

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: CRP/HLV HIGHLANDS RANCH, LLC  
PETITION FOR VARIANCE

OGC Case No.: 12-1338

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FINAL ORDER GRANTING PETITION  
FOR VARIANCE FROM RULE 62-342.700(1)(a), (2), (3), AND (4), F.A.C.

On July 16, 2012, CRP/HLV Highlands Ranch, LLC (Petitioner) filed a petition with the Florida Department of Environmental Protection for a variance under section 120.542, Florida Statutes (F.S.), from requirements in Rules 62-342.700(1)(a), (2), (3), and (4) of the Florida Administrative Code (F.A.C.). A copy of the relevant rules is attached hereto and incorporated herein as Attachment "A". Petitioner requested that the Department waive the requirement that it provide proof of financial responsibility for the construction and implementation activities of Highlands Ranch Mitigation Bank and for the release of mitigation credits. The Department published notice of receipt of the petition in the Florida Administrative Weekly on July 27, 2012. One comment was received in response to the request for public comments.

1. Petitioner is located at 9803 Old St. Augustine Rd., Suite 1, Jacksonville, FL 32257.
2. The Petitioner has applied to the Department for a mitigation bank permit for the construction, operation, and management of the Highlands Ranch Mitigation Bank in Clay County, Florida [Permit No. 10-308703-001].
3. Section 373.4136(11)(a), F.S., provides that "[t]he department and water management district may adopt rules to implement the provisions of s. 373.4135, ["Mitigation banks and offsite regional mitigation"], and this section, which shall include, but not be limited

to, provisions: Requiring financial responsibility for the construction, operation, and long-term management of a mitigation bank.”

4. Rule 62-342.700, F.A.C., promulgated pursuant to Section 373.4136(11)(a), F.S., provides for financial responsibility for construction, implementation, and perpetual management of mitigation banks.

5. The purpose of requiring financial responsibility for the construction, operation, and long-term management of a mitigation bank is to provide reasonable assurance the banker will perform all of its obligations under a mitigation bank permit.

6. The proposed mitigation bank is based upon a pilot, performance-driven approach in which Petitioner will request the release of mitigation credits for Highlands Ranch Mitigation Bank only upon the successful completion of each interim criteria as set forth in the credit release schedule in Petitioner’s mitigation bank permit. Information provided by the Petitioner demonstrates that pursuant to Section 120.542(2), F.S., the Petitioner would incur substantial hardship if required to comply with the current financial responsibility requirements for the construction and implementation of the Highlands Ranch Mitigation Bank permit.

7. In addition, due to the unique nature of the project, pursuant to “principals of fairness” in Section 120.542(2), F.S., the literal application of the rule would affect Petitioner in a manner significantly different from the way it affects other mitigation bankers because the proposed permit requires that work generating the ecological value reflected in the award of credits to be successfully completed before the Department releases mitigation credits.

8. Thus, the proposed mitigation bank permit serves the purpose of the underlying statute by providing reasonable assurance the Petitioner will perform all of its obligations under the permit without the need for financial responsibility for construction and implementation of

the mitigation bank. The purpose of the statute is served by requiring that Petitioner achieve mitigation success prior to the Department's release of mitigation credits associated with each of the interim criteria in the Permit's credit release schedule.

9. For the foregoing reasons, Petitioner has demonstrated that it has met the requirements for a variance from Rule 62-342.700(1)(a), (2), (3), and (4), F.A.C., with the conditions below:

a. Petitioner shall not be required to provide the financial responsibility required in Rule 62-342.700(1)(a), (2), (3), and (4), F.A.C., for the construction and implementation of Highlands Ranch Mitigation Bank, Permit No. 10-308703-001.

b. Financial responsibility for the perpetual management of each phase of the bank shall be provided as required in 62-342.700, F.A.C., and the Permit, at the start of each phase along with the conservation easement and security.

c. This variance shall be permanent and does not relieve Petitioner and Highlands Ranch Mitigation Bank from meeting all other applicable statutory, rule, and permit requirements.

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is filed pursuant to sections 120.569 and 120.57, Florida Statutes, before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, Florida Statutes.

Pursuant to Rule 28-106.201, Florida Administrative Code, a petition must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (**received by the Clerk**) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to CRP/HLV Highlands Ranch, LLC, c/o Marc Hassan, 9803 Old St. Augustine Rd., Suite 1, Jacksonville, FL 32257, at the time of filing.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by CRP/HLV Highlands Ranch, LLC, must be filed within 21 days of receipt of this order.

Petitions filed by any persons other than CRP/HLV Highlands Ranch, LLC, and other than those entitled to written notice under section 120.60(3), Florida Statutes, must be filed within 21 days of publication of the notice or within 21 days of receipt of this order, whichever occurs first.

Under section 120.60(3), Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will only be at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, Florida Administrative Code.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by Rule 28-106.301, Florida Administrative Code.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an

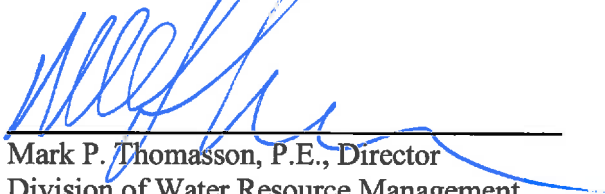
administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

Any party to this action has the right to seek judicial review pursuant to section 120.68 of the Florida Statutes, by filing a Notice of Appeal under Rules 9.110 and 9.190 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

DONE AND ORDERED this 17<sup>th</sup> day of August 2012, in Tallahassee,  
Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
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Mark P. Thomasson, P.E., Director  
Division of Water Resource Management  
Department of Environmental Protection  
2600 Blair Stone Road  
Tallahassee, Florida 32399  
Telephone (850) 245-8337

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

 August 17, 2012  
CLERK DATE

Copies furnished to:

Suzanne Printy, Joint Administrative Procedures Committee  
Christine Francescani, Office of General Counsel