



Florida Department of Environmental Protection

Southwest District Office
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926

August 31, 2011

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

Sarasota County Board of County Commissioners
c/o Laird Wreford, Natural Resources Manager
1001 Sarasota Center Boulevard
Sarasota, FL 34240-7850

File No.: 58-0197009-003, Sarasota County



Dear Mr. Wreford:

This is to acknowledge receipt of your notice on August 24, 2011 of intent to use a Noticed General Permit (NGP), pursuant to Rule 62-341.600, Florida Administrative Code (F.A.C.), to construct an artificial reef in Sarasota Bay, a Class II Outstanding Florida Waterbody, by installing prefabricated structures in an 8.6-acre area within the boundaries of Walker Reef. The north boundary of the project is located at Latitude N 27°22'39", Longitude W 82°35'39" and the south boundary is located at Latitude N 27°22'31", Longitude W 82°35'37", in Sarasota County.

In addition to regulatory authorization under Rule 62-341.600, F.A.C., this type of activity also requires both proprietary and federal authorizations. Proprietary authorization is required pursuant to Chapters 253 and 258, Florida Statute (F.S.), to use state-owned submerged lands for private purposes. Federal authorization is needed for works in waters of the United States through the State Programmatic General Permit (SPGP) program.

Your notice has been reviewed by Department staff for all three types of authorizations: regulatory, proprietary and federal. The authority for review and the outcomes of the reviews 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, the specific section dealing with that authorization 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 authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

For Your Information: Pursuant to Section 379.249, F.S., the Florida Fish and Wildlife Conservation Commission (FWC) is required to track all artificial reef development activities statewide. Therefore, please complete the form entitled "Florida Artificial Reef Materials Placement Report and Post-Deployment Notification" provided at the FWC webpage: <http://myfwc.com/conservation/saltwater/artificial-reefs/>. Please provide the completed form to FWC, Division of Marine Fisheries Management - Artificial Reef Program, 620 South

Meridian Street, Box 4B, Tallahassee, FL 32399-1600 within 30 days of completion of construction. Please also be advised that Section 379.249(6)(b), F.S. requires that a valid cargo manifest issued by FWC or an FWC-certified inspector is on board a vessel when storing, possessing or transporting any materials reasonably suited for artificial reef construction. All county reef coordinators are FWC-certified inspectors; however, if they are not on board, the cargo manifest is required to be on board. For more information on FWC's artificial reef program, please contact Keith Mille at (850) 922-4340, or by e-mail at Keith.Mille@myfwc.com.

REGULATORY REVIEW - APPROVED

Based on the forms, drawings, and documents submitted/revised with your notice, it appears that the project meets the requirements for the Noticed General Permit under Rule 62-341.600, F.A.C.

Please be advised that the construction phase of the NGP must be completed within five years from the date the notice to use the NGP was received by the Department. If you wish to continue this NGP beyond the expiration date, you must notify the Department at least 30 days before its expiration. Any activities performed under a noticed general permit are subject to general conditions required in Rule 62-341.215, F.A.C. (attached), and the specific conditions of Rule 62-341.600, F.A.C. (attached). Any deviations from these conditions may subject the permittee to enforcement action and possible penalties.

Authority for review- Part IV of Chapter 373, F.S., Title 62, F.A.C. and in accordance to operating agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

PROPRIETARY REVIEW - APPROVED

Please be advised that any use of sovereign submerged lands without specific prior authorization from the Board of Trustees will be considered a violation of Chapter 253, F.S., and may subject the affected upland riparian property owners to legal action as well as potential fines for the prior unauthorized use of sovereign land.

In addition, your project occurs on state-owned, sovereign, submerged land and will require authorization from the Board of Trustees of the Internal Improvement Trust Fund to use public property. As staff to the Board of Trustees, we have reviewed your project and as long as the work is performed in the location shown on the attached project drawings, and is consistent with the terms and conditions of the NGP, we find that your project qualifies for a letter of consent pursuant to Rule 18-21.005(1)(c), F.A.C., to use sovereign, submerged lands. As such, consider this letter to also constitute authorization from the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Chapter 253.77, F.S., to perform the activity. This consent to use sovereign submerged lands is specifically conditioned upon acceptance of, and compliance with, the attached General Consent Conditions, and is subject to rights of appeal pursuant to Chapter 120, F.S.

