



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

In the Matter of an
Application for Permit/Water Quality Certification and Variance, by:

APPLICANT:

CRP/HLV Highlands Ranch, LLC
c/o Tim A. Hamilton
Environmental Services, Inc.
7220 Financial Way, Suite 100
Jacksonville, FL 32256

PROJECT:

Highlands Ranch Mitigation Bank
Permit Number 10-308703-001
Date of Issue: August 17, 2012
County: Clay

NOTICE OF INTENT TO ISSUE ENVIRONMENTAL RESOURCE / MITIGATION BANK PERMIT AND VARIANCE

The Department of Environmental Protection gives notice of its intent to issue a mitigation bank permit under Chapter 62-342, Florida Administrative Code (F.A.C.), which also constitutes all necessary permits under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, F.A.C., and grant a variance (OGC Case no. 12-1338) from the provisions of Rule 62-342.700(1)(a), (2), (3), and (4), F.A.C. A copy of the draft permit and Final Order are attached. Additionally, the permit is conditioned to ensure reasonable assurance and permitting criteria will be met prior to acting on this authorization and thus will constitute certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341, and concurrence of consistency in accordance with Section 307, F.S. of Florida's Coastal Zone Management Act, before action on the permit occurs.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The project is to establish Highlands Ranch Mitigation Bank (HRMB) on a ~ 1,575-acre site in 3 phases. The mitigation bank project includes the preservation of the site and the restoration or enhancement of longleaf pine/xeric oak sandhill, mesic flatwoods, hydric or wet flatwoods, baygall/bay swamp, floodplain swamp/stream or lake swamp and bottomland forest/wetland forested mixed communities. Credits generated at HRMB may be used as mitigation for future unavoidable impacts to wetlands typical of these systems within the service area. Enhancement and restoration will be accomplished through canopy thinning in existing upland and wetland pine plantation areas, nuisance and invasive exotic vegetation species control, supplemental planting, prescribed fire, and hydrologic enhancements. Management of the HRMB site

includes prescribed fire and control of nuisance and invasive exotic vegetation species. The mitigation was assessed by using the Uniform Mitigation Assessment Method (UMAM) (Chapter 62-345, F.A.C.) as having a potential of 424.81 total freshwater credits: 207.31 Hydric Flatwoods/Wet Prairie credits and 217.50 Freshwater Forested Wetland credits.

The applicant also requested a variance (OGC Case no. 12-1338) from Rule 62-342.700(1)(a), (2), (3), and (4), F.A.C., to 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 applicant shall be required to provide for the perpetual management of each phase of the bank pursuant to 62-342.700, F.A.C., and the permit, at the start of each phase along with the conservation easement and security.

II. AUTHORITY FOR REVIEW

Pursuant to a Special Case Agreement to the operating agreement executed between the Department and the St. Johns River Water Management District (SJRWMD), as allowed in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity. The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-342 (for mitigation banks), and 62-343, F.A.C. The Mitigation Bank Permit application was reviewed according to Chapter 120, F.S.

The applicant has also requested a variance from Rule 62-342.700(1)(a), (2), (3), and (4), F.A.C. Pursuant to section 120.542, F.S., the Department has the responsibility to review and take final action on this variance.

III. BACKGROUND AND BASIS OF INTENT

CRP/HLV Highlands Ranch, LLC was issued a permit by the SJRWMD (4-019-116094-5) on August 4, 2010, to implement and operate a mitigation bank. The application submitted to the Department on November 3, 2011, reflects changes in the mitigation plan and is intended to replace the SJRWMD-issued permit completely.

Site Location, Condition, and Mitigation Plan. HRMB is located in Clay County, specifically in Sections 9, 10, 15 and 16, Township 5 South, Range 23 East. It lies within the SJRWMD Basin 4 – Lower St. Johns River and Northern Coastal, draining east to Black Creek, Class III waters. HRMB is located in a regional landscape that includes Jennings State Forest and the conservation lands of Camp Blanding.

The site has been under silvicultural management with recent timber harvesting. The majority of the site had been planted with slash pine (*Pinus elliottii*), and one area has

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been planted with longleaf pine (*Pinus palustris*). The isolated and contiguous wetlands that make up the rest of the site are associated with Boggy Branch and Tiger Branch, both of which flow offsite into the North Fork of Black Creek.

The dominant historical communities on this site would have been longleaf-turkey oak sandhills and mesic pine flatwoods grading into hydric flatwoods. The historic sandhills and flatwoods have been cleared of native vegetation and converted to pine plantation, often in bedded rows. The ground disturbance and canopy plant community conversion has significantly altered the historically-open landscapes.

