



Florida Department of Environmental Protection

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

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

August 31, 2016

Sarasota County
Attn: Thomas Harmer, Administrator
1001 Sarasota Center Blvd.
Sarasota, FL 34240

Dear Mr. Harmer,

On July 20, 2016, the Department received Sarasota County's request for delegation of the Department's authority to administer and enforce the regulation of mangroves within the unincorporated portions of Sarasota County pursuant to Section 403.9324, Florida Statutes. Upon review of this request, the Department has determined that Sarasota County has demonstrated sufficient resources and procedures for the adequate administration and enforcement of a mangrove program.

Enclosed is the Mangrove Trimming and Preservation Order of Delegation and Specific Operating Agreement Between the State of Florida Department of Environmental Protection (DEP) and Sarasota County. The execution of this Agreement by the Department constitutes approval of Sarasota County's request for delegation. The Agreement is not effective until executed by Sarasota County. The anticipated effective date is October 10, 2016.

If you have any questions, please feel free to contact me.

Kind regards,


Daniel Sensi
Mangrove and Deadhead Logging Coordinator
Submerged Lands and Environmental Resources Coordination
Phone: (850) 245-8428

Encl: Signed Specific Operating Agreement and Order of Delegation (7 pages)

cc: Tim Rach, FDEP
John A. Coates, FDEP

**MANGROVE TRIMMING AND PRESERVATION
ORDER OF DELEGATION AND
SPECIFIC OPERATING AGREEMENT**

**BETWEEN THE STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION (DEP)**

AND

SARASOTA COUNTY

THIS Agreement is made and entered into this 10th day of October, 2016, by and between the State of Florida Department of Environmental Protection (Department) and the Sarasota County Board of County Commissioners (Board). By execution of this Agreement, the Department delegates its authority to regulate the trimming and alteration of mangroves to the Board and the designated Sarasota County Administrator (Administrator) pursuant to Section 403.9324, Florida Statutes (F.S.).

WITNESSETH:

WHEREAS, mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; and

WHEREAS, mangroves contribute to the economies of many coastal counties in the state through a combination of functions; and

WHEREAS, it is the intent of the Mangrove Trimming and Preservation Act ("the Act" Sections 403.9321-403.9333, Florida Statutes, as it may be amended from time to time) to protect and preserve mangrove resources valuable to Florida's environment and economy from unregulated removal, defoliation, and destruction; and

WHEREAS, the Department has been directed by the Legislature to delegate its authority to administer and enforce the regulation of trimming and alteration of mangroves pursuant to the Act to any local government that makes written request for delegation, if the local government can demonstrate that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove regulatory program.

I. ORDER OF DELEGATION

- A. The Administrator is delegated the authority to issue permits and verify qualification to use exemptions under the Act within the entire territorial limits of unincorporated Sarasota County for the trimming or alteration of mangroves, except when trimming and alteration is conducted as a necessary component of an activity qualifying for an exemption under Section 403.813, F.S., or is authorized in an environmental resource permit under Part IV of Chapter 373, F.S.
- B. In accordance with the Act, the Administrator may impose stricter substantive standards

than the Department for mangrove trimming or alteration permits, except that the Administrator may not prohibit all mangrove trimming or alteration, and may not further restrict or limit the trimming of mangroves within riparian mangrove fringe areas as provided in Section 403.9326, F.S.

- C. Nothing herein shall preclude the Administrator from administering and enforcing any lawfully adopted regulations, pursuant to the rules adopted by the Board, in a manner consistent with the provisions of the Act.
- D. The Administrator is delegated the authority to enforce the provisions of the Act within the territorial limits of the unincorporated Sarasota County, as it may be amended from time to time, for activities requiring a permit from the Administrator. The Administrator is also authorized to enforce any lawful regulation adopted by the Board to the fullest extent possible, in accordance with the provisions of this act. Nothing herein shall limit or restrict the Administrator's authority to enforce any lawful regulation adopted by the Board to the fullest extent possible. Furthermore, nothing herein shall limit or restrict the Department's authority to enforce the provisions of the Act for activities that require a wetland resource or environmental resource permit under Part IV of Chapter 373, F.S.

II. OPERATING AGREEMENT

- A. **PURPOSE OF OPERATING AGREEMENT:** The purpose of this Agreement between the Department and the Administrator is to implement the legislative direction in Section 403.9324, F.S., to delegate the Department's authority to regulate the trimming and alteration of mangroves to counties and municipalities that meet the qualifications of the Act.

