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State of Florida Division of Administrative Hearings: Petitioners' Motions to Compel and in Limine and Memorandum of Law

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TERESA BURKITT,

Petitioner,

v.

DOAH CASE NO. 90-003232

UNIVERSITY OF NORTH FLORIDA
and ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

SJRWMD FILE OF RECORD
NO. 90-916A

Respondents.

CATHLENE DENNY,

Petitioner,

v.

DOAH CASE NO. 90-003233

UNIVERSITY OF NORTH FLORIDA
and ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

SJRWMD FILE OF RECORD
NO. 90-916B

Respondents.

MICHAEL W. WOODWARD,

Petitioner,

v.

DOAH CASE NO. 90-003234

UNIVERSITY OF NORTH FLORIDA
and ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

SJRWMD FILE OF RECORD
NO. 90-916C

Respondents.

PETITIONERS' MOTIONS TO COMPEL
AND IN LIMINE AND MEMORANDUM OF LAW

All petitioners move the hearing officer pursuant to Rule

22I-6.019 and Fla.R.Civ.P. 1.370 for an order compelling answers from respondents, UNIVERSITY OF NORTH FLORIDA (UNF) and ST. JOHNS RIVER WATER MANAGEMENT (DISTRICT) to their first request for admissions and aver:

1. The undersigned counsel has conferred with counsel for UNF in an effort to resolve this dispute in good faith but each side believes that the hearing officer must rule on the dispute.

2. On June 18, 1990, petitioners sent the following request for admissions to both respondents.

(2) This road widening project is the first phase of a larger project known as the modified campus loop road.

(3) The modified campus loop road is among other things, intended to connect with an eastern connection.

(4) The eastern connection is designed to serve an off campus research and development park and an adjacent commercial area.

3. All of the above requests were responded to by UNF as follows:

the requested admission is ambiguous and therefore cannot be admitted or denied.

4. The District responded to the above requests as follows:

2. The District is without knowledge whether permit application #4-031-0359DG, (UNF Drive Road widening) is intended to be a phase of a larger

project. The permit application was reviewed on its own merits separate from any other permit application and the staff recommendation is based on that review. Therefore, this request is DENIED.

3. The District is without knowledge of what use the University of North Florida intends for either the modified loop road and an eastern connection based on the proposed project under review in this proceeding. Therefore, this request is DENIED.

4. The District is without knowledge of what use the University of North Florida intends for an eastern connector based on the permitted project under review in this proceeding. Therefore, this request is DENIED.

5. Petitioners contend that the requests are not ambiguous but are clearly understood by UNF to refer to a larger road project of which this road is a portion. Moreover, the facts sought for admission are clearly within the permissible scope of discovery.

6. The District's Technical Staff Report states that staff is currently reviewing three other permit applications for construction of the other portions of the road (See Attached Exhibit 1). Thus, the District has information to ascertain what it denies knowing.

7. Petitioners further move for an affirmative ruling In Limine that evidence of the future and larger modified loop road

project is relevant to these proceedings.


ARGUMENT

Petitioners' submit that the case of del Campo v. State Department of Environmental Regulation, 452 So.2d 1002 (Fla. 1st DCA 1984) is dispositive of the issue concerning the relevance of other portions of the road to these proceedings. The del Campo court reversed that hearing officer's rulings which denied attempts by opponents of a bridge to present evidence of a proposed development's possible environmental impact on an island during a dredge and fill permit hearing. That court held it was error to so limit the scope of the hearing.

Additions to the road and increases in the area of impervious surfaces that the subject surface water management system will ultimately serve are clearly pertinent to these proceedings. See footnote 5 of the concurring opinion in Manasota - 88, Inc. v. Gardinier, Inc. 481 So.2d 948, 952 (Fla. 1st DCA 1986).

Furthermore, the relevancy of facts requested for admission are determined in accordance with the meaning of relevance in discovery. Fla.R.Civ.P. 1.370(a) and 1.280(b). The general test for the scope of discovery is information not privileged and relevant to the subject matter of the action.

Finally, the District's protestations of lack of knowledge is contradicted by its own technical staff report and by the applications for permits and attachments hereto.


