

Rick Scott
GovernorCarlos Lopez-Cantera
Lt. GovernorJonathan P. Steverson
Secretary

Florida Department of Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@dep.state.fl.us

FINAL ORDER GRANTING VARIANCE

APPLICANT:

Charlotte County
7000 Florida Street
Punta Gorda, FL 33950

AGENT:

Coastal Engineering Consultants, Inc.
c/o Kris Thoenke
3106 Horseshoe Drive
Naples, FL 34104
kthoenke@cecifl.com

PROJECT NAME:

Myakka River Gulf Cove Access Dredge

FILE No. 08-0336110-002-EV
OGC NO. 15-0402

Charlotte County

FINAL ORDER BY THE DEPARTMENT:

The Department of Environmental Protection (Department) hereby grants to Charlotte County Board of County Commissioners (Charlotte County) a variance from the requirements of Rule 62-330.302(1)(c), Florida Administrative Code (F.A.C.), to allow, Class II, Outstanding Florida Waters, conditionally approved for shellfish harvesting, in Charlotte County.

This variance will allow for the dredging of access channels to the Gulf Cove residential community from the Myakka River. This variance shall only be valid during the construction activities authorized in the associated Environmental Resource Permit No. 08-0336110-00-ES and shall expire within 24 months of the issuance date of this final order.

After reviewing the Petition for Variance, the Department concluded the Petitioner demonstrated that the hardship asserted as a basis for the need for a variance is peculiar to the affected project area associated with Environmental Resource Permit application No. 08-0336110-001-ES and not self-imposed and that the grant of this variance is consistent with the general intent and purpose of Chapter 403, Florida Statutes. Additionally, the Petitioner demonstrated that compliance with the particular requirements from which the variance is sought is needed to relieve or prevent hardship.

The Notice of Intent to Issue a Variance from Rule 62-330.302(1)(c), F.A.C., notified Charlotte County, of the Department's proposed agency action and advised them of their right to a hearing pursuant to Sections 120.569 and 120.57, F.S. On October 8, 2015, notice was given in Charlotte Sun, Englewood Sun and North Port Sun and on September 21, 2015, notice was given in the Florida Administrative Register 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.

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 Charlotte County requesting a variance is hereby granted, subject to the following conditions:

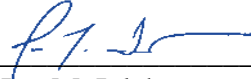
- a. This variance is only valid in conjunction with the issuance of Environmental Resource Permit No. 08-0336110-001-ES, and is subject to all conditions of the permit.
- b. The variance is granted under section 403.201(1)(c), F.S., which limits the duration of the variance to a period of 24 months. Therefore, this variance shall be valid for a period 24 months from the date of the final order authorizing the variance from the above-referenced rule.
- c. The construction may not begin until the Department issues a final order authorizing the variance from the above-referenced rule and the associated Environmental Resource Permit No. 08-0336110-001-ES.

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may 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.

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 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 26th day of October 2015 in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart
Director of District Management
South Florida District

Copies furnished to:

Krystle Hoenstine, Krystle.Hoenstine@dep.state.fl.us
U.S. Army Corps of Engineers

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document, including all copies, was mailed before the close of business on October 26, 2015, to the above listed person(s).

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.



Deputy Clerk

October 26, 2015

Date

Prepared by: Patricia Clune