The Administrator shall comply with the statutory requirements of the Act in decisions pertaining to the regulation of mangrove trimming and alteration.

The Administrator shall not restrict or qualify the availability of the exemptions to trim mangroves in riparian mangrove fringe areas, except as provided by the Act. In accordance with the Act, the Administrator may impose stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration activities outside of riparian mangrove fringe areas.

In order to ensure consistent implementation throughout the state, Sarasota County agrees to construe the phrase "Lands Set Aside for Conservation, Preservation or Mitigation" as provided in the definition of riparian mangrove fringe in 403.9325(6), F.S., to include the following lands which may not be trimmed under exemptions applicable to riparian mangrove fringes:

1. Conservation and recreation lands under Chapter 259, Florida Statutes;
2. State and national parks;
3. State and national reserves and preserves except as provided in Section 403.9326(3), Florida Statutes;

4. State and national wilderness areas;
5. National wildlife refuges (only those lands under Federal Government ownership);
6. Lands acquired through the Water Management Lands Trust Fund, Save Our Rivers Program;
7. Lands acquired under the Save Our Coast Program;
8. Lands acquired under the environmentally endangered lands bond program;
9. Lands purchased by a water management district, the Florida Fish and Wildlife Conservation Commission, or any other state agency for conservation or preservation purposes;
10. Lands encumbered by a conservation easement that does not provide an exception from a general prohibition of Trimming or Alteration of vegetation by specifically allowing for the Trimming or Alteration of Mangroves;
11. Public lands designated as critical wildlife areas by the Florida Fish and Wildlife Conservation Commission; and
12. Lands designated as conservation or preservation on a plat.
13. Lands acquired through the Environmentally Sensitive Lands Protection Program except as provided for under a resource management plan to affect management of these lands, and to accommodate public access.
14. Zoning districts designated Open Use Conservation (OUC).
15. Mangrove areas on public or private land that have been created, enhanced, restored, or preserved as mitigation pursuant to a Wetland Resource Permit, Management and Storage of Surface Waters Permit, Environmental Resource Permit, or resolution of an enforcement action, where the permitting or enforcement agency has not determined that the success criteria have been met, or where a consent agreement has been entered into between the permitting or enforcement agency and the property owner or a restrictive covenant or conservation easement has been granted by the property owner that does not provide for trimming.

B. MODIFICATION OF AGREEMENT

This Agreement may be modified in writing at any time as necessary by mutual consent of the Department and the Board. Modifications may be made in whole, by part, or by section; and upon approval shall supersede previous versions of this Agreement. Approvals of modifications to the language of this Agreement shall be approved and signed by the Secretary for the Department and the Chairperson of the Board.

C. REPORTING REQUIREMENTS

The Department may annually review the performance of the Administrator's delegated mangrove regulatory program to determine if the program is being properly administered and enforced. To allow the Department to effectively review the delegated mangrove regulatory program, the Administrator shall submit an annual report to the Department that includes at a minimum:

1. Number of trimming and alteration permit applications received during the reporting period;
2. Number of trimming and alteration permits issued during the reporting period;

3. Number of trimming and alteration permit denials issued during the reporting period;
4. Number of variance applications received;
5. Number of variance applications approved;
6. Number of voluntary exemption notifications verified during the reporting period;
7. Number of violations reported and investigated during the reporting period; and
8. Number and resolution of enforcement actions taken during the reporting period, including description of restoration, if required.

If additional information is needed for the Department to effectively review the Administrator's performance of administering and enforcing the delegated mangrove regulatory program, the Administrator shall, upon request from the Department, provide additional information concerning permitting, compliance and enforcement for mangrove trimming and alteration activities.

D. COMPLIANCE AND ENFORCEMENT

1. The Department shall resolve all open mangrove projects, including but not limited to: permitting, monitoring, compliance, and enforcement measures initiated prior to the effective date of this agreement.
2. After the effective date of this Agreement, once an activity authorized by the Department under the Act meets maintenance criteria, all future actions on such projects will be under the authority of the Administrator. The Administrator shall be responsible for enforcement of this Agreement and any ordinance, rule, or order adopted pursuant hereto. The Department may provide assistance in compliance and enforcement cases, and intervene or take the lead role in any enforcement actions within the Administrator's jurisdiction, when deemed necessary by the Department. The Department shall give reasonable notice to the Administrator of its intent to pursue such an enforcement action.
3. Nothing in this Agreement shall limit the enforcement authority of either party.

