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December 16, 2010

Via U.S. Mail and Email

Mr. Spud Woodward
Director
Coastal Resources Division
Georgia Department of Natural Resources
One Conservation Way
Brunswick, Georgia 31520

Re: Letters of Permission

Dear Mr. Woodward:

We are writing this letter on behalf of the following Save Georgia's Coast members: the Altamaha Riverkeeper, the Center for a Sustainable Coast, the Georgia Conservancy, the Ogeechee Riverkeeper, the Sierra Club Georgia Coastal Group, and the Savannah Riverkeeper to protest the Coastal Resource Division's continued use of Letters of Permission (LOP) to authorize activities that fall within the jurisdiction of Georgia's Shoreline Protection Act (SPA). The LOP that you issued on October 26, 2010, for the construction of a set and the filming the "X-Men: First Class" film is the most recent example of this practice. By issuing LOPs, CRD excludes the public from the SPA permitting process. Furthermore, their issuance has no legal foundation.

The SPA is explicit in what it requires, stating "No person shall construct or erect any structure or construct . . . or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the jurisdiction of this part, except *in accordance with the terms and conditions of a permit therefore issued in accordance with this part.*" O.C.G.A § 12-5-237(a) (emphasis added). To ensure that any alteration of the state's sand dunes and beaches is in the public interest, the SPA lists factors to be considered in the permit process—including public interest factors. *Id.* § 12-5-239(i). To ensure that these public interest factors are appropriately considered, the statute provides the public the opportunity to comment on every permit issued. *Id.* § 12-5-239(b).

The SPA does not authorize CRD to circumvent the permitting and public comment process by issuing an LOP. Stated simply, the SPA does not reference, contemplate, or implicitly authorize LOPs or any other alternative means of authorizing beach projects. While it is true that other government agencies use LOPs, those LOPs have a legal basis. The Army Corps of Engineers' is a good

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example. The Corps uses LOPs to authorize minor projects under its regulatory program. But the Corps' regulations clearly describe when they can and cannot be used. Unlike the Corps, CRD cannot point to any statutory or regulatory language that would specifically authorize the use of LOPs. Absent such language, CRD's reliance on LOPs is in clear conflict with the SPA.

Over the past month, CRD failed to provide us with a cogent response to our questions on its statutory authority for issuing LOPs. In our discussions with CRD staff, we were informed that CRD derives LOP-issuing authority from Section 12-5-234(a)(1), which states that CRD shall have the authority to "administer and enforce this part and all rules, regulations, and orders issued pursuant to this part." This section, however, means precisely what it says—CRD has the authority to administer and enforce the "*rules, regulations, and orders*" under the SPA. The section neither mentions LOPs nor gives CRD the authority to issue them.

Moreover, we take issue with CRD's emphasis on the "temporary" nature of projects authorized under LOPs. The SPA requires a permit for "any structure or construct" and "any land alteration" within the SPA's jurisdiction. *Id.* § 12-5-237(a). In addition, a permit for "shoreline engineering" or "land alteration on beaches, sand dunes, and submerged lands" may only be issued when the activities associated with the construction of the proposed project are "temporary in nature" and the "completed project will result in complete restoration . . ." *Id.* § 12-5-239(c)(3). Thus, in order for an activity like the X-Men film project to be permitted under the SPA, it in fact must be "temporary." The fact that it is temporary does not give the project a "pass" on the permitting requirements.

In short, CRD cannot legally authorize activities that fall within the jurisdiction of the SPA without an SPA permit. Since there is no mention of LOPs in the SPA, CRD cannot use them to administer any aspect of the SPA regulatory program. Therefore, we urge that CRD stop issuing LOPs for any SPA projects irrespective of how minor or temporary they may be.

If you disagree with the position we have taken in this letter, we request a response from CRD further explaining its purported legal authority for issuing LOPs. Additionally, we would like to meet with you and your counsel to discuss this issue further.

Sincerely,



William W. Sapp
Senior Attorney