

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

RALPH S. PRUGH, et al.

Petitioners,

v.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT and  
FIVE MASTERS CORPORATION,

Respondents.

FILE OF RECORD NO. 89-799

FINAL ORDER

On December 22, 1989, Thomas L. Durrance, Hearing Officer, submitted his Recommended Order in this matter to the St. Johns River Water Management District ("SJRWMD") Governing Board. A copy of the Recommended Order is attached hereto as "Exhibit A". Pursuant to subparagraph 120.57(1)(b)9, Florida Statutes (F.S.), and section 40C-1.564, Florida Administrative Code (F.A.C.), all parties to the proceeding were allowed twenty days after service of the Recommended Order within which to file written exceptions. Petitioners, Ralph S. Prugh, et al., timely served their exceptions to the Hearing Officer's Recommended Order on February 11, 1990. Respondents, SJRWMD and Five Masters Corporation, did not serve exceptions to any portion of the Hearing Officer's Recommended Order.

PETITIONERS' EXCEPTIONS TO  
HEARING OFFICER'S RECOMMENDED ORDER

The following exceptions, as specifically described below, are found to be relevant and supported by competent, substantial evidence and are granted:

The portion of exception no. 9 pertaining to the first sentence of Petitioners' proposed finding of fact no. 15.

The portion of exception no. 11 pertaining to the third sentence of Petitioners' proposed finding of fact no. 21.

Exception no. 15.

The portion of exception no. 16 pertaining to the first, fourth, and fifth sentences of Petitioners' proposed finding of fact no. 32.

The portion of exception no. 19 pertaining to the first sentence of Petitioners' proposed finding of fact no. 36.

The following exceptions, as specifically described below, may be supported by competent, substantial evidence in the record but are found to be irrelevant to the issues in this case, and are therefore denied:

Exception no. 4.

The portion of exception no. 8 pertaining to the second and third sentences of Petitioners' proposed finding of fact no. 14.

The portions of exception no. 11 pertaining to Petitioners' proposed findings of fact numbered 18, 19, 20, and the last sentence of 21.

Exception no. 12 except as it pertains to the third sentence of Petitioners' proposed finding no. 28.

Exception no. 13.

The following exceptions of the Petitioners, as specifically described below, are denied based on the absence of any competent, substantial evidence in the record to support them:

Exception no. 2.

Exception no. 3.

Exception no. 7.

The portion of exception no. 8 pertaining to the last two sentences of Petitioners' proposed finding of fact no. 14.

The portion of exception no. 9 pertaining to the second sentence of Petitioners' proposed finding no. 15.

Exception no. 10.

The portions of exception no. 11 pertaining to the last sentence of Petitioners' proposed finding no. 19, the first two sentences of proposed finding no. 21, and proposed finding no. 22.

The portion of exception no. 12 pertaining to the third sentence of Petitioners' proposed finding no. 28.

Exception nos. 26 through 28.

The following exceptions, as specifically described below, are denied based on irrelevancy and the lack of competent, substantial evidence in the record to support them:

The portions of exception no. 11 pertaining to Petitioners' proposed findings of fact numbered 23 through 27.

Exception no. 13.

The portion of exception no. 16 pertaining to the second and third sentences of Petitioners' proposed finding of fact no. 32.

Exception nos. 17 and 18.

The portions of exception no. 19 pertaining to Petitioners' proposed findings numbered 35 through 38, except the first sentence of proposed finding no. 36.

Exception no. 25.

Exception no. 28.

The following exceptions to the Hearing Officer's recommended findings of fact are denied based on the presence of competent, substantial evidence in the record to support them:

Exception no. 5 (see TR: September 27, 1989, Vol. II, 123).

Exception no. 6 (see TR: September 27, 1989, Vol. II, 124-125).

Exception no. 20 (see TR: September 27, 1989, Vol. II, 139-140 re recommended finding no. 19; TR: September 27, 1989, Vol. II, 143 re recommended finding no. 20; and TR: September 27, 1989, Vol. II, 144, 175 re recommended finding no. 21).

Exception no. 21 (see TR: September 27, 1989, Vol. II, 144).

Exception no. 22 (see TR: September 27, 1989, Vol. II, 142 re recommended finding no. 26; and TR: September 27, 1989, Vol. II, 143 re recommended finding no. 27).

Exception no. 23 (see TR: September 27, 1989, Vol. II, 147).

Exception no. 24 (see TR: September 27, 1989, Vol. II, 149, District's Exhibit #2 re recommended findings numbered 32 through 34; TR: September 27, 1989, Vol. II, 172-173 re recommended finding no. 35).

The Petitioners incorrectly argue that many of their proposed findings of fact are supported by evidence that a reasonable person would consider adequate to support them. The correct standard to be applied in reviewing the Hearing Officer's recommended findings of fact is whether they are supported by competent substantial evidence in the record. The agency head cannot substitute its judgment for that of the Hearing Officer, who is the trier of fact in an administrative proceeding, unless it finds that there is no competent, substantial evidence in the record to support the Hearing Officer's findings. Neither is the

review standard by the "clear weight of the evidence" as suggested by the Petitioners in Exception no. 20.

RULINGS ON CONCLUSIONS OF LAW EXCEPTIONS

Petitioners' exception no. 1 to the Hearing Officer's conclusion of law no. 1 is denied. Even though Petitioners assert that the District lacks exclusive jurisdiction to adjudicate the present application, Petitioners fail to cite authority with which the Recommended Order is inconsistent. Petitioners overlook the fact, as stipulated by Petitioners, that the site which is the subject of the current permit application is completely within the boundaries of the St. Johns River Water Management District as defined in paragraph 373.069(2)(c), F.S. Therefore, the District is not exercising jurisdiction beyond its geographic boundaries.

