irrigation which currently comes from the UWBZ at a rate of approximately 175,000 gallons per day, accounting for approximately 90% of all current water usage on the Island.

82. Pumping from the Floridan Aquifer will be conducted to supplement irrigation from the stormwater management system. Fairfield will use up to 580,000 gallons per day for golf course irrigation in dry years. However, even in a dry year the primary source for golf course irrigation will still be from the stormwater management system. In an average year, approximately 95% of irrigation needs will be met by the surface water management system ponds. In a wet year there should be no need to pump from the Aquifer.

83. The District staff originally recommended denial of Fairfield's CUP application when it was for a 36 hole golf course, and for withdrawal of potable water from the UWBZ with only golf course irrigation being from the MWBZ. Fairfield has modified its application and now proposes a 27 golf course with all water needs coming from the MWBZ, except in an emergency when well P-1 in the UWBZ may be used. The District staff has now recommended approval, with a total of twenty conditions contained in the "Consumptive Uses of Water Summary Sheet," which are hereby incorporated by reference and which ensure generally that Fairfield:

- a) Mitigates any adverse impact caused by withdrawals permitted herein on existing legal uses of water; the District may

curtail any withdrawal if there are adverse impacts on existing legal users.

b) Mitigates any adverse impacts caused by withdrawals permitted herein on existing adjacent land uses; the District may curtail any withdrawal if there are adverse impacts on existing adjacent land uses.

c) Must reapply for another CUP after seven years from issuance.

d) Begins irrigating the existing 18 hole golf course from the MWBZ by March 1, 1987, with existing UWBZ irrigation wells only to be used thereafter for fire protection.

e) Institutes a sampling program for existing wells in the UWBZ and MWBZ.

f) Supplies all potable and supplemental irrigation requirements from the MWBZ, and keeps monthly records of such withdrawals.

g) Drills and maintains a monitoring well in the MWBZ approximately 550 feet northeast of its MWBZ potable and supplemental irrigation well, and provides long term water quality samples to the District from the monitoring well.

The District staff's recommended conditions are found to be reasonable in their entirety.

#### CONCLUSIONS OF LAW

84. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. Section 120.57(1), Florida Statutes. The District's regulatory authority over Fairfield's application for conceptual approval of MSSW is governed by, and subject to, the provisions of Chapter 373, Florida Statutes, and the provisions of Chapter 40C-4, I Florida Administrative Code; the District's regulatory authority over Fairfield's application for CUP is governed by, and subject to, the provisions of Chapter 373, Florida Statutes, and Chapter 40C-2, Florida Administrative Code.

## Standing

85. The parties have stipulated to the standing of Friends of Fort George, Inc., Petitioner, and Intervenors Florida Audubon Society, and Duval Audubon Society pursuant to Section 403.412(5), Florida Statutes. The parties also stipulated to the standing of Logan Diving, Inc. Based upon stipulated findings of fact 7, 14, and 61, above, individual petitioners are also determined to have standing in this proceeding since they are property owners on Fort George Island in the immediate vicinity of Fairfield's property, and further since they possess drinking water wells on the Island and engage in recreational activities on the Island, as well as its adjacent waters and environs. Individual petitioners will suffer injury in fact if their wells and recreational use of waters on and adjacent to Fort George Island are destroyed, and this injury is the type of injury this proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981); Grove Isle, Ltd. v. Bayshore Homeowners, 419 So. 2d 1046 (Fla. 1st DCA 1982); North Ridge General Hospital v. NME Hospital, 478 So. 2d 1138 (Fla. 1st DCA 1985) Based upon the testimony of Robert J. Jones, Intervenor Southern Fisheries Association is determined to have standing since its membership includes Duval and Nassau County residents, as well as residents of Fort George Island itself, the association represent commercial fishing, packing and trucking interests which obtain fish and shellfish in the Fort George Island area, and the Association itself was organized to protect the general welfare of the commercial fisheries industry. Florida Home Builders Association v. Department of Labor and Employment Security, 4121 So. 2d 351 (Fla. 1982); Farmworker Rights Organization Inc, v. Department of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982).

86. No evidence or stipulation was entered on the record in support of the Florida Wildlife Federation's standing in this proceeding, and accordingly it has not been established that the Federation has standing in this case. Section 403.412(5), confers standing on any citizen of the state to intervene in any administrative proceeding involving protection of the state's natural resources upon the filing of a verified petition. The Florida wildlife Federation filed a verified petition herein which was opposed by Fairfield, and urged at hearing on May 19, 1986 that it would only call witnesses in support of standing if Fairfield or the District contested standing. Neither Fairfield or the District ever stipulated to standing, and the Federation failed to produce any evidence in support thereof. While the

Hearing Officer granted the petition to intervene indicating that standing had been properly alleged under Section 403.412(5), the Federation failed to do what it indicated it would on May 19, 1986, when the other parties did not stipulate to its standing, and thereby placed this matter at issue--it failed to produce evidence in support of paragraph one of its petition relating to standing, and accordingly the Florida Wildlife Federation should be dismissed as a party.

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87. In carrying out its responsibilities under Chapter 373, Part IV, Florida Statutes, the District has adopted Rule 40C-4.301, Florida Administrative Code, which sets forth conditions for issuance of permits and states, in pertinent part:

40C-4.301 Conditions for Issuance of Permits.

(1)(a) To obtain a general or individual permit for operation, maintenance, removal or abandonment of a system or to obtain a conceptual approval permit each applicant must give reasonable assurance that such activity will not:

\* \* \*

2. adversely affect recreational development or public lands;

3. endanger life, health, or property;

\* \* \*

5. adversely affect the availability of water for reasonable beneficial purposes;

6. be incapable of being effectively operated;

7. adversely affect the operation of a Work of the District established pursuant to Section 373.086, Florida Statutes, and Chapter 40C-6, Florida Administrative Code;

8. adversely affect existing agricultural, commercial, industrial, or residential developments;

9. cause adverse impacts to the quality of receiving waters;

10. adversely affect natural resources, fish and wildlife;

11. increase the potential for damages to off-site property or the public caused by:

a. floodplain development, encroachment or other alteration or

b. retardance, acceleration, displacement or diversion of surface water; or

c. reduction of natural water storage areas; or

d. facility failure or

\* \* \*

14. otherwise be inconsistent with the overall objectives of the District

\* \* \*

(2)(a) To obtain a general or individual permit for construction, alteration, operation, or maintenance of a system or to obtain a conceptual approval permit each applicant must give reasonable assurance that such activity meets the following standards:

1. adverse water quantity impacts will not be caused to receiving waters and adjacent lands;

2. surface and ground water levels and surface water flows will not be adversely affected;

3. existing surface water storage and conveyance capabilities will not be adversely affected;
4. the system must be capable of being effectively operated;
5. The activity must not result in adverse impacts to the operation of Works of the District established pursuant to Section 373.086, Florida Statutes;
6. hydrologically-related environmental functions will not be affected;
7. otherwise not be harmful to the water resources of the District.

Additionally, the District has adopted Rule 40C-4.091, Florida Administrative Code, which incorporates by reference portions of the Applicant's Handbook: Management and Storage of Surface Waters, which sets forth the policies and procedures, and criteria for evaluation of MSSW applications. The Handbook also specifies the District's policies regarding conceptual approval of MSSW applications:

Because many water management systems are designed and constructed in phases, a procedure has been established which provides for District review and approval of master development plans. The intent of this procedure is to assure the permittee that the engineering concepts upon which he bases current and future design decisions are likely to meet District rule criteria at least in concept. (Part 3.5.1)

The Governing Board's determination that the conceptual plans are consistent with Chapter 373, F.S., and Chapters 40C-4, 40C-40, and 40C-41, F.A.C., will provide the applicant with an assurance that the concepts upon which his designs are based can provide for systems which will not be harmful to the water resources of the District and will not

be inconsistent with the overall objectives of the District. (Part 3.5.3)f

The conceptual approval permit will be valid for twenty years provided that construction of the initial phase of the system must be permitted and construction undertaken within two years of the granting of the conceptual approval permit and provided that all phases of the system are designed and built in accordance with the terms of the conceptual approval permit, and that all required permits for subsequent phases are obtained. (Part 3.5.4)

The term "conceptual approval permit" is defined in Rule 40C-4.021(2) to mean "a surface water management permit issued by the District, approving the concept of a master plan for a surface water management system, which is binding upon the District and the permittee."

88. In this case, Fairfield has applied for conceptual approval of its MSSW application and concedes that even if conceptual approval is obtained, it will then have to apply for actual construction, operation or maintenance permits pursuant to Sections 373.413 and 373.416, Florida Statutes. In accordance with the above-cited provisions, however, Fairfield's application for conceptual approval must be consistent with Chapter 373, Florida Statutes, and Rule Chapter 40C-4, Florida Administrative Code, and therefore Fairfield has the burden of establishing compliance with Rule 40C-4.301, Florida Administrative Code, set forth above. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1979).

89. In order to determine if an applicant has provided reasonable assurance of compliance with Rule 40C-4.301(1)(a), supra, the District considers a balancing of specific effects to show the project is not inconsistent with the overall objectives of the District. This balancing approach is used because it is recognized that a proposed project may result in both beneficial and harmful effects. Rule 40C-4.301(1)(b). Thus, an application for conceptual approval should not be denied if, on-balance, the overall effects of the proposed project are beneficial, even if some harmful effects do result.

90. The evidence in this case establishes that Fairfield's project will not adversely affect recreational development or public lands. Direct surface water discharges to the estuary will be eliminated, thereby reducing pollutant loading and coliform transport. Groundwater flows to the western sloughs will not be substantially altered post-development. Due to this, as well as the undisturbed continued presence of the extensive saltmarshes on the western side of the Island, the salinity regime and presence of detritus in these sloughs will not be adversely affected. Minor drawdowns which may occur will not adversely affect plants or wildlife in Rollins Sanctuary or other state owned uplands.

91. Fairfield's project will not adversely affect the availability of water for reasonable beneficial uses. Fairfield will eliminate the withdrawal of water from the UWBZ for golf course irrigation, and this will have a positive impact on the availability of water for existing legal users, all of whom use the UWBZ. It has been demonstrated that there is a more than adequate supply of water in the MWBZ for Fairfield's uses, particularly since Fairfield will not utilize the MWBZ for irrigation purposes. Its proposed use of the surficial aquifer for stormwater retention and irrigation will have a beneficial impact on the availability of potable water in the UWBZ and MWBZ, and at the same time will not result in any violations of applicable groundwater standards.

92. The stormwater management system is functional and capable of being effectively operated. A resource manager will be employed to monitor the system and ensure it is functioning properly. There is nothing unique about the components to the system.