TIMOTHY KEYSER
Attorney for Petitioners
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(904) 684-4673

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished to Marcia P. Parker, Attorney for University of North Florida, 1300 Building, 1300 Gulf Life Drive, Jacksonville, Florida 32207 and Clare E. Gray, Attorney for St. Johns River Water Management District, Post Office Box 1429, Palatka, Florida 32178-1429 by U. S. mail this 19th day of July, 1990.


TIMOTHY KEYSER, ATTORNEY

MANAGEMENT AND STORAGE OF SURFACE WATERS TECHNICAL STAFF REPORT
3/29/1990

APPLICANT: UNIV. OF N. FLORIDA
4567 ST. JOHNS BLUFF RD
JACKSONVILLE, FL 32216

AGENT: BESSENT, HAMMACK
& RUCKMAN, INC.
1900 CORPORATE SQ. BLVD.
JACKSONVILLE, FL 32216

COUNTY: Duval
SECTION(S): 05
ACRES OWNED: 1000

PROJECT NAME: WIDENING OF UNF DRIVE
TOWNSHIP(S): 03S RANGE(S): 28E
PROJECT ACREAGE: 20.000

AUTHORITY: 40C-4.041(2)(b)2, F.A.C.

GENERAL DESCRIPTION OF APPLICATION NO. 4-031-0359AG: THIS APPLICATION IS FOR A SURFACE WATER MANAGEMENT SYSTEM TO SERVE THE WIDENING OF THE ACCESS ROAD TO THE UNIVERSITY OF NORTH FLORIDA IN JACKSONVILLE.

RECEIVING WATER BODY(IES): SAWMILL SLOUGH, BOGGY BRANCH (CLASS III)

EXISTING LAND USE: ROAD RIGHT-OF-WAY

OPERATION AND MAINTENANCE ENTITY: OWNER

STAFF COMMENTS:

THE UNIVERSITY OF NORTH FLORIDA IS LOCATED EAST OF ST. JOHNS BLUFF ROAD BETWEEN J. TURNER BUTLER BOULEVARD AND BEACH BOULEVARD IN JACKSONVILLE. ACCESS TO THE UNIVERSITY IS PRESENTLY PROVIDED BY A TWO LANE ROAD, UNF DRIVE, WHICH BEGINS AT ST. JOHNS BLUFF ROAD AND ENDS AT THE SOUTHEAST CORNER OF THE EXISTING UNIVERSITY COMPLEX (SEE EXHIBIT 1). THIS APPLICATION IS FOR WIDENING THE EXISTING UNF DRIVE. APPROXIMATELY 1.9 MILES OF UNF DRIVE WILL BE WIDENED TO THREE LANES (STATIONS 61+00 - 113+78) AND 0.6 MILES TO FOUR LANES (STATIONS 34+00 - 61+00).

STAFF IS PRESENTLY REVIEWING THREE OTHER PERMIT APPLICATIONS FOR WORK AT THE UNIVERSITY. A CONCEPTUAL PERMIT APPLICATION (#4-031-0348AGC) FOR APPROVAL OF A MASTER SURFACE WATER MANAGEMENT SYSTEM TO SERVE THE EXISTING UNIVERSITY COMPLEX AND FUTURE CONSTRUCTION WAS RECEIVED ON OCTOBER 18, 1989. A MSSW CONSTRUCTION PERMIT APPLICATION (4-031-0359AGM) AND A DREDGE AND FILL APPLICATION (12-031-0007AG) ARE ALSO UNDER REVIEW FOR CONSTRUCTION OF THE PROPOSED LOOP ROAD AND EASTERN CONNECTOR.



UNF DRIVE IS SEPARATED INTO SIX DRAINAGE BASINS. THE SURFACE WATER MANAGEMENT SYSTEM FOR DRAINAGE BASINS 1 AND 2 WILL CONSIST OF CURB AND GUTTER STORMSEWERS AND SAND FILTER STRUCTURES FOR STORMWATER TREATMENT (SEE CONDITION #4). DRAINAGE AREAS 3-6 WILL BE SERVED BY EITHER CURB AND GUTTER CONVEYANCE OR SWALE CONVEYANCE TO WET DETENTION PONDS. THE APPLICANT HAS DEMONSTRATED COMPLIANCE WITH DISTRICT PEAK DISCHARGE CRITERIA AND CHAPTER 40C-42, F.A.C., STORMWATER TREATMENT CRITERIA.