Petitioners assert that the District violates its taxing and police powers by exercising jurisdiction beyond its boundaries. Petitioners assert that tax money is being spent to permit a stormwater discharge into state waters outside the District's territory. Petitioners again overlook the fact, as stipulated by Petitioners, that the entire project site which is the subject of the application lies within the District's boundaries. Therefore, any money spent or enforcement taken in permitting the current application will only occur within the District's boundaries.

Petitioners assert that they have been denied due process because the Suwannee River Water Management District was not a party to this hearing. Petitioners fail to cite authority for

this assertion. Petitioner's assertion is misplaced.

Petitioners have been afforded the procedural due process provided by law in that Petitioners petitioned, requested, and were provided an administrative hearing concerning the issuance of the subject permit, pursuant to section 120.57, F.S. In their case, Petitioners presented testimonial and documentary evidence. Petitioners were also allowed to ask individual questions and voice objections to the proposed project.

Petitioners assert that the Florida Department of Environmental Regulation (FDER) has delegated stormwater discharge permitting authority to the District; pursuant to section 17-25.090, F.A.C. Petitioners assert that the delegation does not extend those permitting powers beyond the District's boundaries. Petitioners fail to establish that the Recommended Order is inconsistent with the delegation, and therefore, the exception must be rejected.

The subject of the permit application is the stormwater discharge facility for the site, not the discharge into Punch Bowl Lake. The fact that Punch Bowl Lake is the receiving waterbody is irrelevant and immaterial to the jurisdiction of the District to permit stormwater discharge facilities on property completely within its boundaries. The evidence clearly establishes that the stormwater discharge will meet state water quality standards at the property line of the site. Therefore, the District is not extending jurisdiction, spending tax moneys, or exercising police powers into the Suwannee River Water Management District.

Petitioners were not denied due process from the absence of the Suwannee River Water Management District at the hearing. Therefore, Petitioners' exception no. 1 is rejected.

Petitioners' Exception no. 2 to the Hearing Officer's conclusion of law no. 9 is denied as contrary to the evidence. The Recommended Order concludes as a matter of law that section 40C-42.027, F.A.C., has been satisfied. Petitioners assert that the proposed sale of the property at some future date impacts the maintenance and operation of the stormwater discharge facility. Petitioners fail to cite authority for the assertion that the permit application lacks assurances that the maintenance will be continued for the benefit of the public. The evidence established that the facility as designed will require minimal maintenance such as mowing.

Both Mr. Richardson, as agent for Five Masters Corporation, and Mr. Enos, as President of E and L Commercial Properties, Inc., executed affidavits concerning the maintenance and operation of the stormwater discharge facility. The affidavits were introduced into evidence as Five Masters Exhibit #5. In Mr. Richardson's affidavit, he accepts responsibility until such time as the title to the land is transferred to Mr. Enos or E and L Commercial Properties, Inc. In Mr. Enos's affidavit, he accepts responsibility for the facility upon transfer of title to him or E and L Commercial Properties, Inc. In addition, Mr. Enos testified that he intends to maintain the facility during construction. He explained that the maintenance of the facility will be financed

prior to construction through lease packages. The evidence establishes that if enforcement of the maintenance responsibilities is necessary, the District will take the appropriate action.

The evidence shows that Five Masters Corporation has provided that the maintenance and operation of the facility is reasonably assured. The applicant is not required to show that a violation of water quality standards is a scientific impossibility. Rudloe v. Dickerson Bayshore, Inc. and Department of Environmental Regulation, 10 FALR 3426 (June 8, 1988). Petitioners fail to establish that the conclusion of law is not supported by the evidence, and therefore, Petitioners' exception no. 2 must be rejected.

The Petitioners' exception no. 3 to the Hearing Officer's conclusions of law 4 through 7 and conclusion of law 15 is denied.

The intent language (quoted on page 38 of the Petitioners' Exceptions) from the notice of rulemaking published by the Florida Department of Environmental Regulation upon delegating authority to the District to regulate stormwater discharges is misunderstood by the Petitioners. At the time of this delegation, the District was already regulating water quantity impacts under chapter 40C-4, F.A.C.; therefore, the delegation contemplated that the District would review both water quantity and water quality impacts for projects which required an MSSW permit and a stormwater discharge permit. Five Masters proposed project does not meet any of the permitting thresholds in section 40C-4.041, F.A.C., and therefore requires only a stormwater discharge permit from the District



under chapter 40C-42, F.A.C., which criteria pertain only to water quality impacts.

Similarly, the substantive criteria in chapter 40C-40, F.A.C., the general MSSW permitting rule, are not applicable to this project. Projects which qualify for a general stormwater discharge permit under section 40C-42.035, F.A.C., are only subject to the procedural requirements of chapter 40C-40, F.A.C. The substantive review of such applications is based solely on the criteria in chapter 40C-42, F.A.C., which relates only to water quality impacts. Respondent's proposed project qualifies for a general stormwater discharge permit under paragraph 40C-42.035(1)(b), F.A.C., and was only upgraded to an individual application due to the existence of third party objectors to the proposed project. Hence, additional permitting by the District or the FDER of the project's surface and stormwater management aspects is not required.

There is ample evidence in the record to conclude that the substantive permitting requirements of chapter 40C-42, F.A.C., have been met in this case, including subsection 40C-42.041(4), F.A.C. Subsection 40C-42.041(5), F.A.C., concerning equivalent treatment methodologies, is not applicable to this project because the Respondent has proposed to use a treatment methodology, i.e. retention, for which design and performance standards are provided in section 40C-42.025, F.A.C.

The Respondent has submitted all of the information required by the District to complete a stormwater discharge permit appli-

cation. When this occurs, the District is required by section 120.60, F.S., to process the application. In the event other agencies require Five Masters Corporation to make changes which affect the stormwater system, Five Masters will also be required to apply for a modification of its District permit.