93. The proposed development will not adversely affect existing agricultural or industrial developments since none exist on Fort George Island. Fairfield owns the only commercial development, an existing 18 hole golf course, and it will be expanded to a 27 hole course. Existing residents obtain their water from the UWBZ, and Fairfield will be eliminating the use of the UWBZ for irrigation. This is a positive impact on existing residents. By obtaining all potable water from the MWBZ and irrigation from the stormwater management system, Fairfield will be avoiding any adverse impact on existing residents. The only apparent impact on the private residences would be an increased number of neighbors. Such an impact is a zoning/land use consideration. If the land is not properly zoned so that Fairfield can put its development on the Island, local

authorities can pursue zoning concerns, not the District. The operation of Fairfield's proposed system will not divert surface water away from or towards residences or improperly affect ground water.

94. The quality of receiving waters will not be adversely affected. It is unlikely that the ponds will discharge to then groundwater, and any discharge that might occur would be temporary and reversible. Pollutant loading to the estuary will actually be reduced post-development, along with the virtual elimination of coliform transport. Thus, the quality of the discharge will actually be improved over what is presently leaving the Island.

95. Fairfield's development will not adversely affect natural resources, fish and wildlife. As stated above, there will be a net overall improvement in the quality of water leaving the Island to the surrounding estuary. Surface water table draw-downs will have no adverse impacts on wildlife or plant life, particularly in the area of Rollins Sanctuary, since such draw-downs will be minimal' and the water table may in fact rise on the western sides of the Island. There will be no violation of Class II water quality criteria or degradation of the ambient water quality of the estuary. Extensive buffers and undisturbed areas will also benefit high value wetlands on the Island, as well as the surrounding estuary. The re-alignment of a road that crosses Big Slough will benefit the Slough by opening it up to additional sheet flow. Fairfield has demonstrated, further, that there will be no adverse impact on woodstorks, herons, gopher, tortoises or other wildlife on the Island due to remaining undisturbed habitat, reduction of pollutant loading, increase in sheet flow in the area of Big Slough and increase in the number, quality and size of available surface waters for feeding.

96. It has been shown that there will be no increase in the potential for flood damage off site after development since the water balance will not be adversely impacted and the stormwater management system will operate within the boundary of Fairfield's property. It has also been shown that Fairfield's stormwater management system will, on-balance, comply with the overall objectives of the District. Far from adversely affecting the surrounding surface waters, Fairfield's system will actually result in reduced pollutant loading generally, elimination of surface water discharges with their attendant pollutant properties, and the reduction, if not elimination, of coliform transport to the estuary. All applicable ground and

surface water quality criteria will be met by discharges or seepage from the system. The flora and fauna of the Rollins Sanctuary will not be impacted. The system's operation and maintenance is not expected to have a significant adverse impact on natural resources, fish or wildlife.

97. Fairfield has therefore given reasonable assurance that its development will meet the conditions for issuance set forth in Rule 40C-4.301(1)(a). Fairfield has also given reasonable assurance that its application for conceptual approval meets the standards set forth in Rule 40C-4.3 1(2)(a), supra.

98. Post-development discharges will be less than currently existing conditions. Drawdowns caused by the project will be minimal and will have no adverse impact on plants or wildlife. The elimination of direct surface water discharges and surface water flow from borrow pits, are beneficial impacts. There will be no adverse impact on the western sloughs and Big Slough will actually benefit from the realignment of a road on the western side of the Island. No violations of applicable water quality standards in the estuary will be caused by Fairfield's system, even in the very infrequent event of a direct surface water discharge from the system. Upland particulate flows and the salt/freshwater regime of the sloughs will likewise be preserved. If anything, the habitat quality of the sloughs will be enhanced. Moreover, Fairfield will be creating 32 acres in enlarged retention ponds with improved habitat qualities. Thus, Fairfield's proposed MSSW system has been demonstrated to be environmentally sensitive.

99. Chapter 403, Florida Statutes, and Rule 40C-42.025, Florida Administrative Code, require that "[n]o discharge from a stormwater discharge facility shall cause or contribute to a violation of water quality standards in waters of the state." This rule provision goes on to specify various design and performance standards and an authorization to use alternative treatment methodologies and devices other than those specified in the rule. Rule 40C-42.025(12), Florida Administrative Code. The last sentence in Rule 40C-42.041(5), Florida Administrative Code, states "[h]owever, facilities which directly discharge to Class I, Class I} or Outstanding Florida Waters shall provide additional treatment as specified in Section 40C-42.025(10)." Rule 40C-42.025(10), Florida Administrative Code, is a subsection of a rule section entitled, "Design and Performance Standards". Subsection 10 states that direct discharges to Class I, Class II or Outstanding Florida Waters shall include an

additional level of treatment equal to fifty percent of the treatment criteria specified in Rule 40C-42.035(1)(b) or Rule 40C-42.041(5) and "shall provide off-line retention or off-line detention with filtration of the first one-half inch of runoff of the total amount required to be treated." The applicant's design for its proposed stormwater facilities does not contain off-line retention or detention. The Petitioners have maintained that because the design for the proposed system does not contain off line retention or detention, the applicant cannot, seemingly as a matter of law, comply with Rules 40C-42.041(5) and 40C-42.025(10), Florida Administrative Code. The Petitioners are in error because their interpretation of the rule fails to account for Rule 40C-42.025(12), Florida Administrative Code. Subsection (12) allows for "employing a treatment methodology or device other than those described in Section 40C-42.025." Thus, an interpretation of Rules 40C-42.41 and 40C-42.025, Florida Administrative Code, that would not allow for employing something other than the methodology of using off-line retention or detention with filtration whenever there is a direct discharge to Class I, Class II or Outstanding Florida Waters would be an incorrect interpretation of this rule.

100. The various waters around Fort George Island require a consideration of Rules 17-3.041, 17-3.051, 17-3.061, 17-3.111, 17-3.402, and 17-3.404, Florida Administrative Code. Those rules establish the applicable water quality standards for the various types of ambient surface water around and ground water beneath Fort George Island. Rules 17-4.242 and 17-4.245, Florida Administrative Code, also must be considered because they establish additional relevant criteria.

101. All of the surface water around Fort George Island has been designated as Outstanding Florida Waters, but absent that designation the waters around the northern part of the Island would only be Class II and the southern part would be Class III waters. Rule 17-4.242(1), Florida Administrative Code, prohibits issuance of a permit if significant degradation would occur unless the proposed activity is clearly in the public interest and the ambient water quality within the OFW will not be lowered as a result of the proposed discharge. Rule 17-4.242(1)(d), Florida Administrative Code, states that "existing ambient water quality" means the quality of water reasonably expected to have existed for the year prior to the date an area designated as an OFW. The best scientific information available is to be consulted for that purpose.

102. Fairfield's storm water management system will infrequently discharge to surface water, and when it does, it will only be in association with extremely large storm events. Therefore, it can be said that discharges from it into the OFW would not significantly degrade the OFW. Additionally, the infrequent discharges themselves will not lower the quality of the OFW. Discharges of pollutants are permitted where the effect on water quality is, as in this case, found to be negligible. Caloosa Property Owners' Assn.v. Department of Environmental Regulation, 462 So. 2d 523 (Fla. 1st DCA 1985).

103. The fresh water flow to the estuary under the proposed system is basically similar to what is now existing. This, coupled with the treatment processes available in the proposed system to abate contaminants before surface and ground waters reach the surrounding waters, indicate that the existing ambient water quality in the OFW will not be lowered and the Class II and Class III standards will not be violated. Likewise, the proposed system, in combination with treatment processes that are available, will abate contaminants so that ground water standards will be met. In fact, Fairfield's system will produce an overall improvement in the quality of discharges to the estuary, which is clearly in the public interest.

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104. In carrying out its responsibilities under Chapter 373, Part II, Florida Statutes, the District has adopted Rule 40C-2.301, Florida Administrative Code, which sets forth conditions for issuance of permits and states, in pertinent part:

40C-2.301 Conditions for Issuance of Permits.

\* \* \*

(2) To obtain an initial consumptive use permit for a use which will commence after the effective date of implementation, or to obtain a renewal of a consumptive use permit which was issued at any time, the applicant must establish that the proposed use of water:

(a) is a reasonable beneficial use; and

(b) will not interfere with any presently existing legal use of water; and

(c) is consistent with the public interest.

\* \* \*

(4) The following criteria must be met in order for a use to be considered reasonable beneficial:

(a) The use must be in such quantity as is necessary for economic and efficient utilization.

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(c) The source of water must be capable of producing the requested amounts of water.

(d) The environmental or economic harm caused by the consumptive use must be reduced to an acceptable amount.

(e) To the degree which is financially, environmentally, and socially practicable, available water conservation and reuse measures shall be used or proposed for use.

(f) The consumptive use should not cause significant saline water intrusion or further aggravate currently existing saline water intrusion problems.

(g) The consumptive use should not cause or contribute to flood damage.

(h) The water quality of the source of the water should not be seriously harmed by the consumptive use.

(i) The water quality of the receiving body of water should not be seriously harmed by the consumptive use. A valid permit issued pursuant to Rule 17-4.24 or Rule 17-4.26,

Florida Administrative Code, shall establish a presumption that this criterion has been met.

\* \* \*

(5)(a) A proposed consumptive use does not meet the criteria for the issuance of a permit set forth in Rule 40C-2.301(2) if such proposed water use will:

1. significantly induce saline water encroachment; or
2. cause the water table or surface water level to be lowered so that stages or vegetation will be adversely and significantly affected on lands other than those owned, leased or otherwise controlled by the applicant; or
3. cause the water table level or aquifer potentiometric surface level to be lowered so that significant and adverse impacts will affect existing legal users; or
4. require the use of water which, pursuant to Section 373.223(3), Florida Statutes, and Rule 40C-2.301(6), the Board has reserved from use by permit or
5. cause the rate of flow of a surface water course to be lowered below a minimum flow which has been established pursuant to Section 373.042(1), Florida Statutes; or
6. cause the level of a water table aquifer, the potentiometric surface level of an aquifer source, or the water level of a surface water source to be lowered below a minimum level which has been established pursuant to Section 373.042(2), Florida Statutes.

See also Sections 373.019(4), ,73.219 and 373.223, Florida Statutes.

105. The evidence produced at hearing clearly demonstrates that Fairfield has met the conditions set forth above for issuance of a CUP. The proposed use is in such quantity as is necessary for economic and efficient utilization since the amount to be used for supplemental irrigation is reasonable and well within normal ranges. Conditions to be imposed on the permit will ensure that the stormwater management system will be the primary source of irrigation water for the golf course, and that Fairfield monitor its withdrawals from the MWBZ to ensure compliance with District allocations. There will be no aggravation of saline intrusion in the UWBZ or M~BZ and in fact eliminating withdrawals from the UWBZ for irrigation will be a beneficial result of the development.

