UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUL 23 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Williford
Field Operations Division
Alabama Department of Environmental Management
1751 Cong. W.L. Dickinson Drive
Montgomery, Alabama 36130-1463

Dear Mr. Williford:

By letter to Dr. Nancy Foster dated November 17, 1997, Mr. Rick Bellew (Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307 (c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. Appellant sought a Secretarial override of the State of Alabama's (State's) objection to his request to the Army Corps of Engineers for a permit to dredge a channel through submerged lands containing sea grass. Because of the State's objection, the Corps cannot grant the Appellant the requested permit, unless the Secretary overrides the State's objection.

On January 26, 1998, a letter establishing a schedule for submission of supporting information was signed. During a telephone conversation of March 20, 1998, the Appellant advised Pamela Lawrence of the Office of the Assistant General Counsel for Ocean Services that the letters he had submitted earlier constituted the supporting information required by 15 C.F.R. Part 930.

In its initial brief, the State raised the issue of dismissing the appeal for good cause, pursuant to 15 C.F.R. § 930.128(d), for Appellant's failure to address all of the regulatory criteria. When the period for comments from the Federal agencies

and the public closed, Margo E. Jackson, Assistant General Counsel for Ocean Services, sent Appellant and the State a letter establishing the final briefing schedule. In the letter, Ms. Jackson advised Appellant that if in his final brief he did not address the regulatory criteria, his appeal would be dismissed for good cause, pursuant to 15 C.F.R. § 930.128(d). Specifically, the letter noted that Appellant's materials did not address the criteria contained at 15 C.F.R. § 930.121(a), whether his proposed project furthers one or more of the competing national objectives or purposes of the CZMA, and at 15 C.F.R. § 930.121(b), the extent to which Appellant's project contributes to the national interest. The letter also advised Appellant that if his material was not received within 35 days from the date of the mailing of the letter, his appeal would be dismissed.

The letter was mailed December 3, 1998. Appellant signed his U.S. Postal Service receipt for delivery on December 11, 1998. The deadline was thus reached in early January. As of the date of the signing of this letter, Appellant has submitted no additional information. In light of Appellant's failure to file the required supporting information, I dismiss the appeal for good cause pursuant to 15 C.F.R. § 930.128(d). Appellant may not file another appeal from the State's objection to this permit application. This is final agency action for purposes of judicial review.

Sincerely,

D. James Baker

cc: Rick Bellew
Appellant
Barbara J. Allen
U.S. Army Corps of Engineers

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Rick Bellew
252 Dilston Lane
Mobile, Alabama 36608

Dear Mr. Bellew:

By letter to Dr. Nancy Foster dated November 17, 1997, you filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307 (c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. You sought a Secretarial override of the State of Alabama's (State's) objection to your request to the Army Corps of Engineers for a permit to dredge a channel through submerged lands containing sea grass.

On January 26, 1998, a letter establishing a schedule for submission of supporting information was signed. During a telephone conversation of March 20, 1998 with Pamela Lawrence of the Office of the Assistant General Counsel for Ocean Services, you advised that the letters you had submitted earlier constituted the supporting information required by 15 C.F.R. Part 930.

In its initial brief, the State raised the issue of dismissing your appeal for good cause, pursuant to 15 C.F.R. § 930.128(d), for your failure to address all of the regulatory criteria. When the period for comments from the Federal agencies and the public closed, Margo E. Jackson, Assistant General Counsel for Ocean Services, sent you and the State a letter establishing the final briefing schedule. In the letter, Ms. Jackson advised you that if in your final brief you did not address the regulatory criteria, your appeal would be dismissed for good cause, pursuant

to 15 C.F.R. § 930.128(d). Specifically, the letter noted that your materials did not address the criteria contained at 15 C.F.R. § 930.121(a), whether your proposed project furthers one or more of the competing national objectives or purposes of the CZMA, and at 15 C.F.R. § 930.121(b), the extent to which your project contributes to the national interest. The letter also advised you that if your material was not received within 35 days from the date of the mailing of the letter, your appeal would be dismissed.

The letter was mailed December 3, 1998. The U.S. Postal Service receipt for delivery, signed by you, is dated December 11, 1998. The deadline was thus reached in early January. As of the date of the signing of this letter, you have submitted no additional information. In light of your failure to file the required supporting information, I dismiss the appeal for good cause pursuant to 15 C.F.R. § 930.128(d). You may not file another appeal from the State's objection to this permit application. This is final agency action for purposes of judicial review.

Sincerely,

D. James Baker

cc: John Williford
ADEM
Barbara J. Allen
U.S. Army Corps of Engineers