There is ample testimony in the record to conclude that Five Masters has provided the requisite reasonable assurances to warrant issuance of this permit. Specific tests are not required to provide reasonable assurances. Booker Creek v. Mobil Chemical, 481 So.2d 10 (Fla. 1st DCA 1985).

There is no evidence in the record that contaminants or runoff from the project's wastewater facility will enter the stormwater treatment facility. Therefore, subsection 40C-42.061(3), F.A.C., is not applicable.

The standard of proof applicable in this proceeding is not "beyond a reasonable doubt", but rather "by a preponderance of the evidence".

#### ORDER

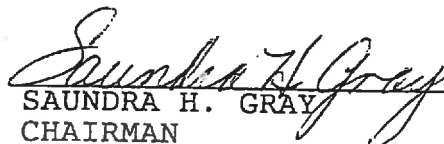
WHEREFORE, having considered the Recommended Order of the Hearing Officer and the Exceptions thereto filed by the Petitioners, Ralph S. Prugh, et al., and having reviewed the transcript of the hearing and the proposed findings and memoranda submitted by the parties, and being otherwise fully advised in the premises, it is thereupon:

ORDERED that the Hearing Officer's Recommended Order dated December 22, 1989 is hereby adopted in full as the final action of the St. Johns River Water Management District; and it is

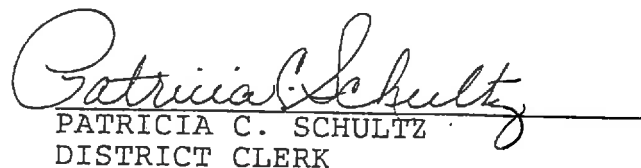
ORDERED that the application of Respondent, Five Masters Corporation, for a stormwater discharge facility permit to serve a proposed shopping center in Melrose, Putnam County, Florida is hereby granted with the conditions as set forth in the District's technical staff report dated August 29, 1989.

14th DONE AND ORDERED in Palatka, Putnam County, Florida this day of February 1990.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

  
SAUNDRA H. GRAY  
CHAIRMAN

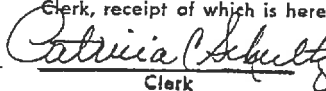
RENDERED this 14th day of February 1990.

  
PATRICIA C. SCHULTZ  
DISTRICT CLERK

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(9)  
Florida Statutes, with the designated District  
Clerk, receipt of which is hereby acknowledged.

11

 2/14/90  
Clerk Date

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

RALPH S. PRUGH, et al.

Petitioners,

v.

FILE OF RECORD NO.: 89-799

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT and  
FIVE MASTERS CORP.,

Respondents.

RECEIVED

DEC 27

Office of  
Executive Director

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on August 30, 1989 in Palatka, Florida before Thomas L. Durrance, a duly designated hearing officer. At the hearing the parties were represented as follows:

For Petitioners:

John Middleton  
Rt. 3, Box 3050  
Melrose, FL 32666

For Respondent Five Masters Corporation:

Gary Betz  
304 Plant Avenue  
Tampa, FL 33606

For Respondent St. Johns River Water Management District:

Jennifer Burdick  
Nancy Barnard  
POB 1429  
Palatka, FL 32178-1429

INTRODUCTION AND ISSUES

This matter involves a challenge to the St. Johns River Water Management District's proposed issuance to Respondent Five Masters Corporation of a permit for the construction and

operation of a stormwater discharge facility to serve a shopping center site of approximately 11.75 acres to be located in Melrose, Putnam County, Florida.

Before the proceedings began, the parties entered into a stipulation as to certain facts and issues which are stated as follows:

1. The District, a governmental agency created and established pursuant to Chapter 373, Fla.Stat., is delegated the statutory authority and responsibility for implementation, administration and enforcement of a permitting program pursuant to Section 403.812, Fla.Stat., and Chapters 17-3 and 40C-42, Fla.Admin.Code. The permitting program established pursuant to these statutes and rules is referred to as "Regulation of Stormwater Discharge".

2. Respondent Five Masters owns or controls approximately 11.75 acres of real property located in Section 18, Township 9 South, Range 23 East, Putnam County, Florida.

3. The District regulates and controls works within the geographical boundary of the District as described in Section 373.069(2)(c), Fla.Stat. See DER Order No. 86-0258, dated March 21, 1986, and "Operating Agreement Concerning Stormwater Discharge Regulation between St. Johns River Water Management District and the Department of Environmental Regulation" dated January 4, 1988.

4. The subject property is located within the geographic boundaries of the District.

5. Punch Bowl Lake, the receiving body of water, is located outside the geographical boundary of the District.

6. Mr. Charles Richardson, as agent for Five Masters, accepts responsibility to maintain and operate the discharge facilities in such a manner as to comply with the provisions of Chapter 40C-42, Fla.Admin. Code. He acknowledges that responsibility for maintenance and operation may be transferred to another entity upon written notice to the District from Five Masters and the entity assuming responsibility certifying that the transfer of responsibility in compliance with Chapter 40C-42, Fla.Admin. Code, has been accepted. Further, Mr. Richardson and Mr. Ernest Enos, the proposed future owner of the project, submitted affidavits stating the responsibility for the operation and maintenance of the stormwater discharge facility will transfer simultaneously with the deed for the property from Richardson to Enos. No documentary proof of financial responsibility has been submitted.

7. The permit application and site plan reflect a proposed shopping center.

8. Punch Bowl Lake is not an Outstanding Florida Water, pursuant to Section 403.061(27)(a), Fla.Stat., and Section 17-3,041, Fla.Admin. Code.

