

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") entered into this 6th day of February, 1997, between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, an agency of the State of Florida (the "Department") and the FLORIDA PORTS COUNCIL, a non-profit Florida Corporation, (the "Council").

WITNESSETH:

WHEREAS, the Florida legislature, through the adoption of Sections 403.021(9)(a) and 403.061(38) and (39), Florida Statutes, created a supplemental and optional regulatory process that enables deepwater ports as defined in Section 403.021(9)(b), Florida Statutes, to conduct dredging and management of dredged materials in an environmentally sound, safe, expeditious and cost-effective manner; and

WHEREAS, the Department and the Council, on behalf of all deepwater ports listed in Section 403.021(9)(b), Florida Statutes, desire to enter into an agreement to implement Section 403.021(a), Florida Statutes, and provide an optional and expedited permitting process for the issuance of permits issued as joint coastal permits, pursuant to Section 161.055 or environmental resource permits, pursuant to Part IV of Chapter 373, all as authorized pursuant to Section 403.061 (38) and (39), Florida Statutes; and

WHEREAS, to implement these supplemental permitting processes, it is necessary to establish the procedures which will be used in the consideration of permit applications, which are filed thereunder.

NOW THEREFORE, in consideration of the terms and conditions set forth herein and of the recitals set forth above, the Department and Council agree as follows:

PART I.

Parties, Purpose, and Goals

1. The parties to this agreement are the Florida Department of Environmental Protection (Department) and the Florida Ports Council (Council).
2. The purpose of this agreement is to establish a supplemental permitting process for the issuance of the following:
 - (a) A joint coastal permit pursuant to s. 161.055, F.S., or environmental resource

permit pursuant to Part IV of Chapter 373, F.S., to a deepwater port for maintenance dredging and the management of dredged material from maintenance dredging in accordance with the provisions of s. 403.061(38), F.S.; and

(b) A conceptual joint coastal permit pursuant to s. 161.055, F.S., or conceptual environmental resource permit pursuant to Part IV of Chapter 373, F.S., to a deepwater port, for dredging and for management of dredged material and other related activities necessary for port development in accordance with the provisions of s. 403.061(39).

3. The goal of the parties to this agreement is the establishment of a regulatory process that shall enable deepwater ports to conduct dredging and the management of dredged materials in an environmentally sound, safe, and expeditious, and cost-effective manner.

PART II. **Definitions**

1. "Deepwater ports" shall mean those ports listed in section 403.021(9)(b), F.S., and includes the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
2. "Other beneficial uses" shall mean placement of suitable dredged material to provide an increase in the ecological value of the project area.
3. "Mitigation credit" represents the increase in ecological value provided by innovative approaches in dredged-material management which may be used to offset the adverse impacts on waters of the state that would otherwise cause a proposed maintenance dredging or port expansion project to be not permissible.
4. "Innovative approaches" are measures or activities applying new techniques or technology which successfully overcome economic or other obstacles to the beach/dune or nearshore placement of suitable dredged-material, or secondarily, result in other beneficial uses.
5. "Permittee" shall mean a port listed in section 403.021(9)(b) or the U.S. Army Corps of Engineers.

PART III
General

1. Maintenance of authorized water depths consistent with port master plans developed pursuant to section 163.3178(2)(k), F.S., Chapters 161, 253, 403, and Part IV of Chapter 373, F.S., as appropriate, is an ongoing, continuous, beneficial, and necessary activity that is in the public interest.
2. Authorization and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to Chapters 161, 253, and 403, and Part IV of Chapter 373, F.S. are consolidated within the Department's Bureau of Beaches and Coastal Systems (Bureau) and, with the concurrence of the department and the affected deepwater port or ports, may be administered by a district office of the department.
3. The Department and deepwater ports, in coordination with the United States Army Corps of Engineers shall ensure that beach compatible dredged material is deposited on Florida's beaches to the extent economically feasible consistent with Florida's beach management plan adopted pursuant to Chapter 161, F.S., and other beneficial uses criteria as may be specified by the Department and applicable federal standards. In the event a permit issued pursuant to this agreement requires deposition of beach compatible sand on beaches, dunes or nearshore areas for beach restoration purposes, no further mitigation for such sand deposition shall be required.
4. A port may obtain mitigation credit for activities that provide innovative approaches to beach/dune or nearshore placement of suitable dredged material consistent with the beach restoration objectives of the Department, or secondarily, with other beneficial uses acceptable to the Department. The mitigation credit must be used in areas owned or controlled by the port. The degree to which the mitigation credit shall offset the adverse impacts of a current or future port project shall be determined by the Department based upon an assessment of the increase in ecological value of the specific innovative approach to be used and the expected adverse impacts of a specific current or future port project. Upon the request of the deepwater port, the recommendation of the Florida Seaport Environmental Management Committee shall be considered by the Department in assessing innovative approaches in beach restoration and other beneficial uses of dredged-material.
5. It is the intent of the Department and the Deep Water Ports to consult with the Department of Community Affairs, and, to the extent required by law, assure consistency between any port master plan, the approved local government comprehensive plans of the units of government within which the port is located

and any permits issued pursuant to s. 403.061(38) and (39), F.S. The Department shall specify to the permittee those actions deemed necessary by the Department of Community Affairs to achieve consistency between activities subject to permit pursuant to s. 403.061(39) and the port master plan and appropriate local government comprehensive plan.

