



FLORIDA DEPARTMENT OF Environmental Protection

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March 8, 2019

U.S. Army Corps of Engineers
Environmental Branch
Jacksonville District
P.O. Box 4970
Jacksonville, FL 32232

Permit Modification No. 0129260-009-JN
Permit No. 0129260-002-JC, Brevard County
Canaveral Harbor Federal Maintenance Dredging Project

Your request to modify Permit No. 0129260-002-JC was received on December 17, 2018, and has been reviewed by the Florida Department of Environmental Protection (Department) staff. The proposed modification is to extend the total duration of Permit No. 0129260-002-JC to 15 years, as provided by Rule 62B-49.011(1)(a), Florida Administrative Code (F.A.C.), and to update the Project Description to reflect the expansion of the project footprint authorized by Environmental Resource Permits 0129260-006-BI and 0129260-008-BI, issued to the Canaveral Port Authority.

Background

On January 15, 2010, the Department issued Permit No. **0129260-002-JC** to the U.S. Army Corps of Engineers (USACE) to maintenance dredge up to 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. The permit authorized disposal of the dredged material into the Canaveral Ocean Dredged Material Disposal Site (ODMDS), the West Confined Disposal Area (CDA-C), and the Barge Canal Disposal Area (CDA-B). The permit also authorized disposal of beach-compatible material into the designated Nearshore Disposal Area. Variance No. **0129260-004-BV** was issued to the USACE concurrently with the permit, to establish a maximum allowable turbidity level of 12 NTUs above background beyond the approved mixing zone for work within the Outstanding Florida Waters associated with the Banana River Aquatic Preserve and Merritt Island National Wildlife Refuge.

For additional background, please see the *CONSOLIDATED NOTICE OF INTENT TO ISSUE*

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JOINT COASTAL PERMIT, VARIANCE AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS for Permit No. 0129260-002-JC at the following website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/brevard/issued/0129260_Canaveral_Harbor_Maintenance_Dredging/002-JC/Intent/

On June 17, 2010, the Department issued Permit Modification No. **0129260-005-JN** to the USACE to authorize maintenance dredging of Barge Canal Zones 4, 13, and 14. These dredging zones had been withdrawn from the original permit application due to the Department's concerns about potential unionized ammonia levels. In applying for the modification, the USACE provided the Department with results from the DREDGE module of the Automated Dredging and Disposal Alternatives Modeling System, which indicated that predicted ammonia concentrations released by dredging Zones 4, 13, and 14 would remain well below known toxic levels for Florida ports.

On October 31, 2013, the Department issued Environmental Resource Permit **0129260-006-BI** to the Canaveral Port Authority to deepen and widen several portions of Canaveral Harbor. The permit authorized increases to the maximum dredge depths and widths of the Entrance Channel, Middle Channel, Navy and Civil Works Widener, South Jetty Sediment Trap, Inner Channel, Middle Turning Basin, West Access Channel, and Barge Canal, and disposal of all dredged material into the Canaveral Ocean Dredged Material Disposal Site (ODMDS) and an upland spoil site. For expansion of the Inner Channel, the permit also authorized relocation of approximately 3,200 linear feet of existing riprap material and 2,000 linear feet of upland containment dike, and installation of approximately 642 linear feet of new steel sheetpile bulkhead along the USAF shoreline.

On November 9, 2015, the Department issued Environmental Resource Permit **0129260-008-BI** to the Canaveral Port Authority to deepen 87 acres of the West Turning Basin, including North Cargo Berths 5 and 6, to a depth of -43 feet mean lower low water (MLLW), plus a 2-foot allowable overdredge, for a maximum dredge depth of -45 feet MLLW. The permit required all dredged material to be placed within the Canaveral ODMDS.

Justification and Staff Assessment

On November 19, 2015, the Department amended Rule 62B-49, F.A.C., which included options for 15-year permit durations. The Permittee has requested an extension to the duration of permit No. 0129260-002-JC, in accordance with Rule 62B-49.011(5), F.A.C. The Department has determined that the project meets the requirements set forth in Rule 62B-49.011(6)(a)-(d), F.A.C. Therefore, the Department will extend the expiration date of permit No. 0129260-002-JC, from January 15, 2020 to January 15, 2025, in conformance with Rule 62B-49.011(1), F.A.C.