9. All of the Petitioners reside adjacent to or near the subject property.

10. Melrose Bay is an Outstanding Florida Water.

11. There are no wetlands on the property which is the site of the proposed project.

12. The United States Department of Agriculture Soil Conservation Service soils report prepared for this property by Soil Conservationist, Mr. Robert Baldwin, and dated June 3, 1989 is accurate.

Subsequent to the two days of hearings, a transcript of said proceedings was filed on or about the 26th day of October, 1989. Subsequent thereto all parties were provided with copies of said transcript and were allowed thirty (30) days from that date within which to file their Proposed Recommended Orders. The Petitioners and the Respondent, St. Johns River Water Management District, both filed Proposed Recommended Orders which said Recommended Orders contain proposed findings of fact and conclusions of law. The Proposed Recommended Orders filed by the parties have been reviewed and considered and a specific ruling on each proposed findings of fact submitted by each party is contained in the appendix which is attached to and incorporated into this Recommended Order.

#### FINDINGS OF FACT

Based upon the stipulations of the parties, on the exhibits received in evidence, and on the testimony of the witnesses at the hearing, I make the following findings of fact.

#### Findings based on admissions in prehearing stipulation

1. Petitioner is a private individual who owns and does business as the Wekiva Falls Resort in Lake County, Florida.
2. Respondent, St. Johns River Water Management District, a special taxing district created by Chapter 373, Florida

Statutes, is charged with the statutory responsibility of the administration and enforcement of permitting programs pursuant to Part II of Chapter 373, Consumptive Uses of Water, specifically Sections 373.219 and 373.223, Florida Statutes, and Chapter 40C-2, Florida Administrative Code. The District is the agency affected in this proceeding. The District has assigned Petitioner's permit application, which is the subject of this proceeding, the permit number 2-069-0785AUS.

3. On September 4, 1985, Petitioner submitted to Respondent a CUP application number 2-069-0785AUS to withdraw water from two wells, one 14 inches in diameter and the other 24 inches in diameter, located on Petitioner's property in Lake County, Florida.

4. The water which flows from the two standpipes flows through a creek which was improved by Petitioner, said creek having as its terminus the Wekiva River. The standpipes were put in place by Petitioner or his authorized agents or employees in 1972.

5. The area of the Wekiva River into which the creek leading from the two standpipes flows has been designated as an aquatic preserve and an "Outstanding Florida Water."

6. On May 23, 1986, Respondent's staff gave notice of its intent to recommend approval with conditions of Petitioner's CUP application number 2-069-0785AUS.

7. Petitioner's Petition for Administrative Hearing was timely filed with the District.



Findings based upon exhibits received in evidence  
and testimony of witnesses

1. The soil boring information for the southwest retention basin revealed Myakka sands and a seasonal high water table at 4 inches below the existing ground surface.
2. The general configuration of the ground surface indicates the direction of flow of the surficial aquifer.
3. The existing site drains naturally to the south and to the west.
4. After construction, the drainage characteristics that existed before will be maintained. The site will ultimately discharge stormwater by overland flow along the southwest corner to a conveyance swale and thence to Punch Bowl Lake.
5. The stormwater management system which Five Masters proposes on the site will include storm receiving inlets and four retention treatment facilities for storage and recovery.
6. The bottom of the retention basins will be two feet above the seasonal high water table so that the stormwater can filter down through at least two feet of material.
7. Any surface runoff from the site will be conveyed to the retention basins.
8. The basins will be sized to retain the first inch of runoff.
9. The stormwater retained will percolate through the soil. The stormwater in the retention basins will percolate within four hours.
10. The retention basin side slopes will be sodded to prevent erosion.

11. The retention basins are accessible from the paved surface and can be maintained through mowing the grass and removing debris.

12. The stormwater management system will be easy to maintain.

13. Five Master's proposed design will include the use of oil skimmers for the removal of oil and grease from the surface water discharge.

14. During construction, silt fences and haybales will be installed along the western boundary of the property to prevent off-site discharge of sediment.

15. Jenl Corporation will be responsible for the construction, operation and maintenance of the stormwater discharge facility.

16. Financing for the maintenance and operation of the stormwater management system will be accomplished through the lease package acquisition and development funds. The financing will be established prior to construction.

17. The District staff has recommended and Five Masters has indicated it accepts the following conditions on the proposed stormwater discharge facility permit:

This permit for construction will expire five years from the date of issuance.

If dewatering is to occur during any phase of construction or thereafter and the surface water pump(s), well(s) or facilities are capable of withdrawing one million gallons of water per day or more or an average of 100,000 gallons per day or more over a year and any discharge is to be off-site, a consumptive use permit (40C-2) will be required prior to any dewatering.

All stormwater treatment facilities and associated control structures must be constructed prior to any structural building construction or placement of any pavement. Adequate measures must be taken during construction to prevent siltation of these treatment facilities and control structures during construction.

The issuance of this permit does not relieve the applicant of the responsibility to obtain any and all other required local, state and federal permits.

The permittee must require the contractor to review and to maintain in good condition at the construction site a copy of this permit complete with all conditions, attachments, exhibits, and permit modifications issued for this permit. The complete permit copy must be available for review upon request by District representatives.

All construction, operation and maintenance shall be as set forth in the plans, specifications and performance criteria as approved by this permit.

District authorized staff, upon proper identification, will have permission to enter, inspect and observe the system to insure conformity with the plans and specifications approved by the permit.

If any other regulatory agency should require revisions or modification to the permitted project, the District is to be notified of the revisions so that a determination can be made whether a permit modification is required.

