



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

February 10, 2012

U.S. Army Corps of Engineers
c/o Eric Summa
P.O. Box 4970
Jacksonville, Florida
32232-0019

Permit Modification No. 0220509-003-JN
Permit No. 0220509-001-JC, Broward County
Port Everglades Maintenance Dredging Modification

Dear Mr. Summa:

Your request to modify Permit No. 0220509-001-JC, was received on November 16, 2011, and has been reviewed by Department staff. The proposed permit modification is to allow maintenance dredging of the Southport Access Channel Cut-1, Cut-2, and Cut-3 to a maximum dredge depth of 44 feet (MLLW). The quantity of material to be dredged from the Southport Access Channel Cut-1, Cut-2, and Cut-3 will be approximately 185,000 cy. All dredged material is not anticipated to be beach compatible and will be placed in the Offshore Dredged Material Disposal Site (ODMDS) located approximately 4.5 miles northeast of Port Everglades Harbor. Additionally, this modification will correct an unintended error in the project description regarding the beach placement at John U. Lloyd Beach State Park.

Permit Background

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0220509-001-JC, dated December 16, 2004, available at the Bureau website:

<http://bcs.dep.state.fl.us/env-prmt/broward>

On April 22, 2005, the Department issued **Permit No. 0220509-001-JC** to the U.S. Army Corps of Engineers. The permit authorized maintenance dredging of the Port Everglades entrance channel, turning basins, and Pier 7 channel.

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Justification / Staff Assessment

The modification to dredge the Southport Access Channel was requested due to the need for maintenance dredging of the area. This area has been previously dredged under Permit 29-1598879. The modification was reviewed by Department staff, who found that the proposed modification is not expected to adversely affect coastal processes. Additionally, the project description was not intended to only allow beach placement at John U. Lloyd Beach State Park in the event there was an active permit; it was intended to allow placement in the previously authorized beach template.

The Fish and Wildlife Conservation Commission also reviewed the project. A high number of manatees have been observed within a five-mile radius of the project, and The Florida Power and Light Port Everglades power plant provides important manatee warm-water refuge in southeast Florida in winter months. Additionally, between August 2001 and 2011, twenty-four manatees have died within a five-mile radius of the project location due to watercraft-related causes. Because of the high manatee use, portions of this area are designated as Important Manatee Areas (IMA). FWC has included manatee protective permit conditions in this modification in order to address the potential for adverse impacts to manatees from this project.

The project description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project is to maintenance dredge the Port Everglades entrance channel, turning basins, Southport Access Channel Cut-1, Cut-2, and Cut-3 and Pier 7 channel. The project depth (including 2 feet of allowable overdredge) is 49 feet for the outer channel, 46 feet for the inner channel, 33 feet for the north and south turning basins, 39 feet for the NW comer of the south turning basin, 38 feet for the SW comer of the south turning basin, 44 feet for the Southport Access Channels Cut-1, Cut-2, and Cut-3 and 40 feet for the Pier 7 channel. This would entail dredging approximately 100,000 cubic yards of material at 3 year intervals or as needed to restore the authorized depths, except for the Southport Access Channel Cut-1, Cut-2, and Cut-3, where approximately 185,000 cy will be dredged. The inner harbor dredged material may be deposited in the EPA-approved Ocean Dredged Material Disposal Site. Beach-quality sand may be placed within the existing or previously permitted design template for the Broward County Beach Nourishment Project - Segment III ~~during the life of Permit No. 0163435-001-JC or any subsequent Joint Coastal Permit for that nourishment project~~ at John U. Lloyd Beach State Park (JUL).

Bypassing of beach-quality sand to JUL will remain the first disposal option for the U.S. Army Corps of Engineers (ACOE), pursuant to the State's inlet management plan. However, the ACOE may also redistribute material within the channel if the

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nourishment template has insufficient capacity, or if the volume of material in the inlet shoal is too low to make a bypassing event financially feasible. Redistribution of material in the channel is limited to placement within the designated *In-Channel Placement Area*, below the 49-foot project depth. The ACOE will provide further details of quantities and technique if this option is proposed.

The specific conditions shall be revised as follows (~~strike throughs~~ are deletions, underlines are additions):

SPECIFIC CONDITIONS:

10. The Standard Manatee and Marine Turtle Conditions for In-Water Work (2011) shall be followed for all in-water activity.
11. Dredging shall not occur between November 15th and March 31st for portions of the project that are within the Port Everglades Important Manatee Area (IMA), including those portions in the ICW that are surrounded by the IMA. These boundaries are depicted in the Army Corps' Regulatory Division's Manatee Key.

After thorough review of your application, staff finds that the proposed modification is not 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 requested. 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 April 22, 2015 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 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.

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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;
- (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.

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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 Bobby Halbert at the letterhead address (add Mail Station 300) or by telephone at (850) 921-7752.

Sincerely,



for
Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/mte

cc:	Russ Jones, USACE	Paden Woodruff, BBCS
	Gene Chalecki, BBCS	JCP Compliance Officer
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	Robert Brantly, BBCS	Catherine Florko, BECP Project Manager
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	Jennifer Smith, DEP, District Office	Jenny Cheng, BBCS CE Processor
	Alex Reed, BBCS	MarineTurtle@myfwc.com
	Walter Denis, Field Inspector	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.

E. J. O'Connell 2/10/12
Deputy Clerk Date