106. Pump tests conducted using well TP-2 show that the MWBZ will produce sufficient potable water for the project, as well as water for supplemental irrigation when necessary. There is no evidence that Fairfield's use of the MWBZ will be environmentally harmful or will impact users of the UWBZ. Fairfield's system will actually lessen nutrient loading to the marsh and substantially reduce coliform discharges. By using the stormwater management system as the primary source of its irrigation water, Fairfield is fully utilizing conservation and reuse measures. As the evidence shows, surface water discharges from the system will be very infrequent, and even when they occur they will not violate Class II or OFW ambient water quality standards. The quality of water leaving the Island via the groundwater will actually be improved from current conditions.

107. While some minor draw-downs will occur as a result of this project, they will be primarily localized around the ponds and will not be of such an extent as to adversely affect vegetation or wildlife. There will be no adverse impacts on existing users of the UWBZ and potentiometric surfaces in the UWBZ will not be lowered.

108. Therefore, Fairfield has also sustained its burden of proof regarding its CUP application by demonstrating that its proposed use is reasonable and beneficial, and will not interfere with presently existing legal users of the UWBZ, as required by Sections 373.223(1)(a) and (b), Florida Statutes. Further Section 373.223(1)(c) requires a CUP to be "consistent with the public interest." Fairfield has clearly demonstrated that its CUP will be in the public interest because: water conservation and reuse measures will be employed; total amount of water allocated is well within accepted standards; no saline

intrusion problems will result; potentiometric surfaces will not be lowered; pollutant loading to the estuary will be reduced; and available potable water within the MWBZ will be made available.

109. Petitioner cites the case of Booker Creek Preservation v. Mobil Chemical, 481 So 2d 10 (Fla. 1st DCA 1985) for the proposition that insufficient testing of the MWBZ and the anomaly was performed in this case to provide reasonable assurances that the stormwater management system and proposed consumptive use will not adversely affect water quality. The facts in Booker Creek are clearly distinguishable from the facts in this case. In Booker Creek, it was undisputed that Karst features (faults, sinkholes or vertical fissures) might exist beneath three proposed discharge areas. The Court concluded that when a permit applicant proposes to build massive pollutant discharge facilities in an area where Karst features are found, the performance of tests below one of the three points of discharge cannot, as a matter of law, provide reasonable assurance.

110. In this case the evidence establishes that there is only one anomaly, which may have been caused by a fault or sinkhole, and it is located in the northeastern part of the Island. Fairfield is not proposing massive pollutant discharge facilities. To the contrary, there will be less pollutants transported to the surrounding waters post-development than under current conditions. The stormwater management system will contain rainfall on the Island, except under extraordinary conditions which may occur once in 80 years, when discharges will occur on the western side of the Island, at a far distance from the anomaly. Well TP-2 is located between the anomaly and the western discharge points, and a monitoring well will be constructed at sufficient distance from TP-2 to detect any changes in the MWBZ, and to allow the relocation or discontinuation of TP-2. The documentation and testing which Fairfield has already completed is extensive and complete, and the monitoring program it will conduct after development will be comprehensive and thorough. There are no factual similarities between this case and Booker Creek that would make that case applicable to the case at hand.

#### RECOMMENDATION

Based on the foregoing, it is recommended that the St. John's River Water Management District issue to Fairfield Communities, Inc., conceptual approval of MSSW permit number 4-

031-002AC with conditions set forth in the District's Management and Storage of Surface Waters Summary Sheet, dated May 1986, and also issue to Fairfield Communities, Inc., CUP number 2-031-3021AN with conditions set forth in the District's Consumptive Uses of Water Summary Sheet. Further, it is recommended that the Florida Wildlife Federation be dismissed as a party in this proceeding.

DONE and ENTERED this 6th day of October, 1986, at Tallahassee, Florida.

---

DONALD D. CONN, Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of October, 1986.

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APPENDIX

Rulings on Petitioners' and Intervenors' Proposed Findings of Fact:

1. Adopted in Findings of Fact 9-27, 58-73.
- 2-7. Rejected as irrelevant and unnecessary
8. Adopted in Findings of Fact 36, 42.
- 9-10. Rejected as irrelevant and unnecessary
11. Adopted in part in Findings of Fact 4, 77, but otherwise rejected as irrelevant and unnecessary
- 12-24. Adopted in Finding of Fact 15, but otherwise rejected as unnecessary or not based on competent substantial evidence.
- 25-27. Rejected as irrelevant and unnecessary
- 28-39. Adopted and rejected in Finding of Fact 76, but otherwise rejected as irrelevant and unnecessary
- 40-45. Rejected in Findings of Fact 25, 77, 78 and otherwise not based on competent substantial evidence.
46. Rejected in Finding of Fact 76.
47. Rejected as irrelevant.
- 48-50. Rejected in Findings of Fact 77, 78 and otherwise not based on competent substantial evidence.
- 51-52. Rejected as unnecessary.
53. Rejected as not based on competent substantial evidence.
- 54-55. Rejected in Findings of Fact 77, 78.
56. Adopted in Finding of Fact 56.
- 57-63. Rejected in Finding of Fact 79 and otherwise not based on competent substantial evidence.
- 64-66. Rejected as irrelevant and unnecessary.
- 67-75. Rejected as irrelevant, unnecessary and otherwise not based on competent substantial evidence.
- 76-79. Rejected in Finding of Fact 79, and otherwise not based

on competent substantial evidence.  
80-83 Rejected in Finding of Fact 75, and otherwise irrelevant and not based on competent substantial evidence.  
84. Rejected in Finding of Fact 78  
85. Rejected as irrelevant and unnecessary.  
86-87. Rejected in Finding of Fact 75.  
88-107. Adopted and rejected in part in Findings of Fact 75, 78, and otherwise irrelevant and not based on competent substantial evidence.  
108. Rejected in Finding of Fact 79.  
109-111. Rejected in Findings of Fact 76, 80.  
112. Adopted in Finding of Fact 80.  
113. Rejected as irrelevant and unnecessary.  
114-116. Adopted in Finding of Fact 80.  
117-120. Rejected as irrelevant and not based on competent substantial evidence.  
121-136. Rejected in Finding of Fact 37 and otherwise unnecessary and not based on competent substantial evidence.  
137. Rejected as not based on competent substantial evidence.  
138. Rejected as unnecessary and cumulative.  
139-141. Rejected as not based on competent substantial evidence.  
142-144. Rejected as unnecessary and cumulative.  
145-147. Rejected as not based on competent substantial evidence.  
148. Rejected in Findings of Fact 36, 37.  
149. Rejected as unnecessary and cumulative.  
150. Rejected as not based on competent substantial evidence  
151-161. Rejected as unnecessary, cumulative and not based on competent substantial evidence.  
162-164. Rejected in Finding of Fact 37 and otherwise not based on competent substantial evidence.  
165-169. Rejected as unnecessary and cumulative.  
170. Rejected in Findings of Fact 34, 39, 41.  
171-173. Rejected as unnecessary and cumulative.  
174-177. Rejected in Findings of Fact 36, 37.  
178-179. Rejected in Findings of Fact 50, 51.  
180. Adopted in Finding of Fact 39.  
181-186. Rejected as not based on competent substantial evidence and otherwise unnecessary.  
187-189. Rejected in Finding of Fact 32, and otherwise not based on competent substantial evidence.  
190-193. Rejected as unnecessary and cumulative.  
194-195. Rejected as not based on competent substantial evidence.  
196. Rejected as unnecessary.  
197-200. Rejected as not based on competent substantial

evidence.

201-205. Rejected in Findings of Fact 32, 33 and otherwise not based on competent substantial evidence.

206-210. Rejected in Findings of Fact 32, 33, 36, 37.

211-268. Rejected in Findings of Fact 35, 36, 39-41, 52-54 and otherwise unnecessary and contrary to competent substantial evidence.

269-278. Adopted in part in Finding of Fact 3, but otherwise rejected as unnecessary.

279-297. Rejected in Findings of Fact 32, 33, 35, 36, 41, 42 and otherwise as unnecessary.

298. Rejected as irrelevant and unnecessary.

299-300. Adopted in part in Finding of Fact 3.

301. Rejected as unnecessary.

302. Rejected in Finding of Fact 44.

303. Adopted and rejected in part in Findings of Fact 45-47.

304-305. Adopted in Finding of Fact 4.

306-312. Rejected in Findings of Fact 44-48 and otherwise not based on competent substantial evidence.

313. Rejected in Findings of Fact 43, 45.

314. Rejected in Finding of Fact 48.

315-321. Rejected as unnecessary and not based on competent substantial evidence.

322-323. Adopted and rejected in part in Finding of Fact 50.

324. Rejected as unnecessary.

325-329. Adopted and rejected in part in Finding of Fact 28.

330. Rejected as unnecessary.

Rulings on Respondent Fairfield Communities' Proposed Findings  
of Fact:

1. Adopted in Findings of Fact 9, 58.
2. Adopted in Findings of Fact 10, 59.
3. Adopted in Findings of Fact 11, 59.
4. Adopted in Findings of Fact 15, 59.
5. Adopted in Finding of Fact 12.
6. Adopted in Findings of Fact 13, 27.
7. Adopted in Findings of Fact 14, 59.
8. Rejected as unnecessary based on Finding of Fact 28
9. Adopted in Findings of Fact 30, 60.
10. Adopted in Findings of Fact 16, 17, 61, 62.
11. Adopted in Findings of Fact 4, 6, 18, 19
12. Adopted in Findings of Fact 20, 65.
13. Adopted in Finding of Fact 26.
14. Adopted in Findings of Fact 21, 67.
15. Adopted and rejected in Finding of Fact 28
16. Adopted in Finding of Fact 28.