Environmental Resource Permits 0129260-006-BI and 0129260-008-BC, which were issued to the Canaveral Port Authority subsequent to issuance of Joint Coastal Permit 0129260-002-JC to the USACE, increased the maximum authorized dredge limits of several portions of the project

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area. Table 1 in the Project Description for Permit No. 0129260-002-JC shall be revised to reflect these increased maximum depth limits for dredging.

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

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

Table 1. Authorized dredge depths at Port Canaveral*

<u>Dredge Locations***</u>	<u>Section of Port</u>	<u>Depth (MLLW)**</u>
<u>Entrance Channel (Cut 1) and Navy Widener (East of Station 125)</u>	<u>East</u>	<u>-48 feet</u>
<u>Entrance Channel (Cut 2) and Settling Basin (Between Stations 125 and 182)</u>	<u>East</u>	<u>-48 feet</u>
<u>Civil Works Widener, 203 Widener</u>	<u>East</u>	<u>-48 feet</u>
<u>Trident Access Channel and Turning Basin</u>	<u>East/Central</u>	<u>-45 feet</u>
<u>Inner Channel (Cut 3) (Between Stations 182 and 215)</u>	<u>East/Central</u>	<u>-46 feet</u>
<u>Middle Turning Basin (NE Portion)</u>	<u>Central</u>	<u>-37 feet</u>
<u>Middle Turning Basin (SW Portion) and West Access Channel (Eastern Portion) (East of Stations 260)</u>	<u>West/Central</u>	<u>-45 feet</u>
<u>West Turning Basin (West of Stations 260)</u>	<u>West</u>	<u>-37 feet</u>
<u>Barge Canal</u>	<u>West/Central</u>	<u>-14 feet</u>

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Dredge Locations***	Section of Port	Depth (MLLW)**
Entrance Channel (Cut 1) and Navy Widener (East of Station 125)	East	-46 feet
Entrance Channel (Cut 2) and Settling Basin (Between Stations 125 and 182)	East	-48 feet
Civil Works Widener, Trident Access Channel and Turning Basin	East	-43 feet
Inner Channel (Cut 3) (Between Stations 182 and 215)	East/Central	-42 feet
Middle Turning Basin (NE Portion)	Central	-37 feet
Middle Turning Basin (SW Portion) and West Access Channel (Eastern Portion) (East of Stations 260)	West/Central	-41 feet
West Turning Basin and West Access Channel (Cut A) (West of Stations 260)	West	-33 feet
Barge Canal	West/Central	-14 feet

**Dredge depths include USACE design depth, advance maintenance and a two-foot paid overdepth allowance.*

***MLLW = -0.2 feet MLW = -1.8 feet NGVD*

**** “Cut” and “Station” designations are referenced from USACE construction plans*

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

The Approved Permit Drawings (12 sheets, December 2008) shall be replaced by a new set of Approved Permit Drawings (5 plates, approved January 2019)

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or change the determination that the project is clearly in 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 extends the expiration date of Permit No. 0129260-002-JC from January 15, 2020 to **January 15, 2025**. This letter must be attached to the original permit.

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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

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

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. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing 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, any email address, any facsimile number, 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.

The petition 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. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

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Time Period for Filing a Petition

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 failure to file a petition 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., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), 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 for filing a petition for an administrative hearing. 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.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, 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 this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 this action is filed with the Clerk of the Department.

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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 Zach Boudreau by email at William.Boudreau@FloridaDEP.gov or by telephone at (850) 245-7585.

EXECUTION AND CLERKING:

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Gregory W. Garis
Program Administrator
Beaches, Inlets and Ports Program
Division of Water Resource Management

Attachments: Approved Permit Drawings (5 plates, January 2019)

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit and all copies were sent on the filing date below to the following listed persons:

cc: Ivana Kenny-Carmola, DWRM
Bob Brantly, DWRM
Peter Bacopoulos, DWRM
Kim Rush, DEP Central District
JCP Compliance, DWRM
Denise Rach, FWC

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FILING AND ACKNOWLEDGMENT

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



Clerk

March 8, 2019
Date