



FLORIDA DEPARTMENT OF Environmental Protection

South District
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DEP # 18-0311

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

FINAL ORDER GRANTING VARIANCE

APPLICANT:
Charlotte County BOCC 7000
Florida Street
Punta Gorda, FL 33950

PROJECT NAME: Gulf Cove Access
Channel Dredging

AGENT:
Matthew Logan; Project Manager
Charlotte County Public Works
410 Taylor Road
Punta Gorda, FL 33950
Matthew.Logan@charlottecountyfl.gov

FILE No. 0336110-003 OGC NO. 18-0211

Charlotte County

FINAL ORDER BY THE DEPARTMENT:

The Department of Environmental Protection South District hereby grants, to Charlotte County BOCC, a variance from the requirements of [Rule 62-330.302(1)(c), Florida Administrative Code (F.A.C.)], to allow dredging of approximately 49,000 cubic yards of material from Class II, conditionally Restricted Shellfish Harvesting Area of the Myakka River, an Outstanding Florida Water.

This variance will temporarily allow for the removal of 49,000 cubic yards of material in existing and new channels to a depth of -5.0 feet mean low water (-6.2 feet NAVD 1988) within waters classified as Class II Outstanding Florida Waters, conditionally approved for shellfish harvesting. This variance shall only be valid during the construction activities authorized in Permit No. 0336110-001 EI and shall expire within 24 months of the issuance date of this final order.

The associated Individual permit (No. 0336110-001) is to construct 40-foot wide navigational channels, to a depth of -5.0 feet mean low water (-6.2 feet NAVD 1988), within the Myakka River, Class II Outstanding Florida Waters, conditionally restricted for shellfish harvesting, by mechanically dredging approximately 49,000 cubic yards of material, to be deposited on an upland disposal site, and to install navigation aids. Those activities include the removal of 49,000 cubic yards of sediment from state-owned sovereignty submerged lands.

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 the existing shoal in the Myakka River has reduced the navigable depth of the

existing channel system to the point that ingress and egress for vessels using the man-made canals is limited. There a total of 35 canals. Of the 35, 7 have existing connector channels such that there are 28 outlets to the River. In 5 of the 28 canals extending towards the River, the water depths are on the order of 2.5 feet Mean Low Water. These shallow depths can result in navigation impacts and public safety issues, and water quality impacts due to prop dredging.

The NOTICE OF INTENT TO ISSUE notified Charlotte County BOCC 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 July 25, 2018, notice was given in Sun Newspapers and on June 18th, 2018, 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 the Charlotte County BOCC requesting a variance be and is hereby granted, subject to the conditions specified by the Department in Permit No. 0336110-001 ES.

The variance shall also be 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 of 24 months from the date of the final order authorizing the variance from the above-referenced rule.

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.

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DONE AND ORDERED this 30th day of August, 2018, in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Jon Iglehart
Director, South District Office, Fort Myers

Copies furnished to:

Grady Timmins; Coastal Engineering Consultants <gtimmins@cecifl.com

Stephanie Gray; OGC Attorney Stephanie.A.Gray@dep.state.fl.us

U.S. Army Corps of Engineers, Fort Myers Office, fdep.other@usace.army.mil

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.



Syed **Shabbir** Azher Rizvi
Deputy Clerk

August 30, 2018
Date

Prepared by: Jon Guinn
Environmental Specialist, FDEP, Fort Myers