Within thirty (30) days after sale or conveyance of the permitted surface water management system or the land on which the system is located, the owner in whose name the permit was granted shall notify the District of such change of ownership. Transfer of this permit shall be in accordance with the provisions of Chapter 373, Florida Statutes, and Chapters 40C-4, 40C-40, and 40C-41, Florida Administrative Code. All terms and conditions of this permit shall be binding upon the transferee.

The proposed stormwater management system must be constructed as per plans submitted to the District on July 24, 1989.

Permittee is responsible for the selection, implementation, and operation of all erosion and sediment control measures required to retain sediment on-site and to prevent violations of water quality standards in Chapters 17-3 and 17-4, F.A.C.

The permittee is encouraged to use the appropriate Best Management Practices described in the Florida Land

Development Manual: A Guide to Sound Land and Water Management (DER, 1988).

All disturbed areas, swales and retention basin side slopes must be sodded or seeded and mulched within 30 days following their completion and a substantial vegetative cover must be established within 60 days of sodding or seeding.

18. Pollutants which are expected to be present in the runoff from the proposed shopping center are metals such as cadmium, chromium, copper, iron, lead and zinc; nutrients such as total nitrogen, ammonia, nitrate, and total phosphorous; coliforms such as fecal coliforms and total coliforms; and oil and grease.

19. Ninety percent of the pollutants from the commercial site are contained in the runoff from the first one-half inch of rainfall.

20. Metal concentrations below the retention basins will be trapped in the first five to eight centimeters of soil below the basin. The soil will trap the heavy metals and prevent them from migrating off-site.

21. Nutrient concentrations below the retention basins will be absorbed by the clay and organic material in the Myakka fine sand under the retention basin.

22. Theoretically, soils can become saturated with nutrients. However, in addition to absorption, nutrients in the soil will be assimilated by plants and denitrified by microorganisms.

23. Retention basins in existence for up to forty years have not resulted in a state where the soils beneath them are saturated with nutrients.

24. Fecal coliform below the retention basins will be removed by filtration through three feet of soil.

25. Any oils and greases not removed by the oil skimmer will be broken down through microbiological activity into harmless substances as it passes through the soil.

26. A zone of discharge at the project's property line would be sufficient to protect the adjacent property from groundwater impacts.

27. The proposed system will not create a water quality discharge nuisance which is harmful or in concentrations which are carcinogenic, neurogenic, tetragenic or toxic to humans, wildlife or aquatic species.

28. The retention basins will not have a surface water discharge unless the rainfall is greater than one inch.

29. Storm rainfall in this area is greater than one inch in only 10% of all storms.

30. Surface water discharges from the retention basins will be received by the swales along the southern boundary line and along the southern part of the western property line. The conveyance swales are not part of the stormwater management system. The swales will dissipate the stormwater discharge and promote overland flow.

31. The retention of one inch of runoff, as opposed to one half inch of runoff, affords a pollutant removal efficiency of 98%, as opposed to 90%.

32. Concentrations of metals in the surface water discharge, immediately at the point of discharge from the

retention basin, are set forth in District's Exhibit #2, attached hereto and incorporated herein as Exhibit A, Table 1. These concentrations are well below the corresponding Class III water quality standards.

33. Concentrations of nutrients in the surface water discharge, immediately at the point of discharge from the retention basin, are set forth in District's Exhibit #2, attached hereto and incorporated herein as Exhibit A, Table 1. These concentrations are well below the corresponding Class III water quality standards.

34. Concentrations of nutrients in the surface water discharge, immediately at the point of discharge from the retention basin, are set forth in Exhibit A, Table 2. The concentration of nutrients will be below the background concentrations of nutrients in the surrounding receiving surface waters and will not cause an imbalance in the natural populations of aquatic flora and fauna.

35. The proposed project's nutrient discharge to surface waters was compared with the water quality data for nutrients in Santa Fe Lake, which is classified as an Outstanding Florida Water, pursuant to Section 17-3.041, Fla.Admin. Code. The retention basins will provide a higher pollutant removal efficiency than that required for discharge into an Outstanding Florida Water.

36. The stormwater model relied on by Petitioners revealed a probability that the project would have a beneficial impact on Punch Bowl Lake by decreasing the phosphorus going to the lake.

37. Concentrations of coliforms in the surface water discharge, immediately at the point of discharge from the retention basin, are set forth in Exhibit A, Table 3. The coliform concentrations will be below the Class III water quality standards.

38. Concentrations of oil and grease in the surface water discharge from the retention basin will be removed by the oil and grease skimmers.

CONCLUSIONS OF LAW

1. The District has jurisdiction over the parties and the subject matter in this case. Sections 120.57 and 373.069, Fla.Stat.

2. The Petitioners have standing to request an administrative hearing on the District's noticed intent to issue stormwater discharge facility permit no. 42-107-0176AN.

3. The District's regulatory authority over Five Master's proposed shopping center project is governed by, and subject to, the provisions of Chapters 373 and 403, Fla. Stat., as well as the provisions of Chapter 40C-42, Fla.Admin. Code.

4. Five Master's application seeks a permit from the District to construct and operate a new stormwater discharge facility to provide retention of the runoff from the first one inch of rainfall. Section 40C-42.025, Fla.Admin. Code, sets out the following pertinent design and performance standards used in determining compliance with the permitting requirements of Chapter 40C-42, Fla.Admin Code:

. . .

(4) Retention basins shall again provide the capacity for the given volume of stormwater within 72 hours following the storm event. The additional storage volume must be provided by a decrease of stored water caused only by percolation through soil, evaporation or evapotranspiration.

. . .

(7) Retention and detention basins must be designed to accommodate maintenance equipment access and to facilitate regular maintenance (such as underdrain replacement, unclogging filters and sediment removal), mowing and vegetation control.

