

**FLORIDA LAND AND WATER ADJUDICATORY COMMISSION  
AGENDA**

**March 17, 2005**

1. **Approval of the minutes of the meeting held February 16, 2005.**
2. **Consideration of a Petition to Establish the Hawk's Haven Community Development District in Lee County, Florida. Petitioner: Hawk's Haven Developers, LLC. FLWAC Case No. CDD-04-009.**

On July 7, 2004, Hawk's Haven Developers, LLC, submitted a petition to establish the Hawk's Haven Community Development District in Lee County, Florida (petitioner provided revised materials on August 19, 2004, and November 15, 2004). The land area proposed to be served by the District comprises approximately 1,926 acres. The following real property is located within the external boundaries of the District and is to be excluded from the District:

Parcel A      Address: 2971 Hickey Creek Road, Alva, Florida 33920  
                  Parcel ID: 25-43-26-00-00122.0000 (approximately 29.6 acres)

Parcel B      Address: 2920 Hickey Creek Road, Alva, Florida 33920  
                  Parcel ID: 26-43-26-00-00010.0000 (approximately 15 acres)

Parcel C      Address: 15180 Palm Beach Boulevard  
                  Parcel ID: 27-43-26-00-00004.0000 (approximately 10 acres)

Petitioner either owns or has written consent to establish the District from the owners of one hundred percent (100%) of the land within the proposed District. The District, if established, currently intends to participate in the provision of certain community facilities and services to the property in the District to include public roads, water and wastewater irrigation, surface water management, and landscape and hardscape.

Upon request of the Secretary, the Department of Community Affairs (DCA) reviewed the petition from the standpoint of their programs and responsibilities, and the requirements of section 190.005(1)(e), F.S. The DCA submitted a letter on September 15, 2004, finding no potential inconsistencies with Chapter 163, F.S.

Pursuant to Chapter 190, F.S., a public hearing was conducted by the Division of Administrative Hearings (DOAH) on November 2, 2004, in Fort Myers, Florida. The DOAH Administrative Law Judge filed a Report with the Commission on December 14, 2004, making affirmative conclusions on all six factors, pursuant to section 190.005(1)(e), F.S.

Pursuant to Chapter 120, F.S., notices of proposed rulemaking were published in the *Florida Administrative Weekly*. No public hearings were requested and no written comments were received as a result of the notice of proposed rule development or the notice of proposed rule.

**Recommendation:**

Approve the proposed final rule and authorize the Secretary to file for final rule adoption.

**Back-Up:**

Petition submitted by Hawk's Haven Developers, LLC, on July 7, 2004. (Revised materials received on August 19, 2004, and November 15, 2004.)

DCA's comment letter received on October 22, 2004.

DOAH's Report received on December 14, 2004.

Proposed Final Rule.

**3. Consideration of a Request for Review filed by Brenda and Jerry Harris requesting review of a Final Order Issued by the St. Johns River Water Management District Denying Marion County's Application for an Environmental Resource Permit and Sovereign Submerged Lands Authorization. FLWAC Case No. WMD-04-001.**

On December 23, 2003, the St. Johns River Water Management District (District) rendered an order denying Marion County's environmental resource permit application and sovereign submerged lands authorization to construct and operate a surface water management system in a sinkhole located in the southwestern corner of Orange Lake in Alachua County. Brenda and Jerry Harris (Petitioners) filed a request for review of the application denial with the Florida Land and Water Adjudicatory Commission (Commission) on January 9, 2004, and supplemented the request for review on February 20, 2004, in response to a Notice of Insufficiency and Request for Information issued by the Secretary of the Commission. On January 29, 2004, the District filed a Statement in Opposition to the Acceptance of Review and Motion to Deny Jurisdiction. The Statement in Opposition was supplemented on March 10, 2004, in response to Petitioners' response to the Commission's Notice of Insufficiency and Request for Information.

In response to a request of the Secretary of the Commission, the District's official index and record on appeal was prepared and submitted on April 19, 2004.

