



Florida Department of Environmental Protection

South District Office
Post Office Box 2549
Fort Myers, Florida 33902-2549

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

VIA ELECTRONIC MAIL

March 21, 2012

Florida Gulf Coast University
c/o David Ceilley
10501 FGCU Blvd South
Fort Myers, FL 33965
dceilley@fgcu.edu

Re: Lee County - ERP
File No. 36-0296493-002

Dear Mr. Ceilley:

Thank you for your application to maintain 25 existing square meter native tape grass (*Vallisneria americana*) planting plots and cages at sites 1 and 2 and install one large cage (4 cages total) measuring six (6) meters by two (2) meters and associated plantings at sites 3, 4, 5, and 6. The cages are constructed of PVC and mesh and will be anchored with plastic PVC into the sediment. A metal tag will be attached to each cage for identification along with a permanent marker identifying the treatment. PVC pipe will be installed along the perimeter of the study site with reflective tape around the top to help identify the restoration boundaries. The cages are expected to remain in place through September 2013. The cages will be placed in the Caloosahatchee River, Class III Waters, Lee County, at the following locations:

- 1) 26° 43' 21.64"N, 81° 41' 14.34"W;
- 2) 26° 43' 9.01"N, 81° 39' 59.55"W;
- 3) 26° 43' 8.80"N, 81° 39' 57.60"W;
- 4) 26° 43' 7.80"N, 81° 39' 15.60"W;
- 5) 26° 43' 12.10"N, 81° 39' 6.20"W;
- 6) 26° 43' 8.70"N, 81° 38' 54.10"W;

This type of activity may require authorization for construction and operation of the project (regulatory authorization), unless otherwise exempt by statute or rule, authorization to use state-owned submerged lands (proprietary authorization), and federal authorization for works in waters of the United States through the State Programmatic General Permit (SPGP) program (SPGP IV). Your request has been reviewed for all three authorizations.

The authorizations you have been granted are listed below. Please read each section carefully. Your project **MAY NOT** have qualified for all three authorizations. If your project did not qualify for one or more of the authorizations, then that specific section will advise you how to obtain it. You may **NOT** commence your project without all three authorizations. **If you change the project from what you submitted, the authorizations(s) granted may no longer be valid at the time of commencement of the project. Please contact the Department prior to beginning your project if you wish to make any changes.**

REGULATORY REVIEW - EXEMPTION VERIFIED

Based on the information submitted, the Department has determined that the maintenance of 25 existing square meter native tape grass (*Vallisneria americana*) planting plots and cages at sites 1 and 2 and the installation of one large cage (4 cages total) measuring six (6) meters by two (2) meters and associated plantings at sites 3, 4, 5, and 6 is exempt, under Section 373.406(6) of the Florida Statutes (F.S.), from the need to obtain a regulatory permit under part IV of Chapter 373, F.S. This determination is made because the activity, in consideration of its type, size, nature, location, use, and operation, is expected to have only minimal or insignificant individual or cumulative adverse impacts on the water resources.

Therefore, the Department grants a *de minimis* exemption for the proposed activity under Section 373.406(6), F.S.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification will expire after one year, and will not be valid at any other time if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. However, the activity may still be conducted without further notification to or verification from the Department after the one-year expiration of this verification, provided: 1) the project design does not change; 2) site conditions do not materially change; and 3) there are no changes to the statutes or rules governing the exempt activity. In the event you need to re-verify the exempt status for the activity after the one-year expiration of this verification, a new application and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

PROPRIETARY REVIEW - GRANTED

Your project occurs on state-owned, submerged land and will require authorization from the Department to use these lands. The Department has reviewed your project as described above and on the documents and/or drawings attached to your application, and as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions therein, we find your project qualifies for consent to use state-owned submerged lands. **As such, consider this letter to also constitute authorization to perform the activity. This consent is conditioned upon acceptance of and compliance with the attached General Consent Conditions.**

Consider this the authority sought under Section 253.77, Florida Statutes (F.S.), and Chapter 18-21, Florida Administrative Code (F.A.C.), to pursue this project.

SPGP (FEDERAL) REVIEW -NOT APPROVED

A copy of your notice was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps determined that your proposed activity as outlined in your application is **NOT in compliance with the Corps State Programmatic General Permit (SPGP IV-R1) effective July 25, 2011.** The Corps may require a separate permit. **Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency.** For further information you should contact the Corps at 239-334-1975.

Authority for review - an agreement with the U.S. Army Corps of Engineers entitled "Coordination Agreement between the U.S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act."

This notice constitutes final agency action and is subject to the provisions of Chapter 120, F.S., which **does not** apply to the SPGP review.

ADDITIONAL INFORMATION

This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

Please retain this letter. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from environmental resource permitting requirements under Section 373.406(6), F.S. and 40E-4.051, F.A.C., and qualifies for authorization to use sovereign submerged lands pursuant to Chapter 253, F.S., and Chapter 18-21, F.A.C. This determination 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, F.S., as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action 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.

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, F.S. In accordance with Rule 62-110.106(3), F.A.C., 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), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

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, 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.

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, F.A.C.

The petition must contain the information set forth above and must be filed (received by the clerk) in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. The petitioner shall mail a copy of the petition to the applicant at the applicant's address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing or pursue mediation as provided below within the appropriate time period shall constitute a waiver of those rights.

Under Sections 120.569(2)(c) and (d), F.S., 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.

Under Rule 62-110.106(4), F.A.C., 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, 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, F.A.C.

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 exemption(s) has(have) been executed and delivered.

This letter acknowledging that the proposed activity is exempt from environmental resource permitting requirements under Section 373.406(6), F.S., and 40E-4.051, F.A.C., and qualifies for to use sovereign submerged lands pursuant to Chapter 253, F.S., and Chapter 18-20, F.A.C., constitutes an order of the Department. Subject to the provisions of Section 120.68(7)(a), F.S., 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, F.S., 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 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) or 373.4275, F.S., may also seek appellate review of the order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. 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.

Mediation is not available.

Complete copies of all documents relating to this determination of exemption are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at Florida Department of Environmental Protection, South District Office, 2295 Victoria Avenue, Fort Myers, FL 33901.

[Intentionally left blank]

Thank you for applying to the Submerged Lands and Environmental Resource Program. **If you have any questions, please contact Patricia Clune at the letterhead address, by telephone at (239) 344-5639 or by e-mail at Patricia.Clune@dep.state.fl.us.** When referring to this project, please reference this file number listed above.

Sincerely,



Lucianne Blair
Environmental Administrator
Submerged Lands and
Environmental Resource Program

LB/EG/pc

Enclosures: State Lands General Consent Conditions

cc: U.S. Army Corps of Engineers, Fort Myers, 2009-2645
Doug Fry, DEP Tallahassee (electronically)

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document, including all copies, was mailed before the close of business on March 21, 2012, to the above listed person(s).

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.

Marie Vidrine

Clerk

3-21-12

Date

DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES PROGRAM
GENERAL CONSENT CONDITIONS FOR AUTHORIZATIONS

Project No: 36-0296493-002

Rule 18-21.004(7), Florida Administrative Code (F.A.C.), provides that all authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for aquaculture activities and geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or Chapter 258, Part II, Florida Statutes (F.S.)

- (a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- (b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- (c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- (d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
- (e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- (f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision
- (g) Structures or activities shall not create a navigational hazard.
- (h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.
- (i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under Rule 18-21.004(1)(g), F.A.C., or any other applicable law.