(8) Erosion and sediment control best management practices shall be used as necessary during construction to retain sediment on-site. These management practices shall be designed by an engineer or other competent professional experienced in the fields of soil conservation or sediment control according to specific site conditions and shall be shown or noted on the plans of the stormwater management system. The engineer or designer shall furnish the contractor with information pertaining to the construction, operation and maintenance of the erosion and sediment control practices.

(9) Stormwater discharge facilities which receive stormwater from areas with greater than 50 percent impervious surface or which are a potential source of oil and grease contamination in concentrations exceeding applicable water quality standards shall include a baffle, skimmer, grease trap or other mechanism suitable for preventing oil and grease from leaving the stormwater discharge facility in concentrations that would cause or contribute to violations of applicable water quality standards in the receiving waters. For purposes of this subsection, the calculation of the amount of impervious surface shall not include water bodies.

5. Additionally, the introduction to Section 40C-42.025, Fla.Admin. Code, states:

No discharge from a stormwater discharge facility shall cause or contribute to a violation of water quality standards in waters of the state. Unless the applicant provides reasonable assurance that the discharge will not cause or contribute to a violation of water quality standards in waters of the state, the District may require more stringent design and performance standards than are otherwise required by this Chapter. . .

6. Paragraph 40C-42.035(1)(b), Fla.Admin. Code, states:



Facilities which provide retention, or detention with filtration, of the runoff from the first one inch of rainfall; or, as an option, for projects or project subunits which consist of less than 80% impervious surface with drainage areas less than 100 acres, facilities which provide retention, or detention with filtration, of the first one-half inch of runoff. However, facilities which directly discharge to Class I, Class II or Outstanding Florida Waters shall provide additional treatment pursuant to Rule 40C-42.025(10), Fla.Admin. Code.

7. The uncontroverted evidence shows that the stormwater facility proposed by Five Masters in its application to the District for a discharge permit meets all of the applicable design and performance standards contained in Sections 40C-42.025 and 40C-42.035, Fla.Admin. Code.

8. Section 40C-42.027, Fla.Admin. Code, contains the legal operation and maintenance entity requirements for new stormwater facilities and reads in pertinent part as follows:

(1) The District considers the following entities to be acceptable for meeting the requirements necessary to ensure that a stormwater discharge facility will be operated and maintained in compliance with the requirements of this Chapter and other District regulations in Chapter 40C-4 or 40C-40:

. . .

(e) The property owner or developer is normally not acceptable as a responsible entity when the property is intended to be sold to third parties. However, the property owner or developer may be acceptable under one of the following circumstances:

1. Written proof is furnished in the appropriate form by either letter or resolution, that a governmental entity or such other acceptable entity as set forth in paragraphs (a)-(c) above, will accept the operation and maintenance of the stormwater management and discharge facility at a time certain in the future.

2. Proof of bonding or other assurance is furnished sufficient to operate and perform anticipated maintenance on stormwater facilities.

(f) Profit or non-profit corporations including homeowners associations, property owners associations, condominium owners associations or master associations shall be acceptable only under certain conditions that ensure that the corporation has the financial, legal and administrative capability to provide for the long term operation and maintenance of the stormwater discharge facility.

. . .

9. The evidence shows that the design of the system will allow for easy access and inexpensive maintenance practices, such as mowing. The evidence further shows that the current owner and future owner/developer intend and have the financial ability to maintain and operate the system in accordance with Chapter 40C-42, Fla.Admin. Code, and the proposed permit conditions.

10. Subsection 17-3.051(1) provides that "[a]ll surface waters of the state shall at all places and at all times be free from:

(1) Domestic, industrial, agricultural, or other man-induced non-thermal components of discharges which, alone or in combination with other substances or in combination with other components of discharges (whether thermal or non-thermal):

(a) Settle to form putrescent deposits or otherwise create a nuisance; or

(b) Float as debris, scum, oil, or other matter in such amounts as to form nuisances; or

(c) Produce color, odor, taste, turbidity or other conditions in such degree as to create a nuisance; or

(d) Are acutely toxic; or

(e) Are present in concentrations which are carcinogenic, mutagenic, or teratogenic to human beings or to significant, locally occurring, wildlife or aquatic species, unless specific standards are established for such components in Sections 17-3.061, 17-3.091, 17-3.111, 17-3.121, 17-3.131, or 17-3.141; or

(f) Pose a serious danger to the public health, safety, or welfare.

11. Section 17-3.121, Fla.Admin. Code, establishes the criteria applicable to Class III surface waters. The following is a list of the pertinent standards:

. . .

(5) Bacteriological Quality - fecal coliform bacteria shall not exceed a monthly average of 200 per 100 ml of sample, nor exceed 400 per 100 ml of sample in 10 percent of the samples, nor exceed 800 per 100 ml on any day, nor exceed a total coliform bacteria count of 1,000 per 100 ml as a monthly average, nor exceed 1,000 per 100 ml in more than 20 percent of the samples examined during any month, nor exceed 2,400 per 100 ml at any time. Monthly averages shall be expressed as geometric means based on a minimum of 10 samples taken over a 30 day period. Neither MPN or MF counts may be utilized.

. . .

(9) Cadmium - shall not exceed 5.0 micrograms per liter in predominantly marine waters; shall not exceed 0.8 micrograms per liter in predominantly fresh waters in water with a hardness (in milligrams per liter of  $\text{CaCO}_3$ ) of less than 150, and shall not exceed 1.2 micrograms per liter in harder waters.

. . .

(11) Copper - shall not exceed .015 milligrams per liter in predominantly marine waters; shall not exceed .03 milligrams per liter in predominantly fresh waters.

. . .

(15) Iron - shall not exceed 1.0 milligrams per liter in predominantly fresh waters; 0.3 milligrams per liter in predominantly marine waters.

. . .