17. Adopted in Finding of Fact 1.
18. Adopted in Finding of Fact 2.
19. Adopted in Finding of Fact 3.
- 20-22. Adopted in Finding of Fact S.
- 23-24. Adopted in Finding of Fact 6.
25. Adopted in Finding of Fact 7.
26. Adopted in Finding of Fact 8.
27. Adopted in Finding of Fact 77, 81.
- 28-30. Adopted in Finding of Fact 74.
31. Adopted in Finding of Fact 75.
32. Adopted in Findings of Fact 75, 76
33. Adopted in Finding of Fact 76.
34. Adopted in Findings of Fact 75, 76.
35. Rejected as unnecessary.
- 36-37. Adopted in Finding of Fact 75.
38. Adopted in Finding of Fact 77, but otherwise rejected
- 39-40. Adopted in Finding of Fact 76 evidence.
- 41-43. Adopted in Findings of Fact 76-80, but otherwise rejected as cumulative and unnecessary.
- 44-47. Adopted in Finding of Fact 74
- 48-50. Adopted in Finding of Fact 78 51-55 Adopted in Finding of Fact 79.
56. Rejected as unnecessary.
57. Adopted in Findings of Fact 77, 80.
58. Adopted in Findings of Fact 77, 83.
59. Adopted in Finding of Fact 80.
60. Adopted in Findings of Fact 78, 79.
61. Adopted in Finding of Fact 79.
- 62-63. Adopted in Finding of Fact 81.
- 64-65. Adopted in Finding of Fact 77
66. Adopted in Findings of Fact 4; 77.
67. Adopted in Finding of Fact 82.
68. Adopted in Finding of Fact 82, but otherwise rejected as unnecessary.
- 69-70. Rejected as unnecessary and cumulative
- 71-72. Adopted in Finding of Fact 30.
- 73-75. Adopted in Finding of Fact 31
- 76-84. Adopted in Findings of Fact 31, 32, but otherwise rejected as unnecessary
- 85-88. Adopted in Finding of Fact 33.
- 89-92. Adopted in Findings of Fact 36, 37, but otherwise rejected as unnecessary.
93. Adopted in Finding of Fact 34.
94. Adopted in Finding of Fact 82, but otherwise rejected as unnecessary.
95. Rejected as unnecessary
96. Adopted in Finding of Fact 43

97. Adopted in Finding of Fact 36
98. Adopted in Findings of Fact 4i, 42
99. Adopted in Findings of Fact 2, 38
100. Adopted in Findings of Fact 41, 42.
- 101-102. Adopted in Finding of Fact 39
103. Adopted in Finding of Fact 40.
104. Adopted in Finding of Fact 35.
- 105-105. Adopted in Finding of Fact 41.
- 110-115. Adopted in Finding of Fact 42
- 116-117. Adopted in Findings of Fact 36, 42, but otherwise rejected as unnecessary.
- 118-121. Adopted in Finding of Fact 50, but otherwise rejected as unnecessary
122. Rejected as unnecessary, cumulative and inaccurate.
- 123-125. Rejected as cumulative and unnecessary.
126. Adopted in Findings of Fact 29, 31.
127. Adopted in Finding of Fact 43.
- 128-131. Adopted in Finding of Fact 56.
- 132-133. Adopted in Finding of Fact 36.
- 134-135. Adopted in Finding of Fact 56, but otherwise rejected as unnecessary.
136. Adopted in Finding of Fact 51.
- 137-138. Adopted in Finding of Fact 35.
139. Adopted in Finding of Fact 36.
140. Adopted in Finding of Fact 52.
141. Adopted in Findings of Fact 52, 53.
142. Adopted in Finding of Fact 54.
143. Adopted in Finding of Fact 55.
- 144-148. Adopted in Finding of Fact 44, but otherwise rejected as unnecessary.
149. Adopted in Findings of Fact 4, 43, 44, but otherwise rejected as unnecessary.
- 150-151. Adopted in Finding of Fact 45.
152. Rejected as unnecessary.
153. Adopted in Finding of Fact 45.
- 154-155. Adopted in Finding of Fact 46.
156. Adopted in Finding of Fact 47.
157. Adopted in Finding of Fact 48.
- 158-160. Adopted in Finding of Fact 49.

Rulings on Respondent St. John's River Water Management District's Proposed Findings of Fact: (The District's proposal was not timely filed, and the District did not seek permission from the Hearing Officer for late filing. It also consists of serial, unnumbered paragraphs from pages 18 to 48 despite specific instruction of the Hearing Officer to the parties to number paragraphs in proposed findings in order to allow

specific rulings to be made. Despite these failures, a ruling will be made on the District's proposals, after having consecutively numbered each unnumbered paragraph, since counsel for the District indicates counsel for Petitioners has no objection to this late-filing, and in fact no Motion to Strike has been filed on behalf of Petitioners.)

1. Adopted in Finding of Fact 1.
2. Adopted in Finding of Fact 2.
3. Adopted in Finding of Fact 4.
4. Adopted in Finding of Fact 75.
5. Adopted in Finding of Fact 76.
6. Adopted in Findings of Fact 77, 81.
7. Adopted in Finding of Fact 60.
8. Adopted in Finding of Fact 30.47
9. Adopted in Findings of Fact 16, 17.
10. Adopted in Finding of Fact 18.
11. Adopted in Finding of Fact 6.
12. Adopted in Findings of Fact 66, 83.
13. Adopted in Finding of Fact 83.
14. Adopted in Finding of Fact 20.
- 15-16. Adopted in Finding of Fact 57.
17. Adopted in Findings of Fact 21, G7.
- 18-21. Adopted in Finding of Fact 74.
22. Adopted in Findings of Fact 74-76.
23. Adopted in Finding of Fact 74.
- 24-26. Rejected as irrelevant and unnecessary.
27. Adopted in Finding of Fact 77.
- 28-35. Adopted in Finding of Fact 76.
- 36-41. Adopted in Finding of Fact 78.
42. Adopted in Finding of Fact 80.
- 43-45. Adopted in Finding of Fact 79.
46. Adopted in Finding of Fact 75.
47. Adopted in Findings of Fact 75, 79.
48. Adopted in Finding of Fact 79.
- 49-50. Adopted in Finding of Fact 81.
- 51-52. Adopted in Finding of Fact 79.
53. Adopted in Finding of Fact 80.
54. Adopted in Finding of Fact 79.
55. Adopted in Finding of Fact 77.
56. Adopted in Finding of Fact 81.
- 57-58. Adopted in Finding of Fact 77.
59. Adopted in Findings of Fact 34, 82.
60. Rejected as unnecessary.
61. Adopted in Finding of Fact 77.
62. Rejected as unnecessary and cumulative.
63. Adopted in Finding of Fact 78.

64-65. Adopted in Finding of Fact 30.  
66. Adopted in Findings of Fact 34, 39.  
67-72. Adopted in Finding of Fact 31.  
73-81. Adopted in Finding of Fact 32.  
82. Adopted in Findings of Fact 36, 42.  
83-84. Adopted in Findings of Fact 32, 33.  
85-87. Adopted in Finding of Fact 33.  
88-94. Rejected as unnecessary.  
95. Adopted in Finding of Fact 37.  
96-98. Adopted in Finding of Fact 36, but otherwise rejected as unnecessary.  
99. Adopted in Finding of Fact 54.  
100. Adopted in Findings of Fact 34-36.  
101-102. Rejected as unnecessary and cumulative.  
103. Adopted in Findings of Fact 2, 38.  
104. Rejected as unnecessary and cumulative.  
105. Adopted in Findings of Fact 36, 39.  
106. Adopted in Finding of Fact 39.  
107. Adopted in Findings of Fact 41.  
108. Adopted in Finding of Fact 35.  
109. Rejected as unnecessary.  
110-118. Adopted in Finding of Fact 41, but otherwise rejected as unnecessary.  
119. Adopted in Finding of Fact 53.  
120. Adopted in Findings of Fact 52, 53, but otherwise rejected as unnecessary.  
122. Adopted in Finding of Fact 55.  
123. Adopted in Finding of Fact 42.  
124-128. Adopted in Findings of Fact 32, 36, 42, but otherwise rejected as unnecessary.  
129. Adopted in Findings of Fact 35, 42, but otherwise rejected as unnecessary.  
130. Rejected as unnecessary.  
131-134. Adopted in Finding of Fact 50, but otherwise rejected as unnecessary.  
135. Adopted in Findings of Fact 42, 43.  
136-138. Adopted in Finding of Fact 56.  
139. Adopted in Findings of Fact 36, 56.  
140-141. Adopted in Finding of Fact 56.  
142. Adopted in Finding of Fact 51.  
143-144. Adopted in Finding of Fact 35.  
145. Adopted in Finding of Fact 36.  
146. Rejected as cumulative, unnecessary and incorrect.  
147. Adopted and rejected in part in Finding of Fact 28.  
148. Adopted in Finding of Fact 28.

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AGENCY FINAL ORDER

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IN THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

FRIENDS OF FORT GEORGE, INC.,

Petitioners,  
and

LOGAN DIVING, INC., SOUTHEASTERN  
FISHERIES ASSOCIATIONS, INC., THE  
FLORIDA AUDUBON SOCIETY, THE  
DUVAL AUDUBON SOCIETY, and THE  
FLORIDA WILDLIFE FEDERATION,

DOAH Case No. 85-3537  
(Management and Storage  
of Surface Waters)  
SJRWMD Case No. 85-3948

Intervenors,

v.

FAIRFIELD COMMUNITIES, INC., and  
ST. JOHNS RIVER WATER, MANAGEMENT  
DISTRICT,

Respondents.

\_\_\_\_\_  
FRIENDS OF FORT GEORGE, INC., et al.,

Petitioners,  
and

THE FLORIDA AUDUBON SOCIETY  
and THE DUVAL AUDUBON SOCIETY,

DOAH Case No. 85-3596  
(Consumptive Use Permit)  
SJRWMD Case No. 85-394A

Intervenors,

v.

FAIRFIELD COMMUNITIES, INC., and  
ST. JOHNS RIVER WATER MANAGEMENT  
DISTRICT,

Respondents.

\_\_\_\_\_

## FINAL ORDER

On October 6, 1986, a hearing officer from the Division of Administrative Hearings (the "DOAH"), Donald D. Conn, submitted his Recommended Order in the above-captioned matter to the St. Johns River Water Management District (the "District"). A copy of the Recommended Order is attached hereto as Exhibit "A." Pursuant to Section 120.57(1)(b)(8), Florida Statutes (1985) and Florida Administrative Code Rule 40C-1.08(g), all parties to the proceeding were allowed twenty (20) days after receipt of the Recommended Order in which to file written exceptions to the Recommended Order. Petitioners, Friends of Fort George, Inc., William E. Arnold, Jr., William M. Bliss, Doris B. Chappelle, Leo E. Chappelle, Mr. and Mrs. Rhodes Gay, Dr. and Mrs. William J. Knauer, Jr., Camillus S. Lingle, Jr., and Mr. and Mrs. J. W. Lucas (the "Petitioners") timely served their exceptions to the hearing officer's Recommended Order on October 27, 1986. Intervenors, Florida Audubon Society and the Duval Audubon Society (the "Intervenors") timely served their exceptions to the hearing officer's Recommended Order on October 27, 1986. Respondent, the District, timely served its exceptions to the hearing officer's Recommended Order on October 27, 1986. No other parties filed written exceptions to the Recommended Order. Applicant/Respondent Fairfield Communities, Inc., served its response to the exceptions filed by Petitioners and Intervenors on November 6, 1986.

### PETITIONERS' EXCEPTIONS TO HEARING OFFICER'S RECOMMENDED ORDER

#### A. ADEQUACY OF HEARING OFFICER'S RULINGS ON PETITIONERS' PROPOSED FINDINGS OF FACT

Petitioners generally complain that the hearing officer:

- a) made insufficiently specific, ambiguous rulings on the Petitioners' Proposed Findings of Fact and Conclusions of Law thereby preventing the Petitioners from adequately responding to those rulings, and
- b) rejected certain of the Petitioners' Proposed Findings of Fact as "not based on competent, substantial evidence."

As a result, the Petitioners claim that they have been prejudiced both before the District Governing Board and on appeal.

