



Florida Department of Environmental Protection

South District Office
P.O. Box 2549
Fort Myers, FL 33902-2549

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Mimi A. Drew
Interim Secretary

December 17, 2010

City of Cape Coral
c/o Oliver Clarke
P.O. Box 150027
Cape Coral, Florida 33915

Re: Lee County - ERP
File No. 36-0295854-002

Dear Mr. Clarke:

This is to acknowledge receipt of your application on November 19, 2010, for an Environmental Resource Permit, pursuant to Part IV, Chapter 373, Florida Statutes (F.S.), to construct a Stormwater Barrier and Boat Lift in the Spreader Waterway, Class III Waters, adjacent to 3916 Ceitus Parkway, and portions of the project occurring within the boundaries of the Charlotte Preserve State Park, Class III Outstanding Florida Waters, Section 18, Township 44 South, Range 23 East, Lee County.

In order to review your application, we need the items listed in the enclosed Request for Additional Information (RAI) by March 17, 2011. If necessary, you may request an extension up to ninety (90) additional days. If neither the information nor a request for an extension is received by March 17, 2011, your application may be denied without prejudice. If you revise your project after submitting the initial joint application, please contact us as soon as possible.

We appreciate your cooperation. If you have any questions, please contact Megan Mills by telephone at (239) 344-5670, or by e-mail at Megan.Mills@dep.state.fl.us. When referring to this project, please reference the file number listed above.

Sincerely,

Megan Mills
Environmental Specialist
Submerged Lands and Environmental Resources Program

MM/mm
Enclosure(s) : Request for Additional Information

Cc: FWC
Charlotte Harbor Preserve State Park
Matlacha Pass Aquatic Preserve

REQUEST FOR ADDITIONAL INFORMATION (RAI)
(Chapter 373, Florida Statutes (F.S.), and Chapters 62-4 and 62-343, Florida Administrative Code
(F.A.C.))

The following information is the basic information generally needed to review and process applications for impacts to wetlands and other surface waters. If the information is incomplete, or reveals additional potential impacts, the Department may request clarification or pose additional questions.

1. Please submit to the Department the required non-refundable application processing fee of \$3,510.00 pursuant to Chapter 62-4 F.A.C. Please include the notation "Application Fee for File No. 36-0295854-002."
2. It appears that the City of Cape Coral does not own the land associated with the western portion of the proposed project. The land appears to be owned by the State of Florida and managed as part of the Charlotte Harbor Preserve State Park (CHPSP). Please obtain and provide permission from the land owner to access and utilize this land for the proposed project. A copy of the application has been sent to the CHPSP office for review and an opportunity to comment on the application. At this time they have requested that the temporary work area and proposed impact areas within Park boundaries clearly identified on the project drawings with the approximate acreage for each. Any additional questions/comments from the CHPSP will be sent upon receipt.
3. The application submittal has been dictated by Consent Order 06-2345-DF. Pursuant to paragraph 12a of that consent order, the application shall be for the "construction of a permanent stormwater barrier and boat lift to separate the canal water from the receiving waters". The submitted design does not appear to address any of the existing breaches along the western portion of the Spreader Canal that currently allow for exchange of canal waters to other waters of the State. Please provide a plan that would prevent such exchange, as required by the consent order.
4. Please provide a detailed description of the construction of the new stormwater barrier, boat lift and extended wall for the proposed project. Please note, construction activities should be restricted to the project area and temporary impact areas identified in the application and project drawings. This description shall include items such as:
 - Channel closure procedures, if necessary;
 - An estimate of time to complete the project;
 - Construction details and scheduled for all aspects of the project, including specific details for work within Charlotte Harbor Preserve State Park;
 - Staging and material storage; and
 - Post-construction site restoration and stabilization.

5. Please provide reasonable assurances that the proposed activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to:

- a. the abundance and diversity of fish, wildlife and listed species; and
- b. the habitat of fish, wildlife and listed species.

A copy of the application has been sent to the Florida Fish and Wildlife Conservation Commission (FWC) for review and comment. A copy of any comments/questions will be forwarded upon receipt.