(17) Mercury - shall not exceed 0.1 micrograms per liter in predominantly marine waters; shall not exceed 0.2 micrograms per liter in predominantly fresh waters.

. . .

(19) Nutrients - In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.

. . .  
(22) Phosphorus (elemental) - shall not exceed 0.1 micrograms per liter in predominantly marine waters.

. . .  
(29) Zinc - shall not exceed .03 milligrams per liter in predominantly fresh waters.

12. Additionally, under paragraph 17-3.061(3)(d), Fla.Admin. Code, the following general surface water standard for chromium reads:

Chromium - shall not exceed 0.05 milligrams per liter hexavalent or 1.0 milligrams per liter total chromium in effluent discharge and shall not exceed 0.05 milligrams per liter total chromium after reasonable mixing in the receiving water.

13. Pursuant to subsection 40C-42.011(3), Fla.Admin. Code, section 17-28.700, Fla.Admin. Code, governs stormwater discharges to groundwater. This Florida Department of Environmental Regulation (FDER) rule provision exempts stormwater facilities from the requirement to obtain a permit establishing a zone of discharge. In lieu of this requirement, the FDER has established by rule a zone of discharge for these installations of "100 feet from the site or to the installation's property boundary, whichever is less", unless and until "the installation threatens to violate ground water standards at the boundary of the zone of discharge, or otherwise threatens to impair the designated use of contiguous waters". See subparagraph 17-28.700(4)(c)3, Fla.Admin. Code.

14. Subsection 17-3.402(1), Fla.Admin. Code, contains the applicable ground water quality standards and reads as follows:

All ground water shall at all places and at all times be free from domestic, industrial, agricultural, or other man-induced non-thermal components of discharges in concentrations which, alone or in combination with other substances, or components of discharges (whether thermal or non-thermal):

(a) Are harmful to plants, animals, or organisms that are native to the soil and responsible for treatment or stabilization of the discharge relied upon by Department permits; or

(b) Are carcinogenic, mutagenic, teratogenic, or toxic to human beings, unless specific criteria are established for such components in Rule 17-3.404; or

(c) Are acutely toxic to indigenous species of significance to the aquatic community within surface waters affected by the ground water at the point of contact with surface waters; or

(d) Pose a serious danger to the public health, safety, or welfare; or

(e) Create or constitute a nuisance; or

(f) Impair the reasonable and beneficial use of adjacent waters.

15. The evidence shows that the stormwater discharge facility will not directly discharge to a designated Class I, II or Outstanding Florida Waters waterbody; therefore the requirement in subsection 40C-42.025(10), Fla.Admin. Code, to provide additional and offline treatment is not applicable. The evidence further shows that the proposed design will provide a 98% treatment efficiency for removal of the pollutants likely to be present in the runoff from the project so that when surface waters sheetflow from the property, its quality will meet or exceed the state water quality standards in Chapter 17-3, Fla.Admin. Code.

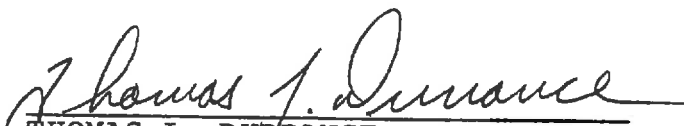
16. A zone of discharge is established by rule for this facility under subparagraph 17-28.700(4)(c)3, Fla.Admin. Code, at

the property boundary. The evidence shows that the pollutants in the ground water will be treated within this zone of discharge through absorption and microbiological processes when they enter the soil. The evidence shows that the stormwater management system is sufficient to prevent releases which are harmful to native plants, animals or other organisms, or are carcinogenic, mutagenic, teratogenic or toxic to human beings, or create a nuisance, or impair the reasonable and beneficial use of adjacent waters.

Upon consideration of the facts found and the conclusions reached, it is RECOMMENDED:

That the Governing Board of the St. Johns River Water Management District enter a final order approving Five Masters Corporation's application for a stormwater discharge permit in accordance with the terms and conditions in the Technical Staff Report dated August 29, 1989.

DONE AND ORDERED this 22<sup>nd</sup> day of December, 1989,  
in Palatka, Florida.

  
THOMAS L. DURANCE  
Hearing Officer  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, FL 32178-1429  
(904) 328-8321

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RECOMMENDED ORDER has been furnished by United States

Mail to GARY BETZ, Attorney for Respondent Five Masters Corporation, 304 Plant Avenue, Tampa, Florida, 33606; JOHN MIDDLETON, Attorney for Petitioner, Rt. 3, Box 3050, Melrose, Florida, 32666; and JENNIFER L. BURDICK and NANCY B. BARNARD, Attorneys for Respondent St. Johns River Water Management District, Post Office Box 1429, Palatka, Florida, 32178-1429; this 22<sup>nd</sup> day of December, 1989.

Marilyn Y. Dance  
Secretary to Hearing Officer

APPENDIX TO RECOMMENDED ORDER  
IN CASE NO. 89-799

The following are my specific rulings on the proposed findings of fact submitted by each of the parties.

Proposed findings submitted by Petitioners

The substance of all of the findings proposed by the Petitioners has been accepted and incorporated into the findings of fact in this Recommended Order, except as specifically noted below:

Paragraph 3, 2nd Sentence: Rejected as irrelevant.

Paragraph 5: Rejected as irrelevant.

Paragraph 6, 2nd Sentence: Rejected as irrelevant.

Paragraph 8: Strike the words "resodding" and "change of filtration soils" as being inaccurate and not supported by persuasive, competent and substantial evidence.

Paragraph 9: Rejected as not supported by persuasive, competent and substantial evidence.

Paragraph 11: Rejected as irrelevant.

Paragraph 13: The second sentence and the last sentence are rejected as not supported by persuasive, competent and substantial evidence.