On April 28, 2004, Petitioners filed their Main Brief. Motions were filed requesting the Commission strike Petitioner's Main Brief alleging the brief did not conform to Florida Rules of Appellate Procedure. On August 11, 2004, the Secretary of the Commission issued an Order granting the motions. Petitioners filed an Amended Main Brief and Request for Oral Argument on September 1, 2004. Petitioners' Amended Main Brief generally addresses issues with respect to whether Orange Lake is being managed according to requirements of Rule 62-302.700(5), F.A.C.; whether controlling one of four known sinkholes at Heagy-Burry Park will adversely affect 1899 acres of wetlands; whether controlling the sinkhole would cause flooding; whether controlling one of four sinkholes is in the public interest; whether the District is utilizing different standards in addressing sinkholes; whether water quality would be adversely affected; and dredging boat access channels to the deep-water pool.

The District filed an Answer Brief on October 6, 2004. The District's Answer Brief generally asserts the Commission lacks jurisdiction in the proceeding and the District's Order does not conflict with provisions of Chapter 373 or a District rule.

Pursuant to 42-2.0132, F.A.C., the DEP filed a recommendation on October 15, 2004, recommending the Commission decline to accept jurisdiction, or alternatively, affirm the District's Order. The DEP concludes that the Petitioners have failed to establish a basis for jurisdiction or to show that the District's Order is inconsistent with Chapter 373, F.S. The DEP further concludes the undisputed facts establish that any decision to grant the permit request would violate Chapter 373, F.S. The DEP also filed a Notice of Filing and Proposed Order on October 15, 2004.

Section 373.114, F.S., provides review by the Commission is appellate in nature and shall be based solely on the record below. Additionally, section 373.114, F.S., provides in order for the Commission to accept a request for review initiated by a party below, with regard to a specific order, three members of the Commission must determine on the basis of the record below that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. Review of an order may also be accepted if three members of the Commission determine that the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent. The party requesting the Commission to review an order must allege with particularity, and the Commission must find, that: 1) the order is in conflict with statutory requirements; or 2) the order is in conflict with the requirements of a duly adopted rule.

**Recommendation:**

The staff recommendation will be distributed separately.

**Back-Up:**

Petitioners' Request for Review received on January 9, 2004.

District's Statement in Opposition to the Acceptance of Review and Motion Deny Jurisdiction received on January 29, 2004.

FLWAC's Notice of Insufficiency issued on February 6, 2004.

Petitioners' Response to Notice of Insufficiency and Request for Information received on February 20, 2004.

District's Supplemental Statement in Opposition to Acceptance of Review of Brenda and Jerry Harris' Amended Request for Review and Motion to Dismiss and Deny Jurisdiction received on March 10, 2004.

Index to District's Record on Appeal received on April 19, 2004.

Petitioners' Main Brief submitted on April 28, 2004.

District's Motion to Strike Petitioner's Main Brief received on May 10, 2004.

DEP's Recommendation that the District's Motion to Strike be Granted and, Alternatively, Second Motion for Extension of Time received on July 7, 2004.

FLWAC's Order Granting Motion to Strike Petitioner's Main Brief issued on August 11, 2004.

Petitioners' Amended Main Brief received on September 1, 2004.

Petitioners' Request for Oral Argument received on September 1, 2004.

District's Answer Brief received on October 6, 2004.

Recommendation of the DEP received on October 15, 2004.

DEP's Notice of Filing and Proposed Order received on October 15, 2004.

Draft Final Order. (To be distributed separately.)

**4. Consideration of a Request for Review filed by Marion County requesting review of a Final Order issued by the St. Johns River Water Management District Denying Marion County's Application for an Environmental Resource Permit and Sovereign Submerged Lands Authorization. FLWAC Case No. WMD-04-002.**

On December 23, 2003, the St. Johns River Water Management District (District) rendered an order denying Marion County's environmental resource permit application and sovereign submerged lands authorization to construct and operate a surface water management system in a sinkhole located in the southwestern corner of Orange Lake in Alachua County. Marion County filed a request for review of the application denial with the Florida Land and Water Adjudicatory Commission (Commission) on January 9, 2004, and supplemented the request for review on February 20, 2004, in response to a Notice of Insufficiency and Request for Information issued by the Secretary of the Commission. On January 29, 2004, the District filed a Statement in Opposition to the Acceptance of Review and Motion to Deny Jurisdiction. The Statement in Opposition was supplemented on March 10, 2004, in response to Petitioners' response to the Commission's Notice of Insufficiency and Request for Information.

