



Florida Department of Environmental Protection

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

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

In the matter of a
Petition for Variance by:

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

Variance No. **0129260-004-BV**
Date of Issue: **January 15, 2010**
Expiration Date: Same as expiration date of
Permit No. **0129260-002-JC**
County: Brevard
Project: Canaveral Harbor Federal
Maintenance Dredging

FINAL ORDER BY THE DEPARTMENT:

On December 5, 2008, the Department received from the U.S. Army Corps of Engineers a Petition for Variance, pursuant to Section 403.201(1), Florida Statutes (F.S.), and Section 62-110.104, Florida Administrative Code (F.A.C.). The Petitioner requested relief from the antidegradation provisions of Rules 62-4.242(2)(a)2.b., 62-302.700(1), 62-312.080(3) and 40C-4.301(1)(e), F.A.C., to establish a maximum allowable turbidity level above background for work adjacent to the Merritt Island National Wildlife Refuge and the Banana River Aquatic Preserve, both of which are designated as Outstanding Florida Waters (OFWs). The Grantee shall not cause or contribute to an exceedance of a temporary turbidity standard of 12 Nephelometric Turbidity Units (NTUs) above background beyond the approved mixing zone and within the boundaries of the adjacent OFWs. This temporary variance shall only be valid during the construction activities authorized in Permit No. 0129260-002-JC and shall expire when the permit expires on January 15, 2020, unless the permit is modified to grant a time extension.

The associated joint coastal permit (Permit No. 0129260-002-JC) is to maintenance dredge up to approximately 1,500,000 cubic yards of sediment annually from the federally-authorized portions of the Port Canaveral navigational complex, including the entrance channel to the east of the port and the barge canal to the west of the port, not to exceed an allowed dredging tolerance that extends six (6) feet deeper than the federally-authorized depths identified in the permit's Project Description (except for the Barge Canal west of the port locks, where the tolerance is limited to three (3) feet deeper than the authorized pay depth). However, Zones 4, 13 and 14 of the Barge Canal are currently excluded from the project. If the permit is modified to include these areas, this variance will also apply to these areas. The majority of the dredged material will be deposited in the Canaveral Ocean Dredged Material Disposal Site (ODMDS), and smaller portions of the material may also be placed in the West Confined Disposal Area (CDA-C) or the Barge Canal Disposal Area (CDA-B). If some of the sediment is suitable for placement in the nearshore portion of the beach, pursuant to Rule 62B-41.007(2)(k), F.A.C., it

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may be deposited in the designated Nearshore Disposal Area, at depths between approximately -10 feet and -25 feet, mean lower low water (MLLW).

After reviewing the Petition for Variance, the Department staff concluded that it satisfied the requirements and criteria set forth in Section 403.201, F.S., and Rule 62-110, F.A.C.

The *Consolidated Notice of Intent to Issue Joint Coastal Permit, Variance and Authorization to Use Sovereign Submerged Lands* notified the Petitioner of the Department's proposed agency action and advised it of its right to a hearing pursuant to Sections 120.569 and 120.57, F.S. On August 19, 2009, notice was given in the *Florida Today* and on August 28, 2009, notice was given in the *Florida Administrative Weekly* informing the public of the Department's intended action and offering an opportunity for hearing pursuant to Sections 120.569 and 120.57, F.S. A copy of the notice published in the newspaper is attached as Exhibit A.

The Petitioner and interested parties having been advised of their rights under Chapter 120, F.S., and having failed or declined to file a Petition pursuant to Sections 120.569 and 120.57, F.S., are hereby deemed to have waived those rights. Acceptance of the variance constitutes notice and agreement that the Department will periodically review this variance for compliance, including site inspections where applicable, and may initiate enforcement action for violation of the conditions and requirements thereof. It is therefore:

ORDERED by the State of Florida, Department of Environmental Protection, that the Petition of the U.S. Army Corps of Engineers requesting a variance be and is hereby granted, subject to the following conditions:

1. The variance is temporary and shall only be valid during maintenance dredging of the Canaveral Harbor Federal Maintenance Dredging Project under all the conditions of, and during the term of, Permit No. 0129260-002-JC, including subsequent modifications.
2. All practical means of limiting the suspension or discharge of sediments (i.e., best management practices) shall be employed during construction.
3. Within Outstanding Florida Waters, the Grantee shall not exceed the temporary water quality standard for turbidity outlined in this variance at or beyond the edge of the mixing zone approved in the permit. Additionally, the minimum water quality criteria identified in Rule 62-302.500 (1)(a), F.A.C., shall be maintained within the mixing zone.

Any Party to this Order has the right to seek judicial review of the Order Pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of the 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

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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 this Order is filed with the clerk of the Department.

DONE AND ORDERED this 15 day of January, 2010, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Michael R. Barnett, P.E., Chief
Bureau of Beaches and Coastal Systems

Attachment: Exhibit A (Variance Notice Publication)

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.



1/15/2010

Deputy Clerk

Date

Prepared by: S. MacLeod