THE PROPOSED ROAD WORK WILL BE CONFINED TO THE EXISTING UPLAND BOUNDARIES OF UNF DRIVE. THE HIGHWAY CROSSES SAWMILL SLOUGH AND BUCKHEAD BRANCH AS IT EXTENDS EASTWARD FROM ST. JOHNS BLUFF ROAD TO THE UNIVERSITY, BUT NO ALTERATIONS TO THE EXISTING CULVERT CROSSINGS ARE PROPOSED. IT IS ALSO ADJOINED BY VARIOUS WETLANDS (CYPRESS SWAMP, BAY RUNS, HARDWOOD FLOODPLAINS AND BAY-HARDWOOD SWAMP), ALL OF WHICH ARE PART OF OR CONNECTED TO SAWMILL SLOUGH, BUCKHEAD BRANCH OR BOGGY BRANCH. THESE FORESTED WETLANDS WILL NOT BE IMPACTED BY THE PROPOSED ROAD WORK OR CONSTRUCTION OF THE TREATMENT PONDS AND SWALES THAT WILL DISCHARGE TO THEM. THE ONLY IMPACTS TO WETLANDS WILL BE LIMITED TO 0.13 ACRES OF ROADSIDE DITCHES THAT ARE DIRECTLY CONNECTED TO WATERS OF THE STATE. EXCAVATION AND FILLING FOR CONSTRUCTION OF THE STORMWATER POND AND CONVEYANCE STRUCTURES WILL ONLY AFFECT UPLAND CUT PORTIONS OF DITCHES LESS THAN 35 SQUARE FEET IN CROSS SECTION AT THE POINT OF CONNECTION. THUS, THAT WORK IS EXEMPT FROM THE PERMIT REQUIREMENTS OF CHAPTER 17-312, F.A.C.

THE WETLAND LOSS WILL NOT CAUSE ADVERSE IMPACTS TO FISH OR WILDLIFE AND SHOULD IMPROVE WATER QUALITY AS ROAD RUNOFF WILL NO LONGER DISCHARGE DIRECTLY TO WATERS OF THE STATE. SILT SCREENS AND HAY BALES WILL BE PLACED TO PREVENT THE DISCHARGE OF TURBID WATERS TO ADJOINING WETLAND AREAS.

TOTAL WETLANDS INVOLVED:	0.000
TOTAL WETLANDS PRESERVED:	0.000
1 TOTAL WETLANDS DISTURBED:	0.000
TOTAL WETLANDS LOST:	0.130
TOTAL WETLANDS RESTORED/CREATED:	0.000
TOTAL WETLANDS ENHANCED:	0.000

RECOMMENDATION: APPROVAL

CONDITIONS FOR APPLICATION NUMBER 4-031-0359AG

GENERAL (SEE CONDITION SHEET): 2 - 8

SPECIAL (SEE CONDITION SHEET): 1, 5-7, 10-12, 29 & 30

OTHER CONDITIONS:

1. The proposed surface water management system must be constructed as per plans received by the District on January 29, 1990, as amended by plans received by the District on February 27, 1990, and by Sheets 10, 12, 13, 19, 25, 26 & 33-35, received on March 14, 1990.
2. This permit does not authorize any construction within waters of the state as defined by Chapter 17-4.022, F.A.C. It is the permittee's responsibility to apply for and obtain all required permits prior to construction.
3. Prior to initiating any construction, including clearing and grading, permittee must clearly delineate the wetland limit lines as shown on the approved plans by establishing a line of continuous flagging. The permittee must notify the District upon completion of wetland delineation and notify the contractor(s) that any work not specifically authorized by this permit within the wetlands is a violation of this permit.
4. The University of North Florida must inspect the sand filter structures after all rainfall events greater than one-quarter inch for the first two years after installation. The University must submit, along with the yearly P.E. inspection report, a maintenance report for the sand filter structures. The maintenance report must include dates of inspection and maintenance actions taken to ensure that the filter structures operate as designed. After two years, the District will assess whether future monitoring of the structures after rainfall events will be required .

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BROWN/GREEN