E. NOTIFICATION REQUIREMENTS

1. The Administrator shall notify the Department prior to promulgating new or modified mangrove regulations, including any decision to expand the delegation to the incorporated municipalities within Sarasota County
2. The Department shall notify the Administrator of any request to obtain delegation by a municipality within Sarasota County.
3. The Administrator shall notify the Department of any request from a local government within Sarasota County to obtain delegation, so that the Department may coordinate the process for review of their delegation request in accordance with Section 403.9324, F.S.
4. The Administrator shall submit all proposed mangrove regulations to the Department for its comments prior to promulgating new or modified mangrove regulations.
5. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this Agreement shall be forwarded to the correct agency for further processing within 10 days of receipt. A

refund of any fee submitted to the incorrect agency that does not retain processing of the application shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly and is being forwarded.

6. All notices and reports required or permitted to be given under the terms and provisions of this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, as follows or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mangrove Coordinator
Office of Submerged Lands and Environmental Resources
MS 2500 2600 Blair Stone Rd., Mail Station 2500
Tallahassee, FL 32399-2400

SARASOTA COUNTY ENVIRONMENTAL PROTECTION DIVISION

Mangrove Coordinator
1001 Sarasota Center Boulevard
Sarasota, FL 34240

F. CONFLICT OF INTEREST

No employee or independent contractor with the Administrator, who is responsible for permitting or compliance and enforcement for mangrove trimming or alteration pursuant to this order, shall supervise or perform mangrove trimming or alteration as part of any private business activity within the jurisdictional boundaries of Sarasota County. Furthermore, no employee or independent contractor with the Administrator shall have or hold any employment or contractual relationship that will create a conflict between his private interests and the performance of his public duties as they relate to mangrove trimming or alteration pursuant to this order.

G. By written agreement between the Administrator and the Department, responsibilities may deviate from the responsibilities outlined in Sections I. and II. Of this Agreement. Instances where this may occur include, but are not limited to, the following:

1. An extensive regulatory history or a proprietary interest by either the Administrator or the Department with a particular project that would make a deviation result in more efficient and effective regulation. This may include activities on lands with a conservation easement held by the other agency;
2. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or
3. Circumstances in which a deviation would result in the application or petition being more efficiently or effectively processed.

H. EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective on October 10, 2016

I. TERMINATION OF AGREEMENT

1. Either party may terminate this Agreement upon written notice of not less than ninety (90) days.
2. The Department may revoke this Agreement upon a determination by the Department that the delegated program has failed to properly administer or enforce the terms and conditions of the delegation, including compliance with the terms and conditions of Sections 403.9321-403.9333, F.S. The Department may revoke this Agreement if the Administrator promulgates new or modified mangrove regulations that are not consistent with Sections 403.9321-403.9333, F.S. Nevertheless, nothing herein shall be interpreted to prohibit the Administrator from promulgating stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas, as authorized by Section 403.9324(6), F.S. In such circumstances, the Department shall provide the written notice of its intent to revoke the authority to operate the delegated program. The Department's revocation of this authority is subject to review under Chapter 120, F.S.
3. In the event of termination of this Agreement, the Administrator agrees to perform compliance inspections on those permits that were issued by the Administrator under this Agreement, and to report any violations to the Department. The Administrator retains joint authority with the Department to enforce the provisions of the Act for any mangrove trimming or alteration activities which were permitted while the Administrator was operating under the provisions of this Agreement.


J. SEVERABILITY

If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

SIGNATURES

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By: 
JOHN A. COATES, P.E.
DIRECTOR
DIVISION OF WATER
RESOURCE MANAGEMENT
2600 BLAIR STONE ROAD
TALLAHASSEE, FL 32399

Date: 8/31/2016

Approved as to Form and Legality by
Office of General Counsel

By: 
Department Attorney

Date: 8/29/16

BOARD OF COUNTY COMMISSIONERS
SARASOTA COUNTY, FLORIDA

By: 
Chairman

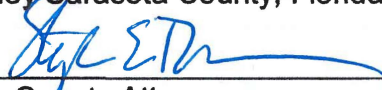
Date: 10/10/16

ATTEST:
KAREN E. RUSHING, Clerk of Circuit
Court and Ex-Officio Clerk to the Board of
County Commissioners of Sarasota
County

By: 
Deputy Clerk

Date: 10/10/16

Approved as to form by Office of County
Attorney Sarasota County, Florida

By:  
County Attorney

Date: 10/10/16