



Department of Environmental Protection

DP-C

Jeb Bush
Governor

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

Colleen M. Castille
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Voice 904-807-3300 FAX 904-448-4366

SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES PROGRAM

November 9, 2004

Mr. Richard E. Bonner
USACOE
Post Office Box 4970
Jacksonville, Florida 32232-0019

DEP File No.: 55-239209-001-EE & 55-239213-001-EE

Dear Mr. Bonner:

Thank you for your request to the Department (copy enclosed) for authorization to dredge artificially cut reaches of the Intracoastal Waterway (Fox Cut) in the vicinity of St. Johns County. Spoil material associated with the dredging activity shall be stored in Dredged Material Management Areas DU-9 and SJ-14, previously authorized under DEP Permit Nos.: 55-129250-002-EM and 55-129248-001-EI respectively. This type of activity requires authorization for construction and operation of the project (regulatory authorization), unless otherwise exempt by statute or rule, authorization to use state-owned submerged lands (proprietary authorization), and federal authorization for works in waters of the United States through the State Programmatic General Permit (SPGP) program. Your request has been reviewed for all three authorizations. The authorizations you have been granted are listed below. Please read each section carefully. Your project **may not** have qualified for all three authorizations. If your project did not qualify for one or more of the authorizations that specific section will advise you how to obtain it. You may NOT commence your project without all three authorization If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

REGULATORY AUTHORIZATION - EXEMPTION VERIFIED

Your project is exempt from the need for an Environmental Resource Permit (ERP). This determination is based solely on the information provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specified activity. This determination shall automatically expire if site conditions materially change or the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after one year. You must comply with the attached criteria and limiting conditions in accordance with section 40C-4.051(11)(b), Florida Administrative Code.

Authority for review - Part IV of Chapter 373, F.S., Title 62, F.A.C. and in accordance to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

"More Protection, Less Process"

Printed on recycled paper.

Mr. Richard E. Bonner
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PROPRIETARY REVIEW - NOT ON STATE OWNED SUBMERGED LANDS

Your project does not occur on state-owned submerged lands and will not require authorization from the Department to use these lands for private purposes in accordance with section 253.77, Florida Statutes. This determination is based solely on the information provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specified activity.

SPGP - REVIEW - AUTHORIZATION GRANTED

Your project has been reviewed for compliance with a State Programmatic General Permit (SPGP). Your proposed activity as outlined on the attached drawings is in compliance with the SPGP program. U.S. Army Corps of Engineers (Corps) Specific conditions apply to your project, attached. **No further permitting for this activity is required by the Corps.** The authority granted under this SPGP expires June 17, 2005. Your project must be completed prior to this expiration date.

In the event of the transfer of ownership of the property by sale or by any other means, when the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire. To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, the attached transfer of permit request must be completed and submitted to the Department at the time of transfer of ownership.

Authority for review - an agreement with the U.S. Army Corps of Engineers entitled "Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection State Programmatic General Permit, Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act".

If you have any questions, please contact Andrew Sears at 904-807-3329 or via his Internet E-mail address at Andrew.Sears@dep.state.fl.us. When referring to your project please use the DEP File number listed above.

Sincerely,



James R. Maher, P.E.
Program Administrator

Enclosures Exemption Criteria and Limiting Conditions 40C-4.051(11)(b)
Lease/Easement Information Package as Applicable
USACOE Specific Condition as Applicable
General Consent of Use Conditions as Applicable

USACOE, Jacksonville

EXEMPT ACTIVITIES

(11) No permit shall be required under chapters 40C-4, 40C-40, 40C-42, 40C-44, or 40C-400, F.A.C, for the following activities:

(b) **The performance of maintenance dredging of existing manmade canals, channels, basins, berths, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site** which will prevent the escape of the spoil material and return water from the spoil site into wetlands or other surface waters, provided no more dredging is performed than is necessary to restore the canal, channels, basins, berths, and intake and discharge structures to original design specifications, and provided that control devices are used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed before April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent wetlands or other surface waters. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund, the Department, the District or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal, channel, basin, berth or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

Be advised that your neighbors and other parties who may be substantially affected by the proposed activity allowed under this determination of approval of this exemption have a right to request an administrative hearing (or mediation, if available) on the Department's decision that the proposed activity qualifies for this exemption. If an administrative hearing (or mediation, if available) is timely requested by a substantially affected person, the finding that the proposed activity qualifies for this [exemption][notice general permit] must be reconsidered, and it is possible that the hearing or mediation could result in a determination that the proposed activity does *not* qualify for the [exemption] [noticed general permit]. Under rule 28-106.111 of the Florida Administrative Code, a request for such an administrative hearing (or mediation, if available) must be filed with the Department's Clerk in the Office of General Counsel within 21 days of either: (a) publication of notice in a newspaper of general circulation in the county where the activity is to take place; or (b) the substantially affected person's receipt of written notice which includes the information contained in Attachment (A).