The District's official index and record on appeal was prepared and submitted to the Secretary of the Commission on April 19, 2004. Marion County filed a Motion to Supplement Record on Appeal on April 30, 2004. A Response to Motion to Supplement Record on Appeal was filed by

the District on May 10, 2004. The District filed a Motion to Strike Marion County's Reply to District Response to Motion to Supplement the Record on June 1, 2004. A Response to Motion to Strike was filed by Marion County on June 10, 2004.

On May 27, 2004, Marion County filed an Initial Brief and Appendix and a Request for Oral Argument. Marion County generally asserts that the District's policy of favoring wetlands preservation in lieu of Orange Lake and the Florida Aquifer is contrary to the policies of the Water Resources Act; the District's policy of requiring an administrative hearing to dispute the technical staff report before District Board consideration violates state policy; and whether the District's conclusion that the sinkhole project is contrary to the public interest is supported by substantial competent evidence. Marion County filed a Notice of Filing and Proposed Order on March 3, 2005.

The District's Answer Brief was received on June 30, 2004. The District generally asserts the Commission lacks jurisdiction in the proceeding; the District's Order does not conflict with provisions of Chapter 373 or a District rule; and the County is improperly requesting the Commission reweigh evidence.

Pursuant to 42-2.0132, F.A.C., the Department of Environmental Protection (DEP) filed a recommendation on July 30, 2004, recommending the Commission decline acceptance of the request for review as the appeal does not authorize any activity and has no significance from the standpoint of agency precedent. Alternatively, the DEP recommends the Commission affirm the District's Order on the merits because the District's decision to deny the County's permit is consistent with Chapter 373, F.S. The DEP also filed a Notice of Filing and Proposed Order on July 30, 2004.

Section 373.114, F.S., provides review by the Commission is appellate in nature and shall be based solely on the record below. Additionally, section 373.114, F.S., provides in order for the Commission to accept a request for review initiated by a party below, with regard to a specific order, three members of the Commission must determine on the basis of the record below that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. Review of an order may also be accepted if three members of the Commission determine that the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent. The party requesting the Commission to review an order must allege with particularity, and the Commission must find, that: 1) the order is in conflict with statutory requirements; or 2) the order is in conflict with the requirements of a duly adopted rule.

**Recommendation:**

The staff recommendation will be distributed separately.

**Back-Up:**

Marion County's Request for Review received on January 9, 2004.

District's Statement in Opposition to the Acceptance of Review and Motion to Deny Jurisdiction received on January 29, 2004.

FLWAC's Notice of Insufficiency issued on February 6, 2004.

Marion County's Response to Notice of Insufficiency and Request for Information received on February 20, 2004.

District's Supplemental Statement in Opposition to Acceptance of Review of Marion County's Amended Request for Review and Motion to Dismiss and Deny Jurisdiction received on March 10, 2004.

Index to District's Record on Appeal received on April 19, 2004.

Marion County's Motion to Supplement Record on Appeal received on April 30, 2004.

District's Response to Motion to Supplement Record on Appeal received on May 10, 2004.

Marion County's Initial Brief and Appendix received on May 27, 2004.

Marion County's Request for Oral Argument received on May 27, 2004.

District's Motion to Strike Marion County's Reply to District Response to Motion to Supplement the Record received on June 1, 2004.

Marion County's Response to Motion to Strike received on June 10, 2004.

District's Answer Brief received on June 30, 2004.

Recommendation of the DEP received on July 30, 2004.

DEP's Notice of Filing and Proposed Order received on July 30, 2004.

Marion County's Notice of Filing and Proposed Order received on March 3, 2005.

Draft Final Order. (To be distributed separately.)