Authority for review - Chapter 253, F.S., Chapter 18-21, F.A.C., and Section 62-343.075, F.A.C., as required.

SPGP REVIEW - NOT APPROVED

Your project does not qualify for federal authorization for works in waters of the United States through the State Programmatic General Permit (SPGP) program.

A copy of your application also has been sent to the U.S. Army Corps of Engineers (USACOE) for review. The USACOE 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 USACOE Tampa Regulatory Field Office at (813) 769-7060 or the Gainesville Regulatory Field Office at (352) 264-7672.

If you revise your project after submitting the initial joint application the above authorization(s) may no longer be valid. Please contact us prior to construction if you wish to make any changes. Also, if you have any questions, please contact Kristina Evans at (813) 632-7600, ext. 360. When referring to this project, please use the file number listed above.

Executed in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Allyson Minick
Environmental Manager
Submerged Lands and Environmental
Resource Program
Southwest District

Copies furnished to:

U.S. Army Corps of Engineers

Dianne Rosenweig, Sarasota Branch Manager, Scheda Ecological Associates, Inc., 6151 Lake Osprey Drive, Suite 313, Sarasota, FL 34240

Keith Mille, Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries Management – Artificial Reef Program, Keith.Mille@myfwc.com

File

Enclosures:

Ch. 62-341.600, F.A.C.

Project Drawings

Ch. 62-341.215, F.A.C.

General Consent Conditions for Use of Sovereignty Submerged Lands

Standard Manatee Construction Conditions

Notice of Rights of Substantially Affected Persons

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this determination, including all copies, was mailed before the close of business on 8/31/2011 to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(7),
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.



8/31/2011

Clerk _____ Date _____

62-341.600 General Permit for the Construction of Artificial Reefs.

(1) A general permit is hereby provided for the construction of an artificial reef by any person, provided:

(a) The material to be used shall be clean concrete or rock, clean steel boat hulls, other clean, heavy gauge steel products with a thickness of 1/4 inch or greater, and prefabricated structures that are a mixture of clean concrete and heavy gauge steel;

(b) The material shall be free of soils, oils and greases, debris, litter, putrescible substances or other pollutants;

(c) The material shall be firmly anchored to the bottom and shall not be indiscriminately dumped; and

(d) The material shall be placed so that the top of the reef does not exceed 1/2 the distance from the bottom to the surface of the water unless a greater distance from the surface is required for safe navigation. At no time shall the distance between the top of the reef and the surface of the water be less than 6 feet.

(2) This general permit shall be subject to the following specific conditions:

(a) The permittee shall conduct a survey of the bottom of the waterbody on which the reef is to be built and shall submit the survey to the Department with the notice required in Subsection 62-343.090(1), F.A.C., demonstrating that the bottom does not have submerged grassbed communities, shellfish or other hardbottom communities, or corals;

(b) There shall be no reefs constructed in bays, lagoons, or estuaries that are less than 12 feet deep;

(c) There shall be no "white goods" (inoperative and discarded refrigerators, freezers, ranges, water heaters, washers, and other similar domestic and commercial appliances), asphalt material, tires, other polluting materials used in construction of the reef;

