

PUBLIC NOTICE
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CONSOLIDATED NOTICE OF PERMIT ISSUANCE
FOR ERP ACTIVITIES ON SOVEREIGN SUBMERGED LANDS

The Department of Environmental Protection gives notice of the issuance of an environmental resource permit, #11-0345034-002, and authorization to use sovereign submerged land to the City of Naples, 295 Riverside Circle, Naples, to conduct oyster habitat restoration through the placement of: (1) bagged shell, loose shell, and limestone rock as specified in the permit drawings; (2) three 150' x 13' reef ball wave attenuation structures to be placed at Site 1; and (3) navigational warning signs and public educational signs at each site. The project will be located within Naples Bay, Class II Waters, Unclassified for Shellfish Harvesting and Rocky Creek, Class III Waters.

Located at two sites in Naples Bay and one near the confluence of Rocky Creek and the Gordon River. Site 1 is a 3.33-acre area located west of Parcel ID# 2076348002 and 20763520001 and Site 2 is a 1.41-acre area located west of Parcel ID # 20763440000, in Sections 15, Township 50 South, Range 25 East. Site 3 is a 0.18-acre site west of Parcel ID # 20763440000, in Section 3, Township 50 South, Range 25 East, Collier County.

The application file is available online and can be accessed through the Department's Information Portal at: http://webapps.dep.state.fl.us/DepNexus/public/electronic-documents/ERP_345034/gis-facility!search. If you have any questions or are experiencing difficulty viewing the electronic application, please call the South District office by phone at 239-344-5600 or by email at SouthDistrict@dep.state.fl.us.

This permit and authorization to use sovereign submerged lands is hereby granted. 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 action automatically becomes only proposed agency action on the application, 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, 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, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit until the deadlines noted below for filing a petition for an administrative hearing, or request for an extension of time have expired.

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.

In the event that 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. Any intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)(1), petitions for an administrative hearing by the applicant or any of the parties listed below must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed with 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), F.S., however, any person who has asked the Department for notice of agency action may file a petition with 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 person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

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, F.A.C.

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 and is untimely filed.

This intent to issue constitutes an order of the Department on its own behalf on the application for the regulatory permit, and on behalf of the Board of Trustees of the Internal Improvement Trust Fund on the application to use sovereign submerged lands. 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 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, 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, 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.