The Department will not publish notice of this determination. *Publication of this notice by you is optional and not required for you to proceed.* However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permits.

If you wish to limit the time within which *all* substantially affected persons may request an administrative hearing (or mediation, if available), you may elect to publish, at your own expense, the enclosed notice (Attachment A) one time only in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place.

If you wish to limit the time within which any *specific* person(s) may request an administrative hearing (or mediation, if available), you may provide such person(s), by certified mail, a copy of this determination, including Attachment A.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address a certification or affidavit of publication issued by the newspaper. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice.

Department of Environmental Protection
Northeast District Office
7825 Baymeadows Way
Jacksonville, Florida 32256-7590

NOTICE OF DETERMINATION OF QUALIFICATION

In the Matter of an Application
for a Determination of Qualification for an EXEMPTION
by: Mr. Richard E. Bonner
USACOE
Post Office Box 4970
Jacksonville, Florida 32232-0019
DEP File No. 55-239209-001-EE & 55-239213-001-EE, County of St. Johns

The Department of Environmental Protection gives notice that it has determined that the project to dredge artificially cut reaches of the Intracoastal Waterway (Fox Cut) in the vicinity of St. Johns County. Spoil material associated with the dredging activity shall be stored in Dredged Material Management Areas DU-9 and SJ-14, previously authorized under DEP Permit Nos.: 55-129250-002-EM and 55-129248-001-EI respectively, by Mr. Richard E. Bonner qualifies for the exemption established under statute Chapter 373 and Rule 40C-4.051(11)(b), Florida Administrative Code.

The Department's determination shall become final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes. The time and procedure for petitioning for a hearing are set forth below. Upon the timely filing of a petition, this determination will not be effective until further order of the Department.

A person whose substantial interests are affected by the Department's decision may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. The petitioner shall also mail a copy of the petition to the applicant at the address indicated above at the time of filing.

Petitions must be filed within 21 days of publication or receipt of this written notice, except that a petition by any person entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 21 days of receipt of the written notice. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department file identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Because the administrative hearing process is designed to re-determine the Department's determination, the filing of a petition means that the Department's final determination may be different from the determination stated in this notice. Persons whose substantial interests may be affected by any change in the Department's determination have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under section 120.573 of the Florida Statutes is **not available** for this proceeding.

GENERAL CONDITIONS FOR FEDERAL AUTHORIZATION SPGP

- a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Condition j hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended, or revoked in whole or in part.
- b. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Sections 301, 302, 306, and 307 of the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), or pursuant to applicable State and local law.
- c. That when the activity authorized herein involves a discharge or deposit of dredged or fill material into navigable waters, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.
- d. That the permittee agrees to make every reasonable effort to prosecute the construction or work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife, and natural environmental values.
- e. That the permittee(s) agree to prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality, and comply with the Florida Department of Environmental Protection or any State Water Management District requirements and criteria.
- f. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
- g. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings that are approved.
- h. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.
- i. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.
- j. That this permit may be either modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest.
- k. That in issuing approval to perform work under this permit the Government has relied on the information and data which the permittee has provided in connection with his application. If, subsequent to the issuance of approval, such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part and/or the Government may, in addition, institute appropriate legal proceedings.

- l. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.
- m. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.
- n. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
- o. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.
- p. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General condition s hereof, he must restore the area to a condition satisfactory to the District Engineer.
- q. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

- s. That authorization under this permit may not be transferred to a third party without prior written notice to the District Engineer by the transferee's written agreement to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Registrar of Deeds or other appropriate official if law permits.
- t. The term "permittee" means the party or parties authorized by the District Engineer to accomplish work under this general permit.

DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST
STATE PROGRAMMATIC GENERAL PERMIT

PERMIT NUMBER: 55-239209-001-EE & 55-239213-001-EE

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the Department of Environmental Protection, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida, 32256-7590.

(TRANSFEREE-SIGNATURE)

(SUBDIVISION)

(DATE)

(LOT) (BLOCK)

(NAME-PRINTED)

(MAILING ADDRESS)

(CITY, STATE, ZIP CODE)

STANDARD MANATEE CONSTRUCTION CONDITIONS

- a. The lessee/grantee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- b. The lessee/grantee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, The Endangered Species Act of 1973 and the Florida Manatee Sanctuary Act.
- c. Siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exits from essential habitat.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- e. If manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.
- f. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Law Enforcement at 1-888-404-FWCC. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for North Florida or Vero Beach (1-772-562-3909) in South Florida.
- g. Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the permittee upon completion of the project. A sign measuring at least 3 ft. by 4 ft. which reads *Caution: Manatee Area* will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 1/2" by 11", which reads:

Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of operation. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Law Enforcement at 1-888-404-FWCC. The U.S. Fish and Wildlife Service should also be contacted in Jacksonville (1-904-232-2580) for North Florida or in Vero Beach (1-772-562-3909) for South Florida.