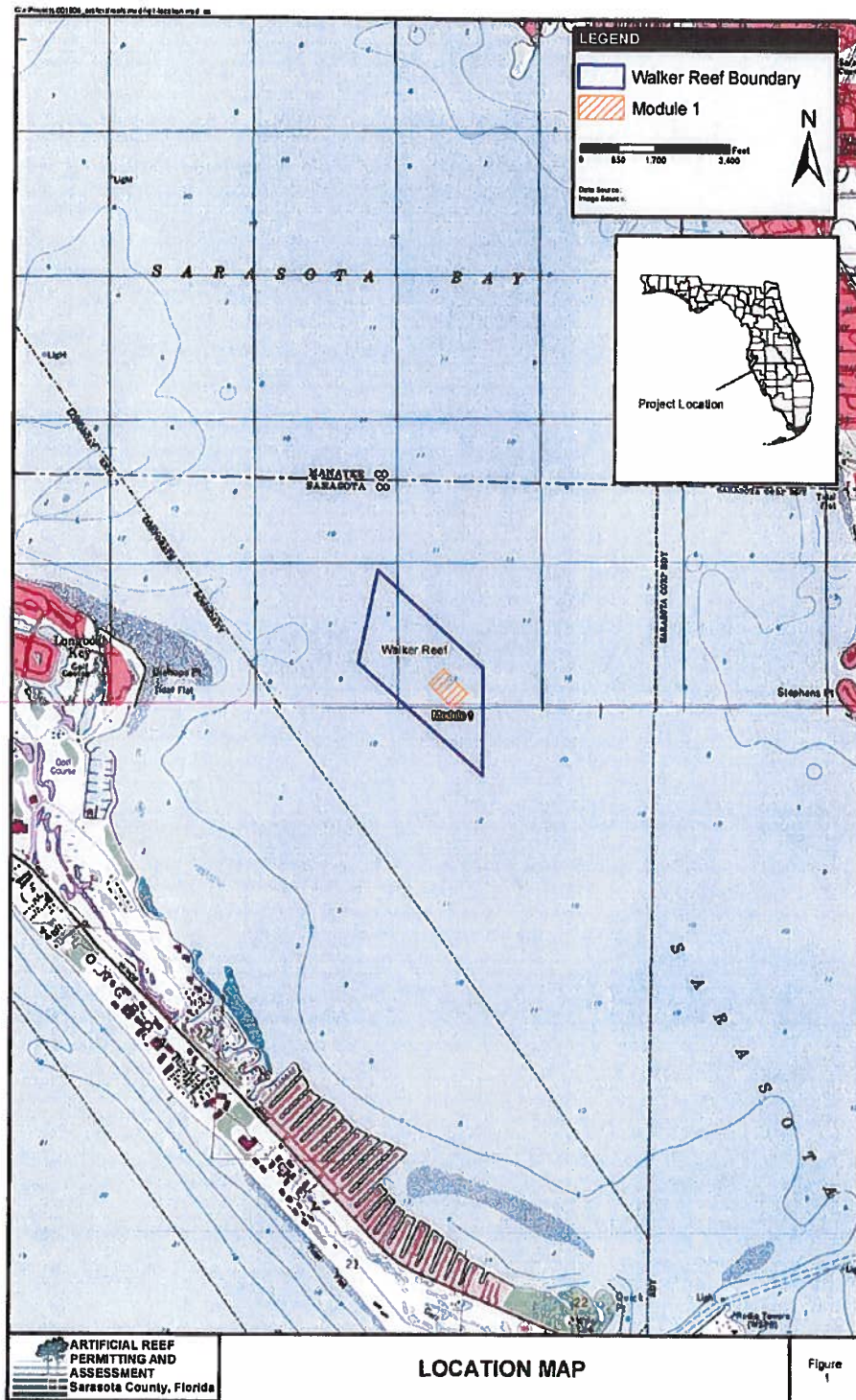
(d) The site shall be marked with perimeter buoys during construction to ensure that no material is deposited outside of the site;