6. The parties to this agreement agree that informal dispute resolution over permitting issues is encouraged. To that end, in the event of an impasse over the issuance of a permit, the department and the applicant may agree to refer the matter to the Florida Seaport Environmental Management Committee for consideration of the dispute. In the event of such referral, the permittee agrees to waive the applicable deadlines under the Florida Administrative Procedures Act. The Department and the permittee shall try to resolve any and all conflicts within 60 days. Upon request, the committee shall provide the Department with comments and recommendations as to resolving the impasse. The Department shall consider those comments in taking final agency action.

PART IV **Procedural**

1. The Department and deepwater port shall conduct a pre-application consultation process to reduce permitting conflicts and ensure expeditious permit application review.
 - a. Upon request by a deepwater port, the Department shall schedule a pre-application conference on a permit application hereunder. Where feasible, the conference shall be held at the port requesting the conference. The deepwater port requesting the conference shall provide the Department with preliminary information regarding the proposed activity at least 30 days prior to the meeting.
 - b. The Department shall provide preliminary information regarding the proposed activity and notice of the pre-application conference to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Department of Community Affairs, and other affected regulatory agencies.
 - c. By no later than 30 days following the conference, the Department shall provide the applicant, in writing, with necessary pertinent information regarding the permit application process, including the identification of potential concerns regarding compliance of the proposed activity with the requirements of Chapters 161, 253, and Part IV of Chapter 373, F.S., and implementing rules, and advise the applicant regarding the level of

information required for permit review. Such advice by the Department shall not preclude the Department from requesting additional information needed to address issues raised by the information initially submitted by the applicant.

2. The permit application process shall be conducted in accordance with supplemental procedures contained in this agreement and with the requirements of Chapters 161, 120 and Part IV of Chapter 373, F.S., and the applicable requirements of the Florida Administrative Code (F.A.C.). If there exists a conflict between the provision of the agreement and Chapter 120, F.S., then the statute shall prevail.
3. A deepwater port defined under Section 403.021(9)(b) and the U.S. Army Corps of Engineers (Corps) shall be the only authorized applicants under this Agreement. Permits authorized herein shall mean permits issued pursuant to s. 403.061(38) and (39) and/or water quality certifications issued to the Corps by the Department.
4. Dredged-material management activities which have been authorized pursuant to this Agreement shall be incorporated into port master plans developed pursuant to Section 163.3178(2)(k), Florida Statutes.
5. The permits authorized herein may be issued for all or portion of a geographic area of a port listed, under Section 403.021(9)(b), Florida Statutes.
6. Supplemental permitting processes authorized by s. 403.061(38) and (39) are optional and do not preclude the applicant from seeking a joint coastal permit or environmental resource permit pursuant to the provisions of Chapter 403.061(24), F.S., or Chapters 62B-49, 62-312, 62-330, and 62-343, F.A.C.

PART V.
Maintenance Dredging

1. Permits issued pursuant to Section 403.061(38), Florida Statutes, are intended to constitute all necessary authority under Chapters 161, 403, and Part IV of Chapter 373, Florida Statutes, for maintenance dredging and the management of dredged-materials from maintenance dredging or some phase thereof.
2. A permit issued under Section 403.061(38) by the Department is final agency action and authorizes maintenance dredging and management of dredged-materials.
3. The duration of a permit issued under Section 403.061(38) is five years and shall

be extended annually on the anniversary date of the permit by the Department for one additional year unless the permittee is not in compliance with permit conditions. Prior to extension of the permit, the permittee shall submit to the Department a summary of the status of the authorized activities, including monitoring conditions, and any processing fee as required by Chapters 62-4 or 62B-49, F.A.C. Within 30 days after receipt of the status report and any fee, the Department staff shall either notify the permittee that the permit has been extended one additional year from the anniversary date or notify the permittee of any noncompliance items and actions required to obtain compliance with the permit.

4. Activities which may be permitted under the supplemental process for maintenance dredging include:
 - a. Maintenance dredging and management of materials from maintenance dredging; and
 - b. Other related activities necessary for the dredging and management of materials from dredging.
5. The fee which shall accompany an application to the Department for a permit under Section 403.061(38), Florida Statutes, shall be established pursuant to Chapters 62B-49 and 62-4, F.A.C..
6. The information which shall be submitted to the Department in any application under this section of the Agreement shall include:
 - a. A description of maintenance dredging activities to be conducted and proposed methods of dredged-material management;
 - b. A characterization of the materials to be dredged and the materials within dredged-material management sites.
 - c. A description of dredged-material management sites and plans.
 - d. A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.
 - e. Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department of Environmental protection.