Contrary to the Petitioners' assertions, the hearing officer's rulings comply with the applicable statutes and case law and provide the Petitioners with an ample basis for contesting the rejection of those findings. Petitioners cite Island Harbor Beach Club, Ltd. v. Dept. Natural Resources, 476 So. 2d 1350 (Fla. 1st DCA 1985) in support of their contentions. In that case, the hearing officer dealt with all of the proposed findings of all of the parties with a single sentence. Understandably, the single sentence did not comply with Section 120.59(2), Florida Statutes (1985) which requires a brief statement of the grounds for ruling on proposed findings. The hearing officer's explanation in this case meets or exceeds the requirements of Section 120.59(2), Florida Statutes (1985).

Certain examples should reflect the appropriateness and adequacy of the hearing officer's rationale for rejecting many of the Petitioners' proposed findings. For instance, Petitioners' proposed findings 137, 139, 140, 141, 145, 146, 147 and 150 all relate to the testimony of Petitioners' expert Robert Oros and were rejected by the hearing officer as not based on competent substantial evidence. Mr. Oros criticized Fairfield's modeling of the surficial aquifer claiming that the surficial aquifer was actually two separate layers and that the model used by Fairfield modeled a single layer aquifer. Neither Mr. Oros nor any other expert on behalf of the Petitioners conducted any additional testing or ran a model that they contended was more appropriate to show whether the criticism would have made a difference in the ultimate result. Mr. Oros admitted that he could only speculate on the effect of the differences he noted. [MSSW Tr: 1516-1529]. As a result, the hearing officer's rejection of proposed findings based on Mr. Oros' testimony as not based on competent substantial evidence unquestionably was correct.

Petitioners' proposed findings 194, 195, 197, 198, 199 and 200 similarly were rejected as not based on competent substantial evidence. The Petitioners' proposed findings in those paragraphs relate to their criticism of Fairfield's selection of a Soil Conservation Service curve number that their experts contended was too low. The principal testimony in support of the Petitioners' position was that of Larry Maron. Mr. Maron's testimony suffered from the same type of defects as that of Mr. Oros. Mr. Maron contended that site specific data

was necessary to choose a curve number below 40. Fairfield had chosen an average curve number of 37 for its calculations. Fairfield explained the basis on which it chose the curve number which was, in part, based on site-specific data. Neither Mr. Maron nor any of the Petitioners' other witnesses obtained any site-specific data or performed any calculations which would reflect that Fairfield's choice of curve numbers was flawed in any manner. To constitute competent substantial evidence, the evidence must establish a substantial basis from which the fact at issue can be reasonably inferred. No evidence reaching that level was produced by Petitioners with regard to the findings of which they complain.

More thorough descriptions of the testimony associated with these findings are contained in Fairfield's response to the Petitioners' exceptions. The fairness of the proceedings has not been impaired by the hearing officer's method of dealing with Petitioners' proposed findings of fact and the hearing officer's basis for rejecting the identified proposed findings is supported by the record.

#### B. PETITIONERS' EXCEPTIONS TO FINDINGS OF FACT

Exception #1. Petitioners claim that finding of fact t33 is not based on competent substantial evidence. That finding is that Fairfield's development will not adversely impact the overall water balance on Fort George Island. Fairfield's expert Dr. Gregory Powell described, in detail, the site-specific testing and modeling that was performed. [MSSW Tr: 113-289]. Fairfield dug 41 wells to varying depths at 18 different locations around the island; performed pump tests, slug tests, double ring infiltrometer tests and reviewed the surface geology to prepare input for the Trescott-Pinder surficial aquifer model. The results of the test and the model runs clearly support the findings contained in finding of fact #33.

Exception #2. Petitioners contend that finding of fact #35 is actually a conclusion of law which can be modified or rejected by the Governing Board. The finding relates to the equivalency of Fairfield's on-line treatment system to the Rule 40C-42, F.A.C. off-line treatment requirement for discharges to Outstanding Florida Waters. Petitioners present no argument in support of any contention that finding of fact #35, to the extent that it is a conclusion, should be modified or rejected. To the extent that finding of fact 135 is considered a conclusion of law, it is accepted by the Governing Board. To the extent that it is considered a finding of fact, it is

supported by competent substantial evidence. [MSSW Tr: 277-8; 2384-2392].

Exception #3. Petitioners contend that a portion of finding of fact #36 is not based on competent substantial evidence. Specifically, Petitioners contest that portion of the finding that surface water run-off is the primary source of pollutant transport. Dr. Powell testified that heavy metals and fecal coliform bacteria principally were transported by surface water-run-off and virtually would be eliminated from Fairfield's system. [MSSW Tr: 248-50]. Further, Petitioners' expert, Dr. Parks, made the same observation regarding oils and greases. [MSSW Tr: 1882]. In addition, the District's expert, Janis Nepshinsky identified the treatment efficiencies for nitrogen, phosphorous and other potential pollutants that travel through groundwater. [MSSW Tr: 2444-2586]. Based on those treatment efficiencies and the near total absence of certain types of pollutants in groundwater, the finding that surface water runoff is the primary source of pollutant transport is warranted. The fact that nutrients are primarily transported through groundwater does not, in and of itself, make groundwater a primary source of pollutant transport on Ft. George Island, contrary to Petitioners' assertions.

Exception #4. Petitioners contend that the hearing officer's finding as to the ambient water conditions in 1978 of the Outstanding Florida Waters surrounding Fort George Island is not based on competent substantial evidence. Contrary to this assertion, the ambient water quality of the Outstanding Florida Waters surrounding Fort George Island was determined by using data collected by the DER in 1977, the Jacksonville Bio-Environmental Services Division in 1983 and data collected by Fairfield in 1984. Coupled with the fact that little or no development has occurred on Ft. George Island since 1979, this data was the best available scientific evidence of the ambient water quality in the Outstanding Florida Waters and therefore is adequate to support the hearing officer's conclusion. [MSSW Tr: 2463-2466; 2498-2499; 258].

Exception #5. Petitioners' contention in exception #5 is unclear. Petitioners appear to be challenging the hearing officer's finding that, post-development, less nutrients and other potential pollutants will reach the estuary than under current conditions. Apparently, Petitioners contend that this finding is not supported by the weight of the evidence. In fact, the testimony of Janis Nepshinsky on this point was explicit. [MSSW Tr: 2489-2533]. Ms. Nepshinsky described the

proposed groundwater divide to be created on the island and the amount and type of land and soil on both sides of the divide. She contrasted the proposed conditions with existing conditions and then calculated the pollutant transport under each set of conditions [Id.].

Petitioners further contend that the hearing officer rejected their proposed findings of fact 222, 224, 225, 238 and 249 as "not based on competent substantial evidence." However, review of the hearing officer's ruling on those proposed findings reflects that they were rejected as unnecessary and as contrary to competent substantial evidence. They were not rejected as not being based on competent substantial evidence. Again, the Petitioners' proposed findings were based on criticisms of the findings and testimony of other experts but were made without any on-site testing, modeling or quantitative calculation and were speculative. As an example, Petitioners' expert, Dr. Parks, did not apply any factor for treatment efficiency in reaching his opinions on groundwater transport of nutrients. Dr. Parks recognized that nutrient uptake occurs and also admitted the crudeness of his calculations. [MSSW Tr: 1919-1921]. In contrast, Ms. Nepshinsky compared treatment efficiencies obtained in studies involving similar soils and used those efficiencies in reaching relatively refined conclusions. [MSSW Tr: 2489-2533]. Rejection of the Petitioners' proposed findings in favor of contrary findings based on Ms. Nepshinsky's testimony was appropriate.

Petitioners' final contention with regard to this exception, that the ambient conditions of the Outstanding Florida Waters could not be determined, was discussed in response to Petitioners' Exception #4 and that response is incorporated herein.

Exception #6. Petitioners contend that the hearing officer is unclear in finding of fact \$44 in that he indicates Fairfield identified only 26 species of plants and 16 species of wildlife on the island. Read in context with finding of fact #43, finding of fact I44 reflects that the hearing officer was discussing only those species of plants and wildlife that could be described as "rare, notable, endangered or threatened. Since that fact is apparent, when read in context with other findings of fact, it is unnecessary for the Governing Board to modify finding #44.

Exception #7. Petitioners contend that finding of fact \$56 should be overturned as not supported by competent substantial

evidence, or, in the alternative, as against the weight of the evidence. Contrary to the Petitioners' assertions, the record reflects that moving Palmetto Avenue is a positive benefit in the form of increased sheet flow in the Big Slough. [MSSW Tr: 723-725; 2605-2607]. Admittedly, moving Palmetto Avenue and paving it will have a slight negative effect on Middle Slough. However, the net beneficial effect is apparent. Middle Slough, in contrast to Big Slough, has a low value to off-site waters. [MSSW Tr: 2609-2611]. Further, required mitigation resulting from destruction of the three-quarter acre wetland area on the west side of the island must be approved by the District. [MSSW Tr: 2607-2609]. As a result, reasonable assurance that the small wetland area will be preserved, protected or detrimental effects on it mitigated is apparent.

Petitioners' objection that this finding does not balance the negative effects with the positive is curious. The finding only purports to identify the positive benefits of the development. It does not purport to balance them. To the extent that negative effects of the project were proved, the hearing officer had full opportunity to describe those effects in other findings of fact if he found them necessary or otherwise supported by competent substantial evidence.

Exception #8. Petitioners state that two portions of finding of fact #76 are not supported by competent substantial evidence. Those portions are:

- a. that the chloride concentrations in the upper water bearing zone (UWBZ) near the anomaly are approximately ten times greater than those appearing in the UWBZ over the remainder of the island.
- b. that no other point source of lower quality water exists on the island other than the anomaly in the northeast corner.

With respect to the first contention, the hearing officer clearly stated that he was making an approximation. A closer approximation would have been that the chloride concentrations in the UWBZ near the anomaly are approximately 15 times concentrations found elsewhere on the island. The hearing officer's finding is not inaccurate; however, Fairfield has indicated that it is willing to stipulate to the "approximately 15 times" finding. As a result, the Governing Board will modify finding of fact #76 to reflect that the concentrations of

chlorides in the UWBZ near the anomaly are approximately 15 times those found elsewhere on the island.

With respect to Petitioners' second contention, competent substantial evidence exists to support the hearing officer's conclusion. Numerous wells have been drilled into the UWBZ throughout the island, none of which reflect the characteristics of well J-1040 at the anomaly. [CUP Tr: 77-87]. The testing done with respect to well TP-2 in the Middle Water Bearing Zone (MWBZ) reflected none of the characteristics of well J-1040. [CUP Tr: 100-123].

While Petitioners claim that the potential exists for additional anomalies on the island due to general faulting characteristics, absolutely no scientific evidence was produced at the hearing reflecting that such faulting had occurred or that if faulting had occurred that another anomaly existed on the island as a result of the faulting. Finally, Rick Levin testified that based on the information presented by Fairfield, that it did not appear that any other anomalies exist on Fort George Island. [CUP Tr: 530].