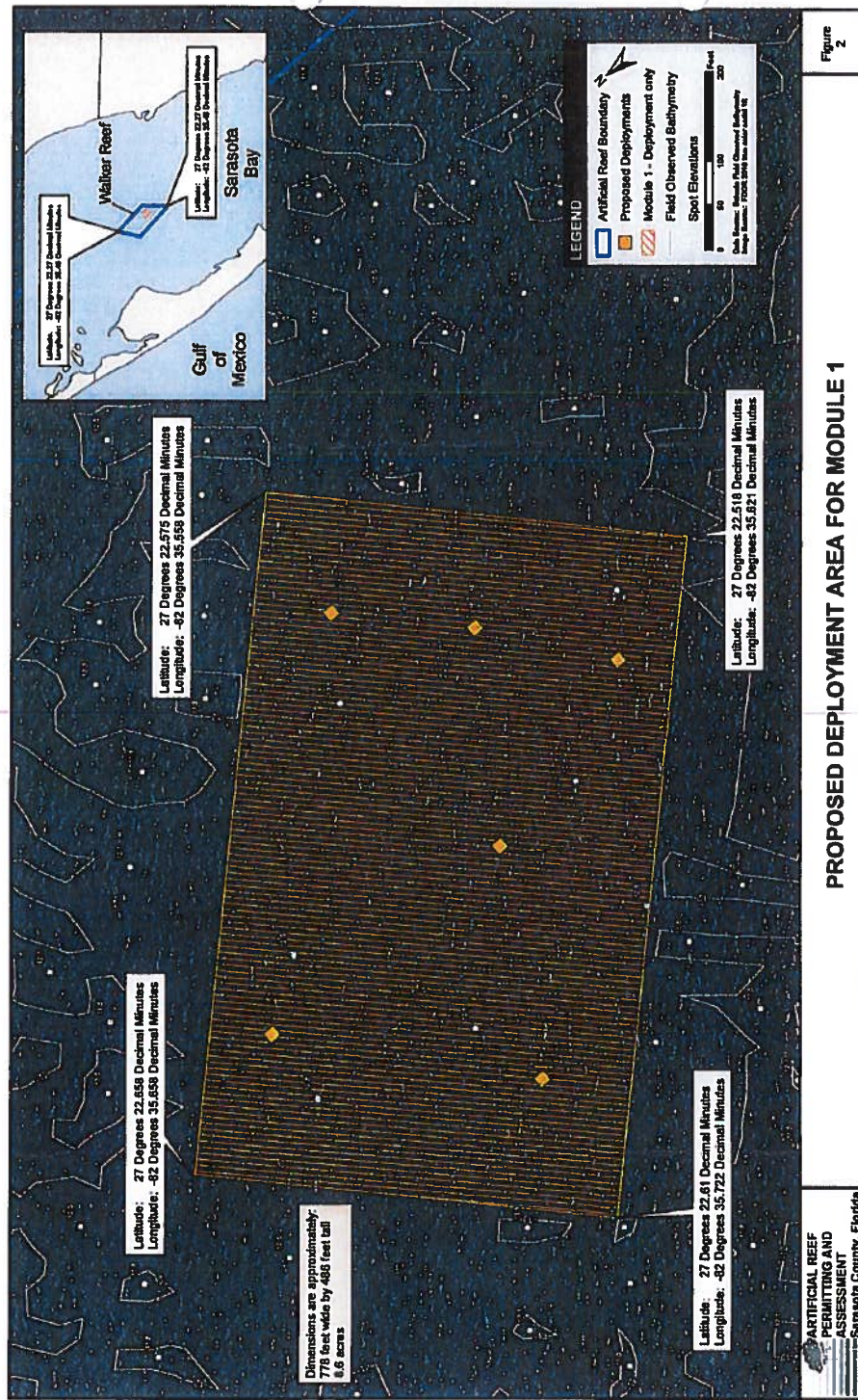
(e) The size of the boundaries within which the artificial reef is to be deposited shall not exceed 1/4 mile on any side;

