



# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING  
3900 COMMONWEALTH BOULEVARD  
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT  
GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

June 27, 2013

U.S. Army Corps of Engineers  
c/o Eric Summa, Chief  
Planning Division, Environmental Branch  
Jacksonville District  
P.O. Box 4970  
Jacksonville, FL 32232

Permit Modification No. 0173188-004-JN  
Permit No. 0173188-002-JC, Miami-Dade County  
Bakers Haulover Inlet and AIWW Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0173188-002-JC was received on May 30, 2013, and has been reviewed by Department staff. The proposed permit modification is to revise Specific Condition 5 by removing the requirement for “new” geotechnical data prior to each nourishment event.

## **Background**

Bakers Haulover Inlet is a man-made cut. It is stabilized with rigid inlet structures, including jetties and revetments. This Inlet connects the north end of Biscayne Bay with the Atlantic Ocean. Both the Inlet and Biscayne Bay are part of the Biscayne Bay Aquatic Preserve (BBAP). Commercial fishermen and recreational boaters access the inlet from the interior via the Atlantic Intracoastal Waterway (AIWW). Dredging of the Inlet and the AIWW is needed to maintain safe navigation. The beach-quality sand that is dredged from this area is bypassed to the downdrift beach.

On August 4, 1989, the Department issued a 10-year permit (No. **13-135734-9**) to the U.S. Army Corps of Engineers (Corps) for maintenance dredging of the AIWW in the vicinity of Bakers Haulover Inlet.

## **Current Permit**

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In 2000, the Corps applied for a permit (File No. **0173188-001-JC**) to continue maintenance dredging of Bakers Haulover Inlet. In 2002, the Corps decided to withdraw that application and reapply later, when more information became available.

On October 21, 2005, the Department issued Permit No. **0173188-002-JC**, which authorized maintenance dredging of a portion of the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Bakers Haulover Inlet (Cut DA-9, Stations 21 to 60), and placement of the beach-quality dredged material south of the jetty, along Bal Harbor beach (DEP reference monuments R-28 to R-32). The initial application proposed dredging of the entire navigational complex within the vicinity of Bakers Haulover Inlet, including the flood shoal. However, due to concerns about seagrasses and corals temporarily colonizing the shoal in this highly dynamic system, and the possibility of silty material in the flood shoal, the Corps limited their request to dredge only that portion of the AIWW channel immediately impaired. The permit only authorized one dredging event, and excluded the larger channel/inlet complex, including the flood shoal. Placement of sand to the north of the inlet, along Haulover Beach, was also excluded. The Permittee placed approximately 50,000 cubic yards of sand south of the inlet when dredging last occurred in June 2006.

For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit And Authorization To Use Sovereign Submerged Lands* for Permit No. 0173188-002-JC at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/dade/issued/0173188\\_Bakers\\_Haulover\\_Inlet/002-Intend%20\(06-03-05\)/Final%20Intend%20\\_06-03-05\\_.pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/dade/issued/0173188_Bakers_Haulover_Inlet/002-Intend%20(06-03-05)/Final%20Intend%20_06-03-05_.pdf)

On March 17, 2010, the Department issued Permit Modification No. **0173188-003-JN**, which authorized multiple maintenance dredging and placement events for the remaining life of this permit. The permit also revised the sediment quality assurance/quality control (QA/QC) plan, manatee-related conditions, and provided new specific conditions regarding monitoring and protection of sea turtles, shorebirds, and benthic resources.

### **Current Modification Request**

The AIWW and Bakers Haulover Inlet have been dredged multiple times with the most recent event occurring in 2010. Historically, the dredged material has been suitable for beach placement in accordance with Rule 62B-41.007(2)(j) and (k), F.A.C. The material that accumulates in the navigation channels is predominantly beach-compatible sand transported from the open coast and into the inlet by waves and tides. Finer sediments do reside in the interior flood shoal adjacent to the AIWW and occasionally migrate into the navigation channel. These volumes are relatively small and can be placed on the beach using the special handling conditions as stipulated in the Department approved Sediment QA/QC plan (dated March 29, 2010).

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Given the historical geotechnical data that is available for this project, it is not necessary for the Corps to collect new geotechnical data prior to each event. In accordance with the approved Sediment QA/QC Plan, upon completion of beach construction, the Corps will collect representative subsurface sand samples from the beach for laboratory analysis. The implementation of the QA/QC provisions during construction and verification of quality of the dredged material after each construction event provides adequate engineering data to assure that only beach-compatible material is placed on Bal Harbor beaches.

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

5. At least 21 days prior to each dredge event, the Permittee will submit to the Department, for review, ~~new~~ geotechnical data from the areas to be dredged. Sediment quality will be assessed as outlined in the Sediment QA/AC plan (attached) and as outlined in Specific Condition No. 7. Any occurrences of unacceptable material will be handled according to the protocols set forth in the DEP approved Sediment QA/QC plan (dated March 29, 2010). The sediment testing result shall be submitted to FDEP within 90 days following the completion of beach construction.

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, 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 October 21, 2015, expiration date, other Specific 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 (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

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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.

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

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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 by email at Robert.Halbert@dep.state.fl.us or by telephone at (850) 921-7752.

Sincerely,



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

MKS/bh

cc: Jim McAdams, USACE  
Geoff Klug, USACE  
Jason Andreotta, DEP, SE District  
Bob Brantly, DEP  
Alex Reed, DEP  
Roxane Dow, DEP  
Jennifer Coor, DEP

**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.



6/27/13

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Deputy Clerk

Date

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