Paragraph 14: Rejected everything after first sentence as not supported by persuasive, competent and substantial evidence.

Paragraph 15: The first sentence and the second sentence are rejected as irrelevant.

Paragraph 16: Rejected as being irrelevant.

Paragraph 17: Rejected as being irrelevant and not supported by persuasive, competent and substantial evidence and further it is argumentative.

Paragraph 18: Rejected as being irrelevant.

Paragraph 19: Rejected as being irrelevant and further the last sentence is rejected because it is not supported by persuasive, competent and substantial evidence.

Paragraph 20: Rejected as being irrelevant except for the last sentence.

Paragraph 21: Rejected as being irrelevant.

Paragraph 22: Rejected as not supported by persuasive, competent and substantial evidence and further it is argumentative.

Paragraph 23: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 24: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 25: Rejected as being irrelevant.

Paragraph 26: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.



Paragraph 27: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 28: Rejected as being irrelevant.

Paragraph 29: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 30: Rejected as being irrelevant.

Paragraph 31: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence.

Paragraph 32: Rejected as not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 33: Rejected as not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 34: Rejected as not supported by persuasive, competent and substantial evidence.

Paragraph 35: Rejected as being irrelevant.

Paragraph 36: Rejected as being irrelevant except for the last sentence which is rejected because it is not supported by persuasive, competent and substantial evidence.

Paragraph 37: Rejected as being irrelevant.

Paragraph 38: Rejected as being irrelevant except for the last sentence which is rejected because it is not supported by persuasive, competent and substantial evidence.

Paragraph 39: The first and second sentences are rejected as not supported by persuasive, competent and substantial evidence, the third sentence is rejected as being irrelevant, the fourth sentence is rejected as not supported by persuasive, competent and substantial evidence, the fifth sentence is rejected as being irrelevant, the sixth sentence is rejected as not supported by persuasive, competent and substantial evidence, the seventh sentence is rejected as being irrelevant, and the eighth sentence is rejected as being irrelevant and is not a complete statement.

Paragraph 40: Rejected as being irrelevant and not supported by persuasive, competent and substantial evidence.

Paragraph 41: Rejected as being irrelevant and further is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 42: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence.

Paragraph 43: The first sentence is not supported by persuasive, competent and substantial evidence, second sentence is rejected as being irrelevant, third sentence is rejected as being irrelevant, and the fourth sentence is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 44: Rejected as being irrelevant.

Paragraph 45: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence.

Paragraph 46: Rejected as being irrelevant and further it is not supported by persuasive, competent and substantial evidence and is argumentative.

Paragraph 47: Rejected as being argumentative.

Paragraph 48: Rejected as being argumentative.

Proposed findings submitted by Respondent St. Johns River  
Water Management District

The substance of all of the findings proposed by the Respondent St. Johns River Water Management District has been accepted and incorporated into the findings of fact in this Recommended Order, except as specifically noted below:

Paragraph 27: Rejected as not supported by persuasive, competent and substantial evidence.

Paragraph 39, 2nd Sentence: Rejected as not supported by persuasive, competent and substantial evidence.

WATER QUALITY EVALUATION OF THE  
STORMWATER MANAGEMENT SYSTEM FOR  
MELROSE SHOPPING CENTER  
PUTNAM COUNTY, FLORIDA

Prepared by:

David L. Miracle, P.E.  
Department of Resource Management  
St. Johns River Water Management District

August, 1989

TABLE 1

Projected Concentrations for Cadmium, Copper, Chromium, Iron, Lead, and Zinc and Comparison with Water Quality Standards

	Concentration (ug/l)					
	Cadmium	Chromium	Copper	Iron	Lead	Zinc
Projected Commercial Runoff Concentration (1)	0.9	48	15	334	387	128
Projected Concentration After Treatment	0.1	1.0	0.3	6.7	7.7	2.6
Class III Water Quality Standards (2)	0.8	50	30	1000	30	30

Example Calculation

Concentration after treatment for iron using a treatment efficiency of 98% (3) =  $334 \times (1 - 0.98) = 6.7 \text{ ug/l}$

- (1) Miller and Mattraw, 1981.
- (2) Section 17-3.121, F.A.C.
- (3) Harper, 1986.

TABLE 2

Projected Stormwater Concentrations for Total Nitrogen, Total Ammonia-Nitrogen, Total Nitrate-Nitrogen, and Total Phosphorus and Comparison with Background Water Quality Concentrations

	TN	Concentration (ug/l) NH <sub>3</sub>	NO <sub>3</sub>	TP
Projected Commercial Runoff Concentration (1)	1100	30	210	100
Projected Concentration After Treatment	22	0.6	4.2	2.0
Background Concentration (2)	678	100	10	21

- (1) Miller and Mattraw
- (2) Harper

Class III Standards for Nutrients: Shall not be altered so as to cause an imbalance in natural populations of aquatic flora and fauna. Section 17-3.121, F.A.C.

Table 3

Projected Concentrations for Total and Fecal Coliform  
and Comparison with Water Quality Standards

	Coliform Bacteria (#/100 ml)	
	Fecal Coliform	Total Coliform
Projected Commercial Runoff Concentration (1)	19000	43000
Projected Concentration After Treatment	380	860
Class III Water Quality Standards (2)	800	2400

- (1) Miller and Matraw
- (2) Section 17-3.121, F.A.C.

BIBLIOGRAPHY

Harper, H.H. "Evaluation of the Stormwater Management Plan for the Santa Fe Pass Private Club, Alachua County, Florida." University of Central Florida, Orlando, Florida. 1986.

Matraw, H.C., Jr., and R.A. Miller. "Stormwater Quality Processes for Three Land-Use Areas in Broward County, Florida." United States Geological Survey, Water Resources Investigations 81-23. March 1981.