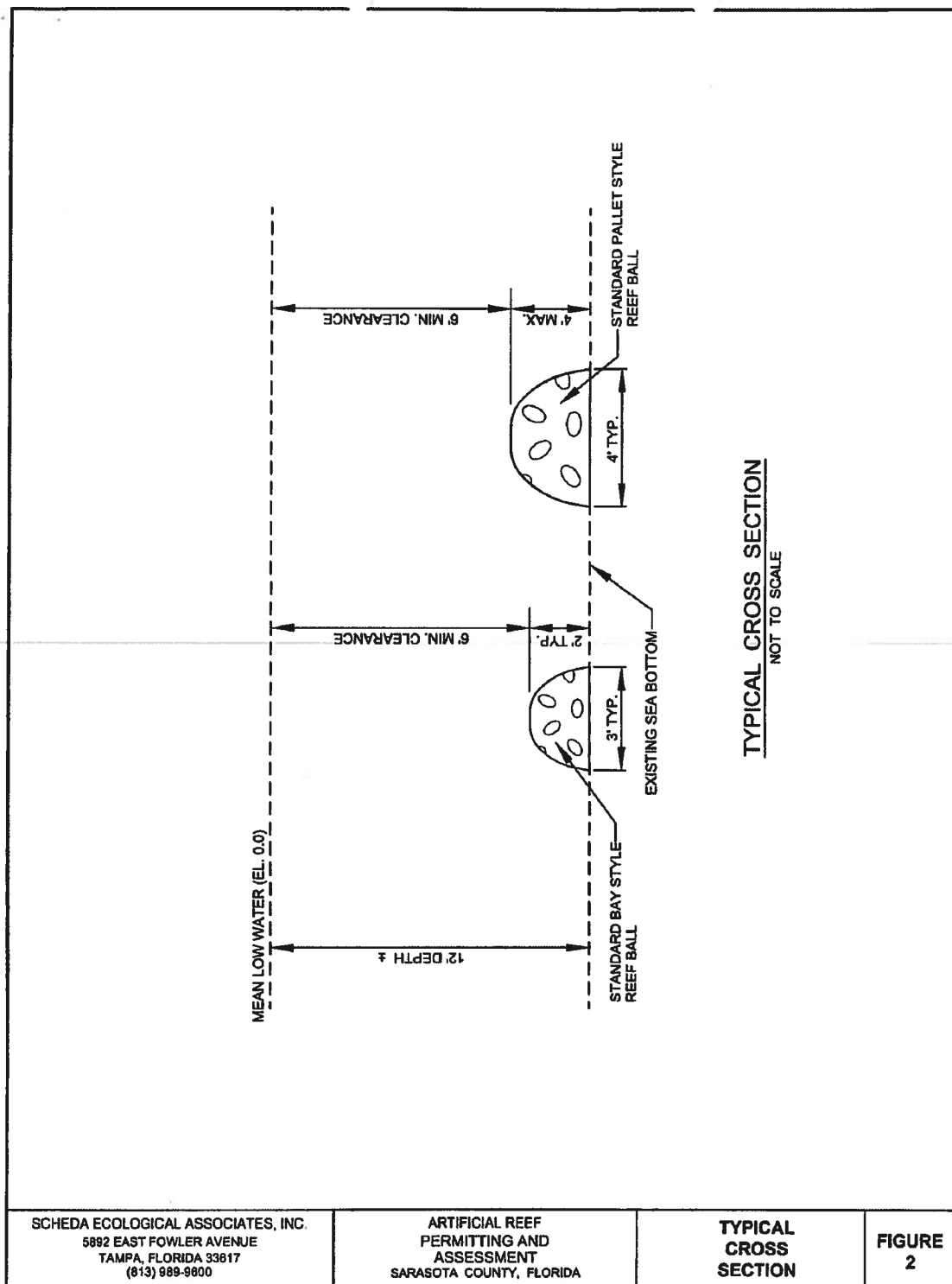
(f) The artificial reef site shall not be established within any shipping lanes; and

(g) The permittee shall notify the National Ocean Service, National Oceanographic and Atmospheric Association, U.S. Department of Commerce, Rockville, Maryland, and the Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries Management, via e-mail at artificialreefdeployments@myfwc.com of the precise location of the reef within 30 days of placement of the reef material.

Specific Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.414(9), 373.418, 403.805(1) FS. Law Implemented 373.118(1), 373.406(5), 373.413, 373.414(9), 373.416, 373.418 FS. History - New 10-3-95.







