



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

## **CERTIFIED - RETURN RECEIPT REQUESTED**

December 17, 2012

U.S. Army Corps of Engineers  
Jacksonville District  
c/o Eric P. Summa  
Chief, Environmental Branch  
Planning Division  
701 San Marco Blvd.  
Jacksonville, FL 32207

Permit Modification No. 0158893-011-JN  
Permit No. 0158893-005-JC, Lee County  
Matanzas Pass Channel Restoration and Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0158893-005-JC, which was received on October 1, 2012, has been reviewed by Department staff. The proposed permit modification is to include Cut 2A and Cut 3 in order to reduce the navigational hazard within the inlet.

### **Background**

On March 9, 2009, the Department issued Permit No. **0158893-005-JC** and Variance No. **0158893-006-BV** to the U.S. Army Corps of Engineers (Corps) to restore and maintain the channel through Matanzas Pass. All compatible material was authorized to be placed in the nearshore, seaward of the sand bar on Estero Island.

For additional background, please see the *Consolidated Notice of Intent to Issue Joint Coastal Permit, Variance And Authorization To Use Sovereign Submerged Lands* for Joint Coastal Permit No. 0158893-005-JC and Variance No. 158893-006-BV, available at the following website:

[http://bcs.dep.state.fl.us/env-prmt/lee/issued/0158893\\_Matanzas\\_Pass\\_Maintenance\\_Dredging/005-JC/Intent/](http://bcs.dep.state.fl.us/env-prmt/lee/issued/0158893_Matanzas_Pass_Maintenance_Dredging/005-JC/Intent/)

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On April 17, 2009, the Department issued Modification No. **0158893-007-BN** to eliminate the prohibition of work on the beach after May 1<sup>st</sup>, if minimized to the maximum extent practicable.

On July 10, 2009, the Department issued Modification No. **0158893-008-BN** to dredge a shoal adjoining the federal channel from Station 39 to Station 45 and out to Range 550 in order to reduce the navigational hazard of this shoal.

On June 6, 2012, the Corps applied for a permit modification (File No. **0158893-009-JM**) and a variance (File No. **0158893-010-BV**) to include the interior channel Cuts 4 through 10 as part of the Matanzas Pass Channel Restoration and Maintenance Dredging project. The Department reviewed the applications and sent a request for additional information on July 3, 2012. Those files are currently incomplete.

**Staff Assessment**

The modification to include maintenance of Cut 2A and Cut 3 is not expected to have any substantial adverse impact to the inlet area and is consistent with the Strategic Beach Management Plan adopted by the Department. Cuts 2A and 3 would be dredged to an authorized depth of -12 feet MLLW, plus a 2-foot allowable overdepth, for a maximum dredge depth of -14 feet MLLW. The dredged material would be placed in the nearshore, between R-182 and R-187A. A small cross-sectional area will be cut on the north side of the channel, at Cut 2A Sta. 1+00. This would allow for a wider turn of the channel. The volume of material to be dredged within Cut 2A (30,000 cy) should not have any substantial adverse impact to the coastal processes of the inlet. The cross-section at Sta. 13+00 shows little shoaling in the channel, and if that is typical of the rest of the Cut, very little dredging is expected in Cut 3.

The fill material excavated from Cut 2A and Cut 3 is sand that is similar to the sediment at the nearshore placement site in terms of color, grain size and sorting. The silt content meets Department standards for nearshore placement pursuant to Rule 62B-41.007(2)(k), F.A.C. Based upon the information and analysis provided by the Applicant, the material to be excavated from the proposed maintenance dredge cuts for placement in the nearshore project area is expected to maintain the general character and functionality of the material occurring at the placement site, as required by Rule 62B-41.007(2)(j), F.A.C. *Note: The assessment of the geotechnical information provided for Cuts 2A and 3 is independent of the regulatory review assessment of the geotechnical information provided in the pending application for the modification to include Cuts 4-10 (File No. 0158893-009-JN).*

The set of approved permit drawings shall be revised as follows:

Sheets 3 of 7 and 6 of 7 (approved on October 24, 2012) will supersede the previously approved Sheets 3 of 7 and 6 of 7. Sheet 6a will be added to the permit drawing package.

After thorough review of your application, staff finds that the proposed modification is not

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expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **March 6, 2019**, expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

#### **NOTICE OF RIGHTS**

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. 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.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code (F.A.C.), a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted

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upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing 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, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;

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- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

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, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact Robert Halbert at [Robert.Halbert@dep.state.fl.us](mailto:Robert.Halbert@dep.state.fl.us) or by telephone at (850) 921-7752.

Sincerely,



Martin K. Seeling, Administrator  
Beaches, Inlets & Ports Program

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MKS/bh

Attachments: Permit drawings: Sheets 3 of 7, 6 of 7, and 6a of 7 (approved October 24, 2012)

cc: Steve Boutelle, Lee County  
Paul Karch, USACE  
Jim McAdams, USACE  
Jim LaGrone, USACE  
Mary Yeargan, DEP, SW District  
Bobby Halbert, DEP  
Liz Yongue, DEP

Vince George,  
El Kromhout, DEP  
Suburna Malakar, DEP  
Heather Stafford, Estero Bay AP  
Robbin Trindell, FWC  
Mary Duncan, FWC  
BBCS Permit File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

*Lauren Wild*

Deputy Clerk

*12-17-12*

Date