Exception #9. This exception appears to be a continuation of Fairfield's objection to finding of fact #76. The discussion with respect to Exception #8 is, therefore, applicable and is incorporated herein. Petitioners' citation to the record regarding "anomalous readings" elsewhere on the island were words used by counsel for Petitioner and not the witness, Rick Levin. Mr. Levin's testimony was that certain of the parameters that were tested in the various wells on the island reflected "a change." However, Mr. Levin did not testify that those readings were "anomalous" or that the readings were the result of any other existing anomaly. Mr. Levin stated that he could not conclude, one way or the other, based on those changes in the readings, whether another anomaly existed on the island. He did not recant his prior testimony that it appeared, from all of the evidence, that no other anomalies exist on the island.

Exception #10. Petitioners contend that the hearing officer's finding that the MWBZ will produce an adequate supply of potable water for 15 to 30 years is not based on competent substantial evidence because he fails to make findings reflecting that pumping of TP-2 will not cause significant saline intrusion. The bedrock of Petitioners' contention is that the hearing officer failed to make a finding as to the source concentration of the chlorides in the lower water bearing zone (LWBZ).

Fairfield's experts specifically testified that the data available in the UWBZ, the head relationships between the various water bearing zones and the potential dilution effects from regional flows provide an adequate basis for determining that the concentration of chlorides at the anomaly in the MWBZ is between 225 and 250 mg/l. [CUP Tr: 220-230]. Further, based on computer modeling of the aquifer, Dr. Motz opined that an adequate water supply would exist for 15 to 30 years or more which is beyond the life of the requested permit. [CUP Tr: 131]. Again, Petitioners' experts made speculative claims that were unsupported by any testing, modeling or other scientific data.

C. PETITIONERS' EXCEPTIONS TO CONCLUSIONS OF LAW

Exception #1. Petitioners contend that the hearing officer failed to include a conclusion that the proposed activity by Fairfield will not induce pollution intrusion. In reciting the Rule 40C-4.301(1)(a), F.A.C. criteria, the hearing officer did not include subparagraph 11 relating to inducing salt water or pollution intrusion. However, numerous findings of fact, including but not limited to numbers 35, 36, 39, 40, 41, 42, 52 and 55, reflect that no significant pollution intrusion will occur in the system. At page 34 of the Conclusions of Law, the hearing officer specifically states that pollution to the estuary will be reduced and at page 35 that all applicable ground and surface water quality criteria will be met by discharges or seepages from the system. For those findings and conclusions to have been made, the Hearing officer clearly considered whether any pollution intrusion would occur in Fairfield's system and found that it would not. To the extent that the hearing officer's conclusion of law needs to be modified to reflect that he considered the appropriate criteria, those conclusions are hereby made by the Governing Board.

Exception #2. Petitioners contend that Fairfield did not provide an off-line system as described in Rule 40C-42.025(5), Florida Administrative Code. That fact is uncontested. Fairfield, however, did show that its system provided not merely equivalency as permitted by 40C-42.025(12), Florida Administrative Code, but actually out-performed the designated off-line system by a factor of 2.5. [MSSW Tr: 277-8; 2384-92]. Nothing in Rule 40C-42.025 precludes the use of the equivalency standard in subparagraph 12 in dealing with the off-line requirements of subparagraph 5.

The second prong of Petitioners' exception is that Fairfield relied solely on the presumption that water quality criteria will be met when using an off-line system but then failed to use the off-line system thereby negating the effect of the presumption. However, irrespective of the presumption, Fairfield presented competent substantial evidence to reflect that the groundwater seepage from Fairfield's development, as well as surface water discharged to the estuary, if any, will not violate the appropriate water quality standards or degrade the ambient water quality of the estuary. [MSSW Tr: 271, 555, 556-568, 579, 581, 591, 628, 2478-2492, 3018-3026, 2708-2709; and recommended Order paragraphs 35, 36, 38, 39, 40, 41, 42 and page 35, first full paragraph].

Exception #3. Petitioners argue that since a measurable amount of pollutants will enter the Outstanding Florida Waters surrounding the island that, as a result, a significant degradation must occur. Petitioners therefore challenge the hearing officer's interpretation of the Department of Environmental Regulation Rule 17-4.242 (1), Florida Administrative Code, as requiring a showing of significant degradation as a precondition to application of the remainder of the rule. The hearing officer's interpretation of the rule appears correct on its face. The Petitioners' citation to Section 403.918, Florida Statutes, is irrelevant to any determination pursuant to Rule 17-4.242, Florida Administrative Code. The hearing officer determined, based on competent substantial evidence [MSSW Tr: 271, 555, 566-568, 579, 581, 591, 628, 2478-2492, 3018-3026, 2708-2709] that Fairfield's system will improve the quality of the water being discharged into the estuary from Fort George Island to the extent that the components of the discharge to the estuary would be detectable. The discharge of pollutants to an Outstanding Florida Waters is permitted where the effect on water quality is found to be negligible. Caloosa Property Owners Assn. v. Dept. Environmental Regulation, 462 So. 2d 523 (Fla. 1st DCA 1985); Bayshore Homeowners Assn. v. Dent. Environmental Regulation, 7 FALR 3042 (1985).

To the extent that any significant degradation could be found to exist, the "clearly in the public interest" requirement is inapplicable, Grove Isle, Ltd. v. Dept. Environmental Regulation, 454 So. 2d 571 (Fla. 1st DCA 1984), and the ambient conditions in the Outstanding Florida Waters, based on the foregoing citations to the record, will not be lowered.

Finally, to the extent that the "clearly in the public

interest" standard is applicable, the public interest clearly is advanced by creating a better quality discharge from Fort George Island to the Outstanding Florida Waters than currently exists.

Exception #4. Petitioners' Exception #4 is a continuation and partial restatement of Exception #3 and has been addressed adequately above. That response is incorporated herein.

Exception #5. Petitioners contend that Fairfield did not establish the ambient conditions of the surrounding Outstanding Florida Waters for the period commencing one year prior to the designation of those waters as Outstanding Florida Waters. The testimony of Janis Nepshinsky [MSSW Tr: 2463-24651 and the previously referenced testimony of Dr. Powell [MSSW Tr: 258] reflect the ambient quality of the Outstanding Florida Waters surrounding Fort George Island using the best scientific information available. Petitioners offered no other information which could have been used to determine the ambient-quality of the water and pointed to no other available information.

Exception #6. Petitioners contend that the hearing officer's conclusion that the infrequent discharges from the storm water management system will not significantly degrade the surrounding Outstanding Florida Waters is not supported by competent substantial evidence. The conclusion is supported by the hearing officer's finding of facts based on the evidence adduced during the hearing. [MSSW Tr: 581, 591-592, 2708-2709 and 2391-23921. The types of discharges from the storm water system that will occur are extremely small in the context of a 100 year storm event. [MSSW Tr: 2391-23921. Only a storm event on the order of a once in 1000 year event would cause any significant discharge. [Id.]

Exception #7. Petitioners contend that even negligible effects on water quality cannot occur in the context of an Outstanding Florida Waters designation. In essence, Petitioners contend that the Outstanding Florida Waters rule is a blanket nondegradation standard. The Department of Environmental Regulation has disagreed with Petitioners contention in this regard. Bayshore Homeowners Assn. v. Dept. Environmental Regulation, 7 FALR 3042 (1985).

Exception #8 and 9. Petitioners contend that the hearing officer's finding that no degradation will occur in the Outstanding Florida Waters surrounding the island was based solely on the similarity in the quantity of discharge currently existing and that which is projected to occur under the proposed

development. Clearly, the hearing officer's conclusion is based on much more evidence than that cited by Petitioner. (See, Response to Petitioners' Second Exception to Conclusions of Law above). The hearing officer did not "credit" Fairfield for its cessation of current activities on the island; however, to the extent that those activities have helped establish or create the existing ambient conditions in the Outstanding Florida Waters, they cannot be ignored. The hearing officer is not permitted to assume that Fairfield should have ceased its current operations in 1978 and then determine a lower level of ambient conditions based on the cessation of the activity. Law and public policy do not require otherwise. Petitioners make no new objection to the hearing officer's conclusions with regard to the existing ambient conditions in the Outstanding Florida Waters surrounding Fort George Island or Fairfield's purported contribution to those conditions. Those objections have been dealt with in responses to previous exceptions and those responses are incorporated herein.

Exception #10. Again, Petitioners make no new arguments on the same issues addressed by their exceptions to the hearing officer's Conclusions of Law contained in Response paragraphs 4 through 9 above. The same responses apply and are incorporated herein.

Exception #11. Petitioners contend that in determining whether the project was clearly in the public interest, the hearing officer failed to take into account negative aspects of the project. As previously discussed (see, Response to Exception 63 above), the "clearly in the public interest" standard, in all likelihood, is not applicable to this proceeding. However, to the extent that it is applicable, the hearing officer must have considered the few negative impacts of this development in reaching his conclusions. Petitioners contend that the mere clearing of a large portion of the forested area on Fairfield's property is, without more, a negative impact. However, much of the hammock will be preserved and Fort George Island is not the last remaining area of coastal hammock. All of the aquatic and wetland dependent plant and animal species will be preserved. (See, Response to District Exception #2, infra at page 23.) Nearly half of the island as a whole, including state-owned land, will remain undisturbed. [MSSW Tr: 903-905, 980 and 1023].

The Osmunda Bog is a depressional swamp which, due to ditching, has an impacted hydroperiod thereby embedding it in an upland plant community. It has a low value as a functioning

wetland. [MSSW Tr: 2613-2615]. To the extent that the bog is impacted adversely, the vegetation will be transplanted. Further, the bog is expected to be an improved and enlarged habitat for both plants and animals. [MSSW Tr: 2616-2619].

Finally, Petitioners point to purported potential impacts on shellfish harvesting and recreational clamming in the waters surrounding Fort George Island. However, in light of the hearing officer's findings that the ambient water quality in those waters will not be degraded, no conceivable impact on the shellfish can be attributed to Fairfield's development. As a result, it appears that the hearing officer has appropriately weighed all of the matters cited by the Petitioners in making his determination with regard to the public interest.

Exception #12. Petitioners do not make contentions that differ from those contained in Exception #11 above. The Response to that Exception is incorporated herein.

Excention #13. Petitioners contend that the withdrawals proposed by Fairfield from the MWBZ will aggravate saline intrusion in the MWBZ. However, the hearing officer, in finding of fact #77, determined that salt-water intrusion from the LWBZ to the MWBZ would not increase significantly as a result of Eairfield's proposed pumping from the MWBZ. That finding was based upon testimony of Dr. Motz and is supported by competent substantial evidence. [CUP Tr: 129, 131, 507, 522 and 524]. The testimony of Petitioners' experts on this subject was suspect.

The anomalous feature is quite old and probably has been injecting connate water into the MWBZ and UWBZ for many years. If Mr. Luckette's assumptions were accurate, the MWBZ would have been destroyed as a potable water source long ago. [CUP Tr: 739-742]. These matters were also addressed in the Response to Exception #10 to the hearing officer's findings of fact and that response is incorporated herein.