GENERAL CONDITIONS FOR ALL NOTICED GENERAL PERMITS

Rule 62-341.215, Florida Administrative Code

- (1) The terms, conditions, requirements, limitations, and restrictions set forth in this section are general permit conditions and are binding upon the permittee for all noticed general permits in this chapter. These conditions are enforceable under Part IV of Chapter 373, F.S.
- (2) The general permit is valid only for the specific activity indicated. Any deviation from the specified activity and the conditions for undertaking that activity shall constitute a violation of the permit. A violation of the permit is a violation of Part IV of Chapter 373, F.S., and may result in suspension or revocation of the permittee's right to conduct such activity under the general permit. The Department also may begin legal proceedings seeking penalties or other remedies as provided by law for any violation of these conditions.
- (3) This general permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any construction, alteration, operation, maintenance, removal or abandonment authorized by this permit.
- (4) This general permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the general permit as provided by Chapter 62-330, F.A.C.
- (5) The general permit does not relieve the permittee from liability and penalties when the permitted activity causes harm or injury to: human health or welfare; animal, plant or aquatic life; or property. It does not allow the permittee to cause pollution in contravention of Florida Statutes and Department rules.
- (6) The permittee is hereby advised that Section 253.77, F.S., states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
- (7) The authorization to conduct activities pursuant to a general permit may be modified, suspended or revoked in accordance with Chapter 120, F.S., and Section 373.429, F.S.
- (8) This permit shall not be transferred to a third party except pursuant to Section 62-343.130, F.A.C. The permittee transferring the general permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located.
- (9) Upon reasonable notice to the permittee, Department staff with proper identification shall have permission to enter, inspect, sample and test the permitted system to insure conformity with the plans and specifications approved by the permit.
- (10) The permittee shall maintain any permitted system in accordance with the plans submitted to the Department and authorized in this general permit.

- (11) A permittee's right to conduct a specific noticed activity under this noticed general permit is authorized for a duration of five years.
- (12) Construction, alteration, operation, maintenance, removal and abandonment approved by this general permit shall be conducted in a manner which does not cause violations of state water quality standards, including any anti-degradation provisions of Sections 62-4.242(1)(a) and (b), 62-4.242(2) and (3), and 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters. The permittee shall implement best management practices for erosion, turbidity, and other pollution control to prevent violation of state water quality standards. Temporary erosion control measures such as sodding, mulching, and seeding shall be implemented and shall be maintained on all erodible ground areas prior to and during construction. Permanent erosion control measures such as sodding and planting of wetland species shall be completed within seven days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and other surface waters exists due to the permitted activity. Turbidity barriers shall remain in place and shall be maintained in a functional condition at all locations until construction is completed and soils are stabilized and vegetation has been established. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
- (13) The permittee shall hold and save the Department harmless from any and all damages, claims, or liabilities, which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the general permit.
- (14) The permittee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate. Specific Authority: 373.026, 373.043, 373.044, 373.118, 373.406, 403.813, 403.814, F.S. Law Implemented: 373.026, 373.043, 373.046, 373.118, 373.403, 373.413, 373.416, 373.418, 373.419, 373.422, 373.423, 373.426, 403.813, 403.814, F.S. History—New 10-3-95.

**GENERAL CONSENT CONDITIONS FOR
USE OF SOVEREIGNTY SUBMERGED LANDS**

Chapter 18-21.004(7), 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, F.S.

Chapter 18-21.004(7), F.A.C., General Conditions for Authorizations:

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and 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 paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK
2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used (see MyFWC.com/manatee). One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. Questions concerning these signs can be sent to the email address listed above.

CAUTION: MANATEE HABITAT

All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:

Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC



RIGHTS OF AFFECTED PARTIES

This letter acknowledges that the proposed activity may be conducted under general permit rule 62-341.600, 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 of the 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. 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.

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 F.S. 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 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 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 rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 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 F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under section 120.60(3) of the F.S.,

however, any person who has asked the Department for notice of agency action may file a petition within 14 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 right.

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.

Under sections 120.569(2)(c) and (d) of the 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.

This determination constitutes an order of the Department. Subject to the provisions of paragraph 120.68(7)(a) of the 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 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 filed within 30 days from the date when the final 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 of the F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) or 373.4275 of the 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 final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of paragraph 20.255(5)(a) of the F.S., may also seek appellate review of the order before the Land and Water Adjudicatory Commission under subsection 20.255(5) of the 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.