7. Environmental mitigation shall not be required for dredging and dredged-material management for the maintenance of port harbors, navigation channels, turning basins, or harbor berths if all prior conditions of the original permit to construct the port harbor, navigation channel, dredged-material management site, turning basin or harbor berth issued by the Department or its predecessor agency have been met.
8. Changes to authorized activities which do not have the potential for environmental effects different from those previously determined for the project and are otherwise determined to be within the scope of the original permit shall not require modification of the permit. Changes to authorized activities which have environmental impacts that are significantly different from those previously considered by the Department or that are otherwise outside the scope of the original permit shall require a major or minor modification of the permit based upon the magnitude and nature of the proposed modification.

PART VI.
Port Development Dredging

1. Permits issued pursuant to Section 403.061(39), Florida Statutes, are intended to constitute all necessary authority under Chapters 161, 403, and Part IV of Chapter 373, Florida Statutes, for the construction of a proposed activity or some phase thereof.
2. A conceptual permit is a permit issued by the Department which approves a conceptual plan for certain port development activities. The issuance of a conceptual permit constitutes final agency action and is binding to the extent that adequate data has been made available for review by the application during the review process. A conceptual permit does not authorize construction. Construction may only be initiated by a port following submission of final engineering design drawings and calculations to the Department and issuance by a Department of a Notice to Proceed. The Department agrees to review all such drawings and calculations within 30 days of receipt and provide a Notice to Proceed, a request for additional information, or notification that the activities depicted in the final design drawings are not consistent with the conceptual permit and what revisions to the drawings are required for consistency, to the port.
3. The duration of a conceptual permit shall be a maximum of 15 years from the date of issuance provided that a Notice to Proceed is obtained and construction of the initial phase has commenced within 5 years of the issuance of the conceptual permit. All work must be completed within the 15 year time frame. The duration of conceptual permits may not be extended but the permit may be renewed.

4. Activities which may be permitted under the supplemental process for port development dredging include:
 - a. Dredging and management of materials from dredging; and
 - b. Other related activities necessary for port development, including the expansion of navigation channels, port harbors, turning basins, harbor berths and associated facilities involving dredging and management of materials from dredging.
5. The fee which shall accompany an application to the Department for a conceptual permit shall be established pursuant to Chapters 62B-49 and 62-4, F.A.C..
6. The information which shall be submitted to the Department in any application under this section of the agreement shall include:
 - a. A characterization of the materials to be dredged and the materials within dredged-material management sites.
 - b. A description of dredged-material management sites and plans.
 - c. A description of measures to be undertaken, including environmental compliance monitoring, to minimize adverse environmental effects of maintenance dredging and dredged-material management.
 - d. Such scheduling information as is required to facilitate state supplementary funding of federal maintenance dredging and dredged-material management programs consistent with beach restoration criteria of the Department.
 - e. A description of dredging and dredged-material management and other related activities associated with port development, including the expansion of navigation channels, dredged-material management sites, port harbors, turning basins, harbor berths, and associated facilities.
 - f. A discussion of environmental mitigation as is proposed for dredging and dredged-material management for port development, including the expansion of navigation channels, dredged-material management site, port harbors, turning basins, harbor berths and associated facilities.
7. Changes to authorized activities which do not have the potential for environmental effects different from those previously determined for the project and are otherwise determined to be within the scope of the original permit shall not require modification of the permit. Changes to authorized activities which have

environmental impacts that are significantly different from those previously considered by the Department or that are otherwise outside the scope of the original permit shall require a major or minor modification of the permit based upon the magnitude of the proposed modification.

PART VII.
Modification of Agreement

This Agreement contains the entire agreement of the parties hereto, with respect to the subject hereof and no modification of this Agreement shall be effective unless executed in writing by the parties.

PART VIII.
Effective Date

This Agreement shall become effective on February 6, 1997.

PART IX.
Termination of Agreement

Any party who wishes to terminate this agreement with or without cause shall provide 60 days prior written notice to the other parties. The notice submitted by the Department shall be signed by the Secretary. The notice submitted by the Council shall be signed by the President. By mutual agreement of all parties, the 60 day notice period may be reduced. Within 30 days of a notice of intent to terminate this agreement, all parties shall make good faith efforts to preserve the agreement by attempting to resolve any basis for the termination. This agreement also may be terminated by future agreements between the parties which expressly provide for supersedure of this agreement.

Virginia B. Wetherell
Virginia B. Wetherell
Secretary
Department of Environmental Protection

2/6/97
Date

John R. LaCapra
John R. LaCapra
President
Florida Ports Council

2/6/97
Date