Exceptions #14, 15 and 16. Petitioners make the same contentions with respect to the potential for additional anomalous conditions on Fort George Island that they made in their Exceptions 8 through 10 to the hearing officer's findings of fact. The Governing Board incorporates its response to those Exceptions herein.

In addition, Petitioners contend that Booker Creek Preservation, Inc. v. Mobil Chemical Co., 481 So. 2d 10 (Fla.

1st DCA 1985) requires that a higher level of proof regarding the lack of anomalous conditions on the island should be required of Fairfield. Booker Creek is easily distinguishable from the present case. In that case, Mobil proposed to discharge huge quantities of polluted water into three massive pollutant discharging industrial facilities the smallest of which was two-thirds of a square mile in size. In that case it was undisputed that substantial solution features in the nature of sinkholes existed in the area and would allow rapid transport of the pollutants into the Floridan aquifer if present. Mobil only tested in the vicinity of one of the proposed discharge facilities finding no Karst features beneath the surface. The Court held that the one test in one of the three, huge proposed facilities did not constitute reasonable assurance as required by the DER rules.

In the present case, a substantial dispute exists between the parties with respect to whether any anomalies exist on the island other than the known anomaly in the northeast corner. Further, Fairfield is not discharging pollutants into any anomalies thereby allowing them to move rapidly into the aquifer. The parallels between the Booker Creek case and the present case are tenuous at best.

D. PETITIONERS' EXCEPTIONS WITH REGARD TO EVIDENTIARY ISSUES.

Petitioners contend that Fairfield's Master Resource Management Plan was admitted in evidence over their hearsay objections, and therefore, they were prejudiced in not being able to cross-examine all of the persons who participated in the preparation of that plan.

First, hearsay evidence is admissible in this type of proceeding. Moreover, the various experts in charge of the various portions of the Master Resource Management Plan all testified that the observations, testing and analysis were done under their supervision and control and that they were responsible for those findings and conclusions. Experts are permitted to rely on this type of information and it may be admitted in evidence over a hearsay objection.

INTERVENORS' EXCEPTIONS TO HEARING OFFICER'S RECOMMENDED ORDER

A. INTERVENORS' EXCEPTIONS TO FINDINGS OF FACT.

Exception #1. Intervenors contend that findings of fact 5, 6, 7 and 8 should be stricken in that they purport to be

findings with regard to the Amended Development Order. The District does not have the authority pursuant to Chapter 373, Florida Statutes, or any other statute or rule, to require compliance with a Development Order issued pursuant to Chapter 380, Florida Statutes. Those determinations are outside the jurisdiction of the District and, as a result, have no binding effect on any other tribunal. However, the findings appear to be only historical in nature and, to that extent, the appropriate relief is not to strike them. However, the Governing Board, by rendering this Final Order does not intend to determine, in any manner, whether Fairfield complied with the Amended Development Order. The Governing Board specifically finds that compliance with the Amended Development Order is a matter outside its jurisdiction.

Exception #2. Intervenors contend that findings of fact 32 and 42 should be modified in that they are not supported by competent substantial evidence. Intervenors believe that the hearing officer has confused ground water and surface water flow in his findings. However, a careful reading of the hearing officer's findings reflects that he has not confused ground water and surface water flow to the estuary. In fact, he states that the total amount of freshwater flow, both ground and surface, in the pre-development condition is 17.5 inches per year and that the post-development flow will be 16 inches per year almost entirely in the form of ground water flow. The hearing officer's findings are supported by the testimony. [MSSW Tr: 186-187].

Exception #3: Intervenors contend that no competent substantial evidence reflects that the health of the estuary can be determined on the basis of gross annual averages and that fresh water pulsing is, irrefutably, a highly important factor in the functioning of an estuary. In fact, the testimony of Mr. Elledge was that the freshwater flows, in the form of groundwater, to the sloughs would continue. [MSSW Tr: 2394]. To the extent that the flows differed, the post-development flows could relieve stress on the estuarine organisms according to Mr. Gerry. [MSSW Tr: 2708-2716].

Exception #4. Intervenors contend that no competent substantial evidence supports the hearing officer's finding of fact 142 that the elimination of fresh water runoff to the sloughs on the western side of the island will not be detrimental to the salinities of those sloughs.

However, the record is replete with competent substantial evidence that:

a. Post-development ground water flow to the sloughs will not be significantly altered from the pre-development condition and will continue to be concentrated in the sloughs. The total calculated surface water runoff in the pre-development condition is less than one-half inch compared with pre-development ground water flow of approximately 17 inches [MSSW Tr: 186-189, 583, 600, 694, 2394-2395, 2704-2706].

b. The salinity of the sloughs is affected more by the 50 inches of rainfall and the forcing function of the tidal flow than by the one-half inch of fresh water surface runoff. [MSSW Tr: pp 771, 2704-2706, 694, 695, 735, 737 and 2705-2708].

c. The post-development condition may actually relieve stress on the estuary [MSSW Tr: 2708-2716].

Exception #5. Intervenors contend that findings of fact 39 and 41 should be modified because no competent substantial evidence supports a finding that nutrients are pollutants.

The hearing officer's findings do not reflect an equivalency between nutrients and pollutants. The hearing officer refers to "nutrient pollutants" which presumably are those nutrients which exceed a beneficial quantity of nutrients in the estuarine system. To the extent that Intervenors are seeking a determination that beneficial nutrients are blocked as a result of the blockage of the surface water runoff, the record adequately reflects that those beneficial nutrients and particulates will continue to reach the sloughs. [MSSW Tr: 2715, 2648, 3017].

Exception #6. Intervenors contend that finding of fact #41 should be stricken as not based on competent substantial evidence in that no reasonable assurance was provided with respect to the quality of water reaching the Outstanding Florida Waters surrounding the island. On the contrary, as reflected in the discussion of Petitioners'-Exceptions to findings of fact #4 and 5, reasonable assurances were provided. Those responses are incorporated herein

Exception #7. The Intervenors maintain that findings of fact #76 through 79 should be modified in that no competent substantial evidence exists which provides reasonable assurance that the anomaly on the northeast corner of the island is the

only existing potential source of connate water intrusion to the MWBZ. These contentions are discussed, in detail, in response to Petitioners' Exceptions to findings of fact #8 through 10 and Petitioners' Exception to Conclusion of Law #13. Those responses are incorporated herein.

B. INTERVENORS' EXCEPTIONS TO CONCLUSIONS OF LAW.

Exception #1. In a rather lengthy exception, Intervenors contend that Booker Creek creates a higher burden on Fairfield to provide reasonable assurance with respect to both the consumptive use and the MSSW permits criteria. With respect to the MSSW issues, Intervenors contend that the principal study on which Ms. Nepshinsky relied in reaching her water quality conclusions was too dissimilar and too far removed from Fort George Island to support a conclusion that reasonable assurance had been given with regard to pollutant transport on Fort George Island.

Ms. Nepshinsky specifically testified that the studies she used were sufficiently analogous to the Fort George Island conditions and in fact reflected a conservative approach to the analysis of the Fort George Island conditions. [MSSW Tr: 2581-2582]. The soil conditions were analogous and, therefore, Ms. Nepshinsky believed that she was using the best available sources of data. [MSSW Tr: 258-2]. Therefore, competent substantial evidence appeared in the record to support the findings of fact made by the hearing officer on the MSSW criteria.

With respect to the consumptive use criteria, Intervenors make the same contentions made by Petitioners in their Exceptions to findings of fact #8, 9 and 10 and Petitioners' Exception to Conclusions of Law #13. Those exceptions have been previously discussed and the responses to those exceptions are incorporated herein.

Exception #2. Intervenors contend that when discharges to Outstanding Florida Waters are involved a higher standard of reasonable assurance is applicable. Intervenors identify that standard as being that the activity must be "clearly in the public interest." This standard was adequately discussed in response to Petitioners' Exceptions to Conclusions of Law #3, 4, 11 and 12. Those responses are incorporated herein.

Exception #3. Intervenors contend that Fairfield's proposed consumptive use is not consistent with the public

interest because Fairfield cannot assure an adequate potable water supply for more than 15 years. Intervenors propose, in the absence of denial of the requested permit, that the District require a bond to secure implementation of an identified alternative potable water supply or, at least, require Fairfield to disclose the life span of the potable water supply in purchase contracts for their units.

Chapter 373, Florida Statutes and the District's rules do not contemplate the proposed conditions which Intervenors would have the District adopt. Those conditions are clearly outside the District's jurisdiction. The District may either grant or deny the permits and apply conditions; however, those conditions must be with respect to matters within the District's jurisdiction.

Actually, the Intervenors have overstated matters. Lou Motz testified that the proposed well, TP-2 will produce an adequate supply of potable water for at least 15 to 30 years in the future and perhaps even more. [CUP Tr: 131]. Fairfield will install a monitor well between TP-2 and the known existing anomaly to provide warning of any chloride concentration increases. The monitor well is expected to provide approximately a 10 year lead time regarding any changes in the chloride concentrations in the MWBZ. [CUP Tr: 276]. In the event that chloride concentrations increase in either the monitor well or TP-2, Fairfield is required by permit conditions to investigate other alternative sources of potable water supply for the project.

No developer can assure that potable water supplies from ground water will exist beyond certain reasonable time period projections. Intervenors, under the guise of a public interest argument, seek to have the District place an impossible burden on its consumptive use applicants. That burden is not warranted given the facts presented in this case.

RESPONDENT ST. JOHNS RIVER WATER MANAGEMENT  
DISTRICT'S EXCEPTIONS TO HEARING OFFICER'S RECOMMENDED ORDER

Exception #1. The District staff takes exception to the inclusion of the phrase "in compliance with the ADO" in finding of fact 630. The District staff contends that compliance with the Amended Development Order is not a determination that is within the jurisdiction of the District. As reflected in its discussion of Intervenors' Exception #1 to the hearing officer's finding of facts, the Governing Board agrees with this

contention. To the extent that the hearing officer was attempting to relate his finding to the ADO, the finding is inconsequential. However, the Governing Board specifically declines to adopt a finding, implied or otherwise, that the District staff could make a binding determination that a plan of study complied with a Development Order's requirements.

Exception #2. The District staff takes exception to the third paragraph on page 34 of the Conclusions of Law in that the paragraph does not adequately distinguish between construction and operation of the surface water system. The District staff further takes exception to the hearing officer's exclusion of R. Duke Woodson's testimony regarding past agency practice relating to its review of effects on natural resources, fish and wildlife. The District contends that it considers only aquatic and wetland dependent species pursuant to its rule criteria.

