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Alabama Department of Environmental Management
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March 9, 2012

The Nature Conservancy
Attn: Ms. Judy Haner
56 St. Joseph Street
Mobile, Alabama 36602

RE: State of Alabama: Coastal Consistency and CWA Section 401(a) Water Quality Certification
The Nature Conservancy
Various Shorelines of Mobile Bay, Portersville Bay, Bon Secour Bay, Weeks Bay, and the Mississippi Sound
U.S. Army Corps of Engineers Joint Public Notice and Permit: SAM-2011-00493-DEM
ADEM Tracking Code: 2011-191-COE

Dear Ms. Haner:

This office has completed its review of the above referenced joint public notice and all associated materials submitted to the Alabama Department of Environmental Management (ADEM) related to your proposal to conduct activities within the Alabama Coastal Zone. The project includes the creation of 11 miles of oyster reef/living shoreline breakwaters along approximately 15 miles of shoreline in Mobile Bay, Portersville Bay, Bon Secour Bay, Weeks Bay, and the Mississippi Sound. Depending on the conditions of the site, bagged oyster shell, Reef-Balls, Reef-blocks, and other technologies will be used to provide a settlement substrate for the oysters. The shoreline breakwaters will be placed between 20-meters and 100-meters from the shoreline to provide adequate shoreline protection. Breakwater lengths will range from 15-meters to 125-meters based on the site shoreline length and will be spaced to allow for tidal flushing. For navigational purposes, "Submerged Reef" signs will be placed along the breakwaters. No impacts to coastal wetlands, existing natural oyster reefs, or submerged grassbeds are authorized for this project.

Action pertinent to water quality certification is required by Section 401(a)(1) of the Clean Water Act, 33 U.S.C. §1251, *et seq.* If conducted in accordance with the conditions prescribed herein, ADEM hereby grants official certification that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the Clean Water Act and §22-22-9(g), Code of Alabama (1975). This certification terminates coincidentally with the expiration of SAM-2011-00493-DEM but in no case shall this ADEM certification exceed a maximum of five (5) years from the date the U.S. Army Corps of Engineers officially extends permit SAM-2011-00493-DEM unless specifically authorized in response to a written request for same.

Furthermore, ADEM hereby concurs with the applicant's coastal consistency certification conditional upon continued compliance with the management program.

ADEM certifies that there are no applicable effluent limitations under Sections 301 and 302 nor applicable standards under Sections 306 and 307 of the Clean Water Act in regard to the activities specified. However, regulations promulgated by the EPA requiring discharge permits for storm water runoff from individual and commercial facilities may be applicable. This certification does not address the requirements of those regulations.

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209 4702
(205) 942-6188
(205) 941 1803 (FAX)

Decatur Branch
2715 Sardin Road, S. W.
Decatur, AL 35603-1333
(256) 383-1718
(256) 340-1389 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1121
(251) 450-3400
(251) 479-2583 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36618-1421
(251) 432-8833
(251) 432-8988 (FAX)

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To protect water quality, the following conditions must be incorporated as part of SAM-2011-00493-DEM.

1. The Nature Conservancy and/or its assigns shall provide to the ADEM written notice of the start and expected completion date, including any project phasing utilized.
2. The Nature Conservancy and/or its assigns shall allow any duly authorized employee of the ADEM or its contractors, or Attorney General or District Attorney to enter upon the premises associated with the project authorized by this certification for the purposes of ascertaining compliance with the terms and conditions of the certification and with the rules and regulations of the ADEM.
3. No bagged or loose shell shall be used in the construction of shoreline stabilization structures in shellfish growing areas that are classified as restricted, conditionally restricted, or prohibited by the Alabama Department of Public Health.
4. Prior to construction in shellfish growing that are classified as restricted, conditionally restricted, or prohibited by the Alabama Department of Public Health, the Nature Conservancy and/or its assigns shall obtain concurrence from the Alabama Department of Conservation and Natural Resources - Marine Resources Division that the materials to be used as shoreline stabilization structures are acceptable.
5. Site-specific SAV surveys shall be conducted for each phase of the project. A copy of these surveys shall be submitted to the ADEM Coastal/Facility Section prior to project implementation.
6. Breakwaters will be located a minimum of ten-feet away from any visible sea grass bed and/or sea grass habitat.
7. Upon completion of each phase of the project, an as built survey(s) shall be submitted to the ADEM Coastal/Facility Section.
8. If turbidity generated from the activities conducted within or close proximity to State waters causes or results an increase of more than fifty (50) Nephelometric Turbidity Units (NTU) above background turbidity levels within the affected surface water or its tributaries or any other State water, The Nature Conservancy and/or its assigns must cease all construction activities at the site, except those related to BMP implementation or maintenance, until turbidity is restored to acceptable levels. The ADEM Coastal Section shall be notified by phone of the resultant work stoppage immediately, with a follow-up written notification no later than seventy-two (72) hours from the beginning of the work stoppage.
9. All materials used as fill shall be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris.
10. Effective solid waste management practices shall be implemented at the site. All construction debris must be contained while on-site and regularly removed and disposed of in an approved manner. There shall be regular monitoring and removal of any construction debris or wastes from wetland areas, State waters, or adjacent offsite areas.
11. The Nature Conservancy and/or its assigns shall provide written notice to the ADEM Coastal Section of any proposed modifications to the approved site plans. Upon such notice, the ADEM Director may require the submission of additional information and/or a new permit application, and additional fees may be required. Modifications may not be implemented without prior approval from the ADEM.
12. This certification is not transferable without prior written notice and approval of the ADEM. Upon such notice, the Director may require submission of additional information and/or a new permit application, and additional fees may be required.

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13. Time extension requests must be submitted to the ADEM in writing 60 days prior to the expiration of this CWA 401 (a) water quality certification.

Failure to comply with any of the above-referenced conditions, unauthorized deviations from the approved development plan, or implementation of additional impacts (whether temporary or permanent) exceeding the scope of the project authorized herein may constitute a violation of this certification and result in enforcement action.

In recognition that projects are site specific in nature and conditions can change during project implementation, the ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case-by-case basis, in order to ensure the protection of water quality and coastal resources.

Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The Nature Conservancy and/or its assigns shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by The Nature Conservancy complies with this certification. Any violations resulting from the actions of such person shall be considered violations of this certification and may result in an enforcement action.

This certification does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in The Nature Conservancy the title to lands now owned by the State of Alabama nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State that may be in the possession of The Nature Conservancy.

All project correspondence, time extension requests, modification requests, and notifications should be mailed to the ADEM Coastal Section, 4171 Commanders Drive, Mobile, AL 36615. Please include ADEM Tracking Code: 2011-191-COE on all written correspondence on this matter.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/jsb/sed File: CZCERT/41227

Enclosures (37 Pages)

ecopy: Don Mroczo [USACE - Mobile District]
Rosemary Hall [EPA-Region 4]
Phillip Hinesley [ADCNR-Coastal]
Christopher Blankenship [ADCNR-MRD]
McCool, Jeff [ADPH]