6. A proposed activity located in, on, or over surface waters or wetlands located within Outstanding Florida Waters must be shown to be clearly in the public interest. Please use the following criteria to show that the proposed project is clearly in the public interest:

- (a) Whether the regulated activity will adversely affect the public health, safety, or welfare or the property of others (40E-4.302(1)(a)1., F.A.C.);
- (b) Whether the regulated activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats (40E-4.302(1)(a)2., F.A.C.);
- (c) Whether the regulated activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling (40E-4.302(1)(a)3., F.A.C.). **The application included several references to the installation of the stormwater barrier causing future erosion of the Spreader Waterway's western berm. While the language of the Consent Order prevents the City from the obligation to undertake the design and construction of any *other* work to prevent further erosion, any associated erosion/shoaling as a result of the proposed design must be addressed as part of this application;**
- (d) Whether the regulated activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity (40E-4.302(1)(a)4., F.A.C.);
- (e) Whether the regulated activity will be of a temporary or permanent nature (40E-4.302(a)5., F.A.C.);
- (f) Whether the regulated activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of section 267.061, F.S. (40E-4.302(1)(a)6., F.A.C.); and
- (g) The current condition and relative value of functions being performed by areas affected by the proposed regulated activity (40E-4.302(1)(a)7., F.A.C.).

7. Please provide reasonable assurance that the secondary impacts from construction, alteration, and intended or reasonably expected uses of a proposed system will not cause violations of water quality standards, adverse impacts to the functions of wetlands or other surface waters, or adversely impact the ecological value of uplands to

aquatic or wetland dependent listed animal species for enabling existing nesting or denning by these species.

8. Please provide reasonable assurances that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters.
9. A complete hydrographic study may be required for assurance that this project is clearly in the public interest. A copy of your application has been forwarded to the Department's hydrographic engineer for review. A copy of any comments/questions will be forwarded upon receipt.
10. The Department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the project. Mitigation allows the applicant to compensate for destruction of wetlands at the project site by enhancing, preserving, or restoring other wetland areas either on or off the project site in a variety of ways. In many cases, mitigation makes it possible to obtain a permit for work in wetlands and waters of the State without causing a net environmental degradation, which would otherwise be unpermissible. Applicants may propose mitigation for their impacts using one particular approach or a combination of mitigation types. For example, an applicant may propose to make a monetary donation for use in the enhancement of other offsite wetlands, which are already preserved and/or propose to preserve a portion of their onsite wetlands. Before considering mitigation, all reasonable measures must first be taken to reduce the adverse affects which otherwise render the project unpermissible. Please note that mitigation may also be needed to offset unavoidable wetland impacts. Attachment I briefly describes the different forms of mitigation. Please submit to the Department a mitigation plan that will offset those impacts that remain after reduction or elimination of impacts. [Section 373.414(b), F.S.]
11. Please provide to the Department a Unified Mitigation Assessment Methodology for the proposed project area along with a copy of the necessary supporting information in accordance with Rules 62-345.400-.600, F.A.C., which can be found at <http://www.dep.state.fl.us/legal/Rules/surfacewater/62-345/62-345.pdf> This should describe the proposed project as well as the mitigation proposal as required per Rule 62-345.300, F.A.C. Once the Department has received a copy of the information, the application has been deemed complete, and site visit has been completed, the proposed mitigation will be evaluated.

In order to provide adequate and accurate site information for the Unified Mitigation Assessment Method (UMAM) requirement, you are encouraged to use the services of an environmental consultant or wetland scientist who is

knowledgeable and experienced in wetland delineation as defined in Chapter 62-343, F.A.C

For Your Information

Your project is in Class III Waters. According to Section 373.414(1), F.S., you must provide reasonable assurance that state water quality standards applicable to waters, as defined in Section 403.031(13), F.S., will not be violated. The specific state water quality standards for Class III Waters are contained in Rules 62-302.500 and 530, F.A.C. The specific state water quality standards for Outstanding Florida Waters are contained in Rule 62-4.242, F.A.C.

Your project may be located within or adjacent to:

- o Manatee habitat
- o A national or state park, Charlotte Harbor Preserve State Park
- o The Matlacha Pass Aquatic Preserve
- o Outstanding Florida Waters
- o Other

and may be affected by comments from those entities having special interest in the project. Modifications to your project may be required upon receipt of the requested comments. [See Rule 18-21.004(2), F.A.C.]

The department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects which may be caused by the project. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the department shall consider mitigation measures proposed or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards. Before considering mitigation, all practicable measures must first be taken to reduce the adverse effects which otherwise render the project unpermittable.