The Governing Board adopts the position of the District staff and modifies the Conclusion of Law beginning in the third paragraph on page 34 as follows:

The operation of Fairfield's proposed system will not adversely affect natural resources, fish and wildlife. No adverse impacts to the surrounding estuary will occur due to the discharge of any pollutants from the proposed system to either ground or surface water. Therefore, no adverse impact to the fish and other aquatic and wetland dependent species which exist in or around the estuary will occur. The curtailment of surface water runoff to the sloughs will not be adverse. The surface water table drawdowns will have no adverse impacts on aquatic and wetland dependent species.

The construction and operation of the proposed system must not adversely effect hydrologically related functions as set forth in Sections 10.7.2 and 10.7.3 of the Applicant's Handbook. In addition to the reasons identified immediately above, the proposed system meets this standard for the following additional reasons. Extensive buffers in undisturbed areas benefit the high value wetlands on the island as well as the surrounding estuary. The realignment of

a road that crosses Big Slough will benefit the slough by opening it up to additional sheet flow. Fairfield has demonstrated that no adverse impact on aquatic and wetland dependent species will occur due to remaining undisturbed habitat, increased sheet flow in the area of Big Slough and increases in the number, quality and size of available surface waters for feeding.

As reflected in Mr. Woodson's proffered, but excluded, testimony the past practice of the District has been to review effects on natural resources, fish and wildlife with respect to aquatic or wetland dependent species. The provisions in the Applicant's Handbook, Sections 10.7.2 and 10.7.3 reflect the intent of the District's Rule 40C-4.301(1)(a)(10), Florida Administrative Code, to limit that rule criterion to aquatic and wetland dependent species. Had Mr. Woodson's testimony been permitted, he would have supported that interpretation of the rules by past agency practice.

The distinction between the criteria necessary for construction of an MSSW system and operation of that system is similarly well-founded in the District Rule 40C-4.301(1)(a) and (2)(a). The rule is clear on its face and needs no interpretation in that regard.

Exception #3. The District staff takes exception to the second sentence in the last paragraph of page 35 to the extent that it refers to adverse impact on "plants or wildlife." Again, the District staff contends that only aquatic and wetland dependent species are evaluated pursuant to its MSSW rule criteria based on the same reasoning reflected in Exception #2 above. The identified conclusion appears in the portion of the Recommended Order identified as relating solely to the MSSW application. The Governing Board agrees with the staff's construction of the rules and inserts the words "aquatic or wetland dependent" between the word "on" and "plants" in that paragraph of the Recommended Order as its final order.

Exceptions #4, 5, 6 and 7. The District staff, for the same reasons set forth in its Exceptions #2 and #3 above, takes exception to the following portions of the hearing officer's Recommended Order:

- a) The use of the term "wildlife" in finding of fact #36.

b) The use of the phrase "rare, notable, endangered or threatened plant and wildlife species" in finding of fact 143.

c) All references to the gopher tortoise in finding of fact #47 because the gopher tortoise is a terrestrial Species.

d) All of paragraph 48 of the findings of fact in that none of the animals mentioned are aquatic or wetland dependent species.

For the same reasons set forth in response to Exceptions #2 and #3 above, the Governing Board makes the following modifications to the Recommended Order as its final order:

a) The phrase "aquatic and wetland dependent" is inserted in paragraph 36 of the findings of fact between the words "for" and "wildlife".

b) The phrase "aquatic and wetland dependent wildlife species" is substituted for the phrase "rare, notable, endangered or threatened plant and wildlife species" contained in paragraph 43 of the findings of fact.

c) Paragraph 47 of the findings of fact is rejected in that the scope of inquiry under Section 40C-4.301(2)(a)(6), Florida Administrative Code, does not extend to wildlife species which are not aquatic or wetland dependent.

d) Paragraph 48 of the findings of fact is rejected in that the scope of inquiry under Section 40C-4.301 (2)(a)(6), Florida Administrative Code, does not extend to wildlife species which are not aquatic or wetland dependent.

Exception Number 8. The District staff takes exception to the findings of fact concerning archeological impacts of Fairfield's project. The Governing Board agrees that none of its rules or its past agency practice take into consideration archeological impacts. As a result, paragraph 49 is rejected as irrelevant to review of applications in the District's MSSW and CUP permitting programs.

GOVERNING BOARD DETERMINATIONS WITH RESPECT  
TO MATTERS NOT SPECIFICALLY IDENTIFIED

To the extent that the foregoing discussion of the Petitioners', the Intervenor's' and the District's Exceptions to the hearing officer's Recommended Order and to the extent that

the findings of fact adopted in the Order set forth herein below do not discuss or adopt the Exceptions contained in the parties' Exceptions to the Recommended Order, those Exceptions and contrary findings based thereon have been rejected as not being relevant or material to the issues or not being based upon evidence adduced at the hearing or as being inconsistent with evidence which the hearing officer deemed more credible.

The District staff, by letter to Board Counsel dated November 19, 1986 with copies to all counsel of record, suggested that certain dates should be changed in the Consumptive Use Permit Conditions due to the lengthy nature of these proceedings. The suggested changes merely reflect time periods which run from the effective date of the permit rather than absolute dates that soon will become obsolete.

The Governing Board adopts the staff suggestion and hereby modifies the following conditions in the following manner:

14. At the time any new golf course area requires irrigation, permittee must tie in well TP-2 with the existing 18-hole golf course for irrigation. At such time, the connections of wells J-576 and J-228 to the irrigation system must be served. Wells J-576 and J-228 will be allowed to serve as fire protection wells.

18. Maximum annual withdrawals from well TP-2 for potable supply must not exceed:

First 365 day period	*	6.61	mgal
Second 365 day period	*	14.8	mgal
Third 365 day period	*	26.9	mgal
Fourth 365 day period	*	36.9	mgal
Fifth 365 day period	*	55.7	mgal
Sixth 365 day period	*	66.8	mgal
Seventh 365 day period	*	77.8	mgal

\*From effective date of this permit

19. Maximum daily withdrawals from well TP-2 for potable supply must not exceed:

First 365 day period	*	.036	mgal
Second 365 day period	*	.081	mgal
Third 365 day period	*	.147	mgal
Fourth 365 day period	*	.202	mgal
Fifth 365 day period	*	.305	mgal

Sixth 365 day period \* .365 mgal  
Seventh 365 day period \* .426 mgal

\*From effective date of this permit

21. Following approval of the reuse system and its monitoring network by the District and all appropriate state and local agencies, the permittee must use treated effluent from the Fort George Island wastewater treatment facility for supplemental irrigation of the golf courses.

The schedule for reuse of treated effluent is as follows:

Third 365 day period \* 11.68 mgal  
Fourth 365 day period \* 18.62 mgal  
Fifth 365 day period \* 26.68 mgal  
Sixth 365 day period \* 31.03 mgal  
Seventh 365 day period \* 35.77 mgal

\*From effective date of this permit

22. If wastewater reuse is approved by the District and all appropriate state and local agencies, maximum annual withdrawals from well TP-2 for supplemental irrigation must not exceed:

First 365 day period \* 141.5 mgal  
Second 365 day period \* 141.5 mgal  
Third 365 day period \* 79.4 mgal  
Fourth 365 day period \* 72.4 mgal  
Fifth 365 day period \* 64.4 mgal  
Sixth 365 day period \* 60.0 mgal  
Seventh 365 day period \* 55.3 mgal

\*From effective date of this permit

If wastewater reuse is not approved, the above-stated maximum annual withdrawals will be increased by the quantities shown in condition 21 above.

23. Maximum daily withdrawals from well TP-2 for supplemental irrigation must not exceed:

1st and 2nd 365 day period \* .500mgal  
3rd 365 day period \* .750mgal  
4th through 7th 365 day period \* 1.0mgal

\*From effective date of this permit

ORDER

WHEREFORE, having considered the Recommended Order of the hearing officer and the Exceptions thereto filed by Petitioners, Friends of Fort George, Inc., William E. Arnold, Jr., William M. Bliss, Doris B. Chappelle, Leo E. Chappelle, Mr. and Mrs. Rhodes Gay, Dr. and Mrs. William J. Knauer, Jr., Camillus S. Lengle, Jr., and Mr. and Mrs. J. W. Lucas, the Intervenors, the Florida Audubon Society and the Duval Audubon Society and Respondent St. Johns River Water Management District and having further reviewed the transcript of the hearing and the memoranda and proposed findings submitted by the parties, and being otherwise fully advised in the premises, it is thereupon:

ORDERED that the hearing officer's Recommended Order dated October 6, 1986 is hereby adopted in full, subject to those modifications noted hereinabove, as the final action of the St. Johns River Water Management District; and it is

ORDERED that Fairfield Communities, Inc. is hereby granted conceptual approval of MSSW Permit No.: 4-031-0002 AC with the conditions set forth in the District's Management and Storage of surface water summary sheet, dated May 1986, and the District hereby grants to Fairfield Communities, Inc. Consumptive Use Permit No.: 2-031-0021 AN with the conditions set forth in the District 's consumptive uses of water summary sheet as modified hereinabove; and it is

FURTHER ORDERED that the Florida Wildlife Federation is dismissed as a party to this proceeding.

DONE AND ORDERED in Palatka, Putnam County, Florida this 9th day of December, 1986.

THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

By: Ralph E. Simmons, Chairman

RENDERED THIS 15th DAY OF DECEMBER, 1986.

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Ruth D. Hedstrom, District Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail return receipt requested to Segundo J. Fernandez, Esq.; Thomas G. Pelham, Esq.; Mr. Charles Lee, Florida Audubon Society, 1101 Audubon Way, Maitland, Florida 32751; Jeffrey R. Ludwig, One Independent Square, Jacksonville, Florida 32276; Stephen O'Hara, Jr., Esq., 1500 American Heritage Life Building, Jacksonville, Florida 32202; Kathryn L. Mennella, Esq., St. Johns River Water Management District, Palatka, Florida 32078-1429 and Donald D. Conn, Hearing Officer, Division of Administrative Hearings, 2009 Apalachee Parkway, Tallahassee, Florida 32301 this 15th day of December, 1986.

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Ruth D. Hedstrom, District Clerk

NOTICE OF RIGHTS

1. Any substantially affected person who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, within 90 days of the rendering of the final District action.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla.R.App.P. 9.110 within 30 days of the rendering of the final District action.

3. A party to the proceeding who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statute, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Land and Water Adjudicatory Commission (Commission) by filing a request for review with the Commission and serving a copy on the

Department of Environmental Regulation and any person named in the order within 20 days of the rendering of the District order. However, if the order to be reviewed is determined by the Commission within 60 days after receipt of the request for review to-be of statewide or regional significance, the Commission may accept a request for review within 30 days of the rendering of the order.

4. A District action or order is considered "rendered" after it is signed by the Chairman of the Governing Board on behalf of the District and is filed by the District Clerk.

5. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraphs §1 and 12 or for Commission review as described in paragraph r3 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

SEE ATTACHED SHEET

At 4:30 p.m. this 15th day of December, 1986.

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RUTH D. HEDSTROM  
DISTRICT CLERK  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, Florida 32078-1429  
(904) 328-8321

COPIES FURNISHED:

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