The hardwood wetlands (baygall, mixed/bottomland forest, and floodplain communities) on this site were also impacted by logging, with some limited pine planting. As a result, most of the systems do not have appropriate or mature plant community structure.

All areas on the property have been affected in some way by prior silvicultural practices. Bedding rows disturbed the native groundcover throughout the site and re-directed the surface water sheet flow within the main wetland systems. In addition, timber roads and their wetland crossings impacted the wetlands onsite.

The goal of the mitigation bank is to restore the bank property to the native communities historically found on the site, as indicated by changes in the community structure and by changes in the hydrologic regimes of wetlands that are reflective of typical wetland hydrology.

These activities are expected to result in 291 acres of long leaf pine/xeric oak sandhill, 699 acres of mesic flatwoods, 260 acres of hydric or wet flatwoods, 30 acres of baygall/bay swamp, 211 acres stream or lake swamp/floodplain swamp, and 50 acres of bottomland forest/wetland forested mixed. A qualified mitigation specialist (QMS) will coordinate, direct, and oversee all mitigation activities.

The project is proposed to be implemented in 3 phases, using a pilot, performance-driven approach that focuses on accomplishment of defined milestones and ecological restoration results. Milestones for interim and final community success criteria, defined by community type, are incorporated into the permit conditions and credit release schedules.

Land Protection and Financial Assurance. Prior to the release of credits in any phase, the land in each phase shall be placed under a perpetual conservation easement in favor of both the Department and the SJRWMD, and recorded in the Clay County records. Locked access gates along all roadways and "No Trespassing" signs will be placed along the boundary for security. A limited amount of hunting and passive recreation may be allowed, given an approved plan. Perpetual management will include

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prescribed burning and other activities as necessary to ensure continued sustainability of the native target communities.

Prior to the release of credits for any phase, a financial assurance mechanism will be established and secured for a perpetual management fund.

Establishment of Mitigation Credits. Based upon the information submitted by the applicant and an assessment of the proposed mitigation bank, the Department evaluated the factors in Rule 62-342.470, F.A.C., to estimate the potential mitigation credits to be assigned to the bank. The Department has assessed the mitigation bank goal using the Uniform Mitigation Assessment Method (UMAM) (Chapter 62-345, F.A.C.), and has determined that the project can potentially provide a total of 424.81 total freshwater credits: 207.31 Hydric Flatwoods/Wet Prairie credits and 217.50 Freshwater Forested Wetland credits.

Schedule of release of credits. Rule 62-342.470(3), F.A.C., allows for a partial release of credits based upon performance and success criteria. The permit contains a schedule for the release of credits for each phase based on: (1) recording a conservation easement and providing the required financial assurance, (2) achieving interim success milestones for each target community, and (3) attainment of final success criteria.

Ledger. The Department and permittee shall maintain a ledger that records all mitigation credit releases and uses. Ledger debits and credits are made by minor modifications of the permit.

Mitigation Service Area. The Mitigation Service Area (MSA) for the Bank is SJRWMD Basin 4 – Lower St. Johns River Basin and includes portions of Baker, Clay, Putnam, St. Johns, and Duval Counties. The suitability of this bank to offset impacts to any given project will be determined by the impact application reviewing agency on a case-by-case basis of the project for which impacts are proposed.

Acceptability of mitigation bank proposal. Rule 62-342.400, F.A.C., outlines criteria that must be met to establish a mitigation bank. The Department's assessment of this mitigation bank proposal in relation to those criteria is as follows:

The HRMB includes Boggy Branch and Tiger Branch, both of which drain into the North Fork of Black Creek. The HRMB site has the potential to contribute to the protection of these tributaries and the enhancement of associated wildlife functions, thus improving the ecological conditions of the regional watershed (Rule 62-342.400 (1)(a), F.A.C.).

The proposed conversion of the land from silviculture/pine plantations to a native community complex of uplands and wetlands has been successfully implemented in

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other large-scale restoration areas. QMS oversight will ensure appropriate adaptive management during both the mitigation implementation phase and long-term management. Thus, the bank site has the potential to provide viable and sustainable ecological and hydrological functions for the proposed MSA (Rule 62-342.400 (1)(b), F.A.C.).

The future conservation easement on the property and a funded long-term management trust, along with a maintenance plan that includes prescribed burning, will ensure that the site can be effectively managed in perpetuity (Rule 62-342.400 (1)(c), F.A.C.).

