

FINAL ORDER GRANTING VARIANCE**PETITIONER:**

Bay County Board of County
Commissioners
ATTN: Keith Bryant
840 West 11th Street
Panama City, FL 32404

PROJECT INFORMATION:

Variance No. 03-0336381-002-EV
OGC No. 15-0611
Date of Issue: June 13, 2016
Expiration Date: June 13, 2018
County: Bay County
Project: Richard Bayou Dredge Variance

FINAL ORDER BY THE DEPARTMENT:

The Department of Environmental Protection (Department) hereby grants, to Petitioner, Bay County Board of County Commissioners, a variance from the requirements of Rule 62-330.302(1)(c), F.A.C., and section 10.2.5 of the Environmental Resource Permit Applicant's Handbook, Volume I (Volume I). These rules direct the Department to deny a permit application for a regulated activity in Class II waters that are classified by the Department of Agriculture and Consumer Services as "approved," "restricted," "conditionally approved," or "conditionally restricted" for shellfish harvesting, except as specified in section 10.2.5 of Volume I.

The associated environmental resource permit application is File No. 03-336381-001-EI (Permit). The proposed project is to dredge approximately 573 cubic yards to create a navigational channel approximately 600 linear feet in length.

This variance will temporarily allow for dredging of an access channel from East Bay to Richard Bayou, within a Class II waters that are classified by the Department of Agriculture and Consumer Services as "conditionally approved" for shellfish harvesting, to a depth of -5 MLW. This variance shall only be valid for a period of 24 months from the issuance of this final order granting the variance. The variance shall also be subject to the issuance of the Permit, and all general and specific conditions contained therein, and will be valid only in conjunction with the construction phase of the Permit.

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 property 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 there is a need to relieve or prevent hardship resulting from the limited access to East Bayou from Richard Bayou due to a decrease in water depths over time along the mouth of the Richard Bayou. The decrease in water depths have been caused by natural shoreline erosion and roadside sediment loading, which may be due to the amount of unpaved roads located within Richard Bayou's watershed.

The Notice of Intent to Grant a Variance notified Petitioner 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 05/20/2016, notice was given in Bay County Bullet and on 05/20/2016, 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 Bay County Board of County Commissioners requesting a variance be and is hereby granted, subject to the conditions specified by the Department in Permit No. 03-0336381-001-EI.

The variance shall also be subject to the following conditions:

1. The variance shall be subject to the issuance of Environmental Resource Permit No. 03-0336381-001-EI (Permit), and all general and specific conditions contained therein, and will be valid only in conjunction with the Permit.
2. The construction activities may not begin until the Department issues both a final order granting a variance from the above-referenced rules, and the associated Permit authorizing the proposed activities. The variance shall be valid only during the construction phase of the Permit, if issued, for a period of 24 months from the date of issuance of this final order granting a variance.
3. Dredging in or in close proximity of conditionally approved waters shall only be conducted during the months of July, August and September, when shellfish harvesting area #1212 and #1222 are closed pursuant to rules of the Florida Fish and Wildlife Commission (FWC). Florida Department of Agriculture & Consumer Services (FDACS) will not have to invoke a temporary closure of East Bay Sections 1 and 2 shellfish harvesting areas if the proposed dredging takes place during this time.
4. In the circumstance that dredging needs to happen beyond the summer closure months of July, August and September, FDACS must be notified of the start and end date that dredging will occur so that a temporary shellfish harvesting closure can be invoked.

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 13th day of June, 2016, in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



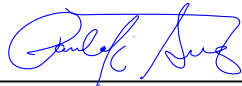
Emile D. Hamilton
Director
Northwest District

Copies furnished to:

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**FILING AND
ACKNOWLEDGMENT**

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



June 13, 2016

Deputy Clerk

Date