Please be advised that this permit does not constitute the issuance of a NPDES Stormwater Permit or acceptance of an NPDES Stormwater Pollution Prevention Plan. For additional information regarding this matter please contact the NPDES Stormwater Notices Center toll free at (866) 336-6312 or Department personnel in Tallahassee at (850) 245-7522.

Attachment I 1995 South Florida Water Management District's Basis for Review

4.3 Mitigation -

Protection of wetlands and other surface waters is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with these features. Mitigation will be approved only after the applicant has complied with the requirements of subsection 4.2.1 regarding practicable modifications to eliminate or reduce adverse impacts. However, any mitigation proposal submitted by an applicant shall be reviewed concurrently with the analysis of any modifications pursuant to subsection 4.2.1. This section establishes criteria to be followed in evaluating mitigation proposals.

Mitigation as described in sections 4.3-4.3.8 is required only to offset the adverse impacts to the functions as defined in sections 4.2-4.2.8 caused by regulated activities. In certain cases, mitigation cannot offset impacts sufficiently to yield a permissible project. Such cases often include activities which significantly degrade Outstanding Florida Waters, adversely impact habitat for listed species, or adversely impact those wetlands or other surface waters not likely to be successfully recreated.

Applicants are encouraged to consult with District staff in pre-application conferences or during the application process to identify appropriate mitigation options.

4.3.1 Types of Mitigation

Mitigation usually consists of restoration, enhancement, creation or preservation of wetlands, other surface waters or uplands. In some cases, a combination of mitigation types is the best approach to offset adverse impacts resulting from the regulated activity.

4.3.1.1 In general, mitigation is best accomplished through creation, restoration, enhancement or preservation of ecological communities similar to those being impacted. However, when the area proposed to be impacted is degraded, compared to its historic condition, mitigation is best accomplished through creation, restoration, enhancement or preservation of the ecological community which was historically present. Mitigation involving other ecological communities is acceptable if impacts are offset and the applicant demonstrates that greater improvement in ecological value will result.

4.3.1.2 In general, mitigation is best accomplished when located on-site or in close proximity to the area being impacted. Off-site mitigation will only be accepted if adverse impacts are offset and the applicant demonstrates that:

- a) On-site mitigation opportunities are not expected to have comparable long-term viability due to such factors as unsuitable hydrologic conditions or ecologically incompatible existing adjacent land uses or future land uses identified in a local comprehensive plan adopted according to Chapter 163, F.S.; or
- b) Off-site mitigation would provide greater improvement in ecological value than

on-site mitigation

One example of a project that would be expected to meet the criteria of paragraphs (a) or (b) above is a linear project which cannot effectively implement on-site mitigation due to documented right-of-way constraints.

4.3.1.3 Mitigation through participation in a mitigation bank shall be in accordance with subsection 4.4.

4.3.1.4 In instances where the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards and the system will contribute to this existing condition, mitigation for water quality impacts can consist of water quality enhancement. In these cases, the applicant must implement mitigation measures that will cause net improvement of the water quality in the receiving waters for those parameters which do not meet standards.

4.3.1.5 To offset adverse secondary impacts from regulated activities to habitat functions that uplands provide to listed species evaluated as provided in paragraph 4.2.7(b), mitigation can include the implementation of management plans, participation in a wildlife mitigation park established by the FGFWFC, or other measures. Measures to offset adverse secondary impacts on wetlands and other surface waters resulting in use of a system can include the incorporation of culverts or bridged crossings designed to facilitate wildlife movement, fencing to limit access, reduced speed zones, or other measures designed to offset the secondary impact.

4.3.1.6 Except as provided in subsection 373.414(6), F.S., mitigation for certain mining activities shall be in accordance with subsection 373.414(6), F.S.

4.3.1.7 Mitigation or reclamation required or approved by other agencies for a specific project will be acceptable to the District to the extent that such mitigation or reclamation fulfills the requirements of sections 4.3-4.3.8 and offsets adverse impacts of the same project in accordance with the criteria in sections 4.2-4.2.8.2.

4.3.1.8 Innovative mitigation proposals which deviate from the standard practices described in sections 4.3-4.3.6 shall be considered on a case-by-case basis. The donation of money is not considered to be an acceptable method of mitigation, unless cash payments are specified for use in a District or Department of Environmental Protection endorsed environmental preservation, enhancement, or restoration project and the payments initiate a project or supplement and on-going project. The project or portion of the project funded by donation of money must offset the impacts of the proposed system.