The majority of the restoration and enhancement activities are located on disturbed silviculture lands and along existing roads. The QMS will oversee all construction and mechanical work on the bank, including turbidity monitoring, to ensure best management practices and permit compliance. In addition, the permit requires engineering and hydrologic information prior to conducting any hydrologic activities on the site. Therefore, given these provisions, the bank is not expected to impact or destroy areas of high ecological value or cause offsite flooding (Rule 62-342.400 (1)(d), F.A.C.).

The pilot, performance-driven approach of this permit provides incentive for the mitigation banker to achieve ecological success on this site (Rule 62-342.400 (1)(e), F.A.C.).

The ~1,575-acre HRMB contains two tributaries to the North Fork of Black Creek. The property also lies adjacent to Jennings State Forest and Camp Blanding, providing a potential natural wildlife corridor between these publicly-owned conservation lands. These adjacent land uses provide reasonable assurance that the mitigation bank has the potential for long-term viability due to its location in the landscape (Rule 62-342.400 (1)(f), F.A.C.).

Basis of Intent. It is the Department's intent that mitigation banks be used to minimize mitigation uncertainty associated with traditional mitigation practices and provide greater assurance of mitigation success (Rule 62-342.100 (3), F.A.C.). Because the criteria for bank establishment (Rule 62-342.400, F.A.C.) will be met by the conditions in the attached draft permit, it is the Department's intent to issue a permit for this project pursuant to the requirements of Sections 373.4135 and 373.4136, F.S. and Chapter 62-342, F.A.C. The draft permit also meets the requirements of Rule 62-342.750, F.A.C.

IV. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Section 403.815, F.S., and Rule 62-312.060 (14), F.A.C., you (the applicant) are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice is required to be published one time within 30 days, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the counties where the activity is to take place, including all three counties within the mitigation service area. The applicant shall provide proof of publication to:

Department of Environmental Protection
Bureau of Submerged Land and Environmental Resources
2600 Blair Stone Road, MS 2500
Tallahassee, Florida 32399-2400

The proof of publication shall be provided to the above address within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the permit.

V. RIGHTS OF AFFECTED PARTIES

Under this intent to issue, the above applications are hereby granted subject to the applicant's compliance with any requirement in this intent to publish notice of this intent in a newspaper of general circulation and to provide proof of such publication in accordance with Section 50.051 of the Florida Statutes. This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this intent to issue automatically becomes only proposed agency action on the application(s), subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. When proof of publication is provided, if required by this intent, and if a sufficient petition is not timely filed, the permit will be issued. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired and until the permit has been issued.

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Mediation is not available.

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 of the Florida Statutes. The petition must contain the information set forth below and 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.

Under Rule 62-110.106(4) of the 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. 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. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)4 of the Florida Administrative Code, petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3) of the 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 petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing 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 of the Florida Statutes.

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A petition that disputes the material facts on which the Department's action is based 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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; 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.

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 shall contain the same information as set forth above, as required by Rule 28-106.301 of the Florida Administrative Code.

Under Sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

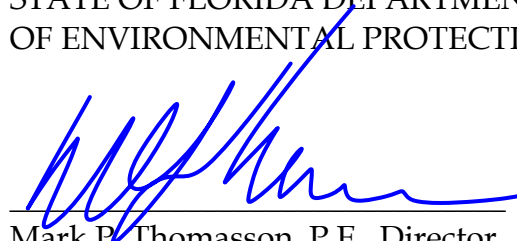
This intent to issue constitutes an order of the Department on its own behalf on the application for the regulatory permit. Subject to the provisions of paragraph 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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

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filed within 30 days from the date when the order is filed with the Clerk of the Department.

The applicant, or any party within the meaning of Section 373.114(1)(a) of the Florida Statutes, may also seek appellate review of the order before the Land and Water Adjudicatory Commission under Section 373.114(1) of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Mark P. Thomasson, P.E., Director
Division of Water Resource Management

Attachments: Public Notice

Draft Permit with Figures 1-7 and Attachments 1-4
Final Order (OGC no. 12-1338)

Copies (by email) furnished to:

Vivian Gerena, U.S. Army Corps of Engineers

Eric Hughes, EPA, Jacksonville

James McLaughlin, Fish and Wildlife Conservation Commission

Jim Maher, DEP, Northeast District Office

Michelle Reiber, SJRWMD

Aliki Moncrief, Environment Florida (aliki@environmentflorida.org)