



Florida Department of Environmental Protection

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

Rick Scott
Governor

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Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 29, 2012

U.S. Army Corps of Engineers
Attn: Eric Summa, Chief
Environmental Branch
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

Permit Modification No. 0220509-005-JN
Permit No. 0220509-001-JC, Broward County
Port Everglades Channels Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0220509-001-JC was received on September 7, 2012, and has been reviewed by Department staff. The proposed permit modification is to revise Specific Condition 11 to allow dredging activities within the Important Manatee Area (IMA) if protected marine species observers are present.

Permit History

On April 22, 2005, the Department issued Joint Coastal Permit No. **0220509-001-JC** to the U.S. Army Corps of Engineers (Corps), to maintenance dredge the Port entrance channel, turning basins, and Pier 7 channel. The authorized project depths (including 2 feet of allowable overdredge) were -49 feet mean lower low water (MLLW) for the outer channel, -46 feet MLLW for the inner channel, -33 feet MLLW for the north and south turning basins, -39 feet MLLW for the northwest corner of the south turning basin, -38 feet MLLW for the southwest corner of the south turning basin and -40 feet MLLW for the Pier 7 channel. Approximately 100,000 cubic yards of material was to be dredged at 3-year intervals, or as needed to maintain the authorized depths. The inner harbor dredged material was to be deposited in the EPA-approved Ocean Dredged Material Disposal Site (ODMDS) located approximately 4.5 miles northeast of the Port. The beach-quality sand was authorized to be placed within the design template for the Broward County Beach Nourishment Project - Segment III, at John U. Lloyd Beach State Park (JUL), during the life of Permit No. 0163435-001-JC, or any subsequent joint coastal permit for that nourishment project.

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For additional background on this permit, please see the *Consolidated Notice of Intent to Issue Joint Coastal Permit and Authorization to Use Sovereign Submerged Lands* for Permit No. 0220509-001-JC, dated December 15, 2004, available at the Bureau website:

http://bcs.dep.state.fl.us/env-prmt/broward/issued/0220509_Port_Everglades_Maintenance_Dredging/

On February 10, 2012, the Department issued **Permit Modification No. 0220509-003-JN** 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 was approximately 185,000 cubic yards. The material to be dredged was not anticipated to be beach compatible, and was to be placed in the ODMDS. Additionally, this modification removed the requirement that beach-quality sand may only be placed within the design template of the Broward County Beach Segment III Nourishment Project during the life of that permit, or any subsequent Joint Coastal Permit for that nourishment project. Instead, the modification allowed placement of materials dredged during the subject maintenance permit within the Segment III template for JUL, regardless of whether the Segment III permit was active or expired. Modification No. 0220509-003-JN also added Specific Conditions 10 and 11 to the permit in order to address the protection of manatees.

On July 27, 2012, the Department issued **Permit Modification No. 0220509-004-JN** to add an additional pipeline access corridor and associated staging areas, extend the beach placement template northward, toward monument R-86 and convert the berm height datum from NGVD29 to NAVD88, without changing the actual elevations.

Project Justification

As a result of Permit Modification No. 0220509-003-JN, which added Specific Permit Condition 11, the Corps consulted with the U.S. Fish and Wildlife Service on dredging the Port during winter months, when manatees frequent the warm waters of the Southport Access Channel. The Corps explained the logistical difficulty of Specific Condition 11, and hence the reasoning for the currently requested modification.

Staff Assessment

The Florida Fish & Wildlife Conservation Commission (FWC) acknowledged this condition as essential for the protection of manatees. FWC initially recommended a reduced period of prohibited dredging within the IMA and a prohibition on the use of clamshell and mechanical dredging activities. After further negotiations, FWC agreed to lift those restrictions if protected marine species observers were present while dredging within the IMA.

The specific conditions shall be revised as follows:

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SPECIFIC CONDITIONS:

- ~~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.~~
11. Dedicated observers shall be present when in-water work is being performed on a dredge, and shall perform no other duties that may interfere with their ability to observe for protected marine species (such as manatees, marine turtles, dolphins, etc.) during dredging activities. That person shall have significant, prior, on the job experience observing for protected marine species (including manatees) during previous dredging events where the activities were similar in nature to this project. Observers shall be equipped with polarized sunglasses to aid in observation during the daytime. Dedicated observers will advise personnel to cease operation upon sighting a protected marine species within 50 feet of any in-water construction activity.

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 stated above. By copy of this letter, 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 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, 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

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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, 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.

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

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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.

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

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30 days from the date when the final order is filed with the Clerk of the Department. The Applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

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. 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.

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

Sincerely,



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

MKS/bh

cc (via electronic mail):

Russ Jones, USACE, Jacksonville
Jim McAdams, USACE, Jacksonville
Marshall Flake, DEP, Parks
Mary Duncan, FWC, ISMS
Robbin Trindell, FWC, ISMS
Jennifer Smith, DEP, Southeast District
Lainie Edwards, DEP, BBCS
Vladimir Kosmynin, DEP, BBCS
Walter Denis, DEP, BBCS, Field Inspector

Sid Leve, DEP, Parks (JUL)
Jenny Cheng, DEP, BBCS
Eric Myers, Broward County
Roxanne Dow, DEP, BBCS
Gene Chalecki, DEP, BBCS
Catherine Florko, DEP, BBCS
Bobby Halbert, DEP, BBCS
JCP Compliance Officer, DEP, BBCS
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 10/29/12
Deputy Clerk Date