



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

September 29, 2009

Mr. Eric Summa, Chief
U.S. Army Corps of Engineers
Environmental Branch
Jacksonville District
PO Box 4970
Jacksonville, FL 32232-0019

NOTICE OF DE MINIMISEXEMPTION USACE Broward County Sand Search Vibracores File No. 0293476-002-BE, Broward County

Dear Mr. Summa:

The Department received your application for a de minimus exemption on July 14, 2009. As stated in your application, the project is to obtain seventeen (17) vibracores in an effort to identify sand sources for beach nourishment activities in new borrow area BO-1, which encompasses old borrow area BA-III. All vibracores will be shallow core borings (3.5-inch diameter by 20 feet long) collected from sandy sediment. A 400-foot buffer will be observed from all adjacent hardbottom, as determined from the 2007 Florida Southeast Coast Reconnaissance Offshore Sand Search.

The project site is located offshore between Hillsboro Inlet and Hillsboro Beach in Broward County, Class III waters, Atlantic Ocean.

The sand search is to identify potential sand sources for future beach nourishment in Broward County. Within the past year, two other vibracoring exemptions have been issued in the County for the same purpose. The applicant was asked to collaborate with the other exemption holders to ensure cores were not taken in the same areas. The Applicant has submitted a letter from the Florida Department of State, Division of Historical Resources indicating that agency's approval of the proposed vibracore investigation. Because a 400-foot buffer from natural resources was stipulated, no environmental concerns were expressed by any agencies.

Under normal conditions, the proposed activity is not expected to generate a noticeable amount of turbidity. However, if an obvious plume is observed and appears to be caused by the vibracoring activity, there could be a violation of state water quality standards and adverse resource impacts associated with the turbidity. In that case, the de minimus exemption is no

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longer valid, and a permit would be required before the project activities outline herein would be allowed to continue. The application for that permit would have to address the need to establish a mixing zone for turbidity and the potential impacts associated with the turbidity.

Activities in, on or over waters of the State require a regulatory authorization for construction and operation of the project, unless otherwise exempt by statute or rule. Activities that have a material physical effect on existing coastal conditions or natural shore and inlet processes, and that extend seaward of the mean high water line into sovereign submerged lands, are regulated as “coastal construction”, unless otherwise exempt by rule. Activities on sovereign submerged lands require a proprietary authorization. Normally, works in waters of the United States also require federal authorization, but this is not required when the U.S. Army Corps of Engineers is proposing a federal project.

REGULATORY REVIEW – EXEMPTION VERIFIED

A project that affects surface waters is regulated under Part IV of Chapter 373, Florida Statutes (F.S.), and unless otherwise exempt by statute or rule, requires an environmental resource permit described in Rule 62-343.050(2), Florida Administrative Code (F.A.C.). However, Chapter 373.406(6), F.S., provides a de minimus exemption for activities that will have only minimal or insignificant individual or cumulative adverse impacts on the water resources. The Department has determined that the proposed vibracoring activity meets this criterion, and would be exempt from the need for an environmental resource permit.

A project that may affect existing coastal conditions or natural shore and inlet processes on sovereign submerged lands is regulated under the coastal construction program, as specified in Chapter 161.041, F.S., and Chapter 62B-41, F.A.C. Our review of your application indicates that the proposed activity is not expected to significantly affect coastal conditions or natural shore and inlet processes. Therefore, this work is not regulated as “coastal construction” under Chapter 161.041, F.S., and Chapter 62B-41, F.A.C. Because the project is exempt from the need for an environmental resource permit and is not regulated under the coastal construction program, the project does not require a joint coastal permit, as prescribed in Rules 62B-49.003 and 62-343.075(7), F.A.C.

Therefore, the Department hereby grants a de minimus exemption for the proposed activity under Chapter 373.406(6), F.S.

Working under an exemption does not relieve you from the need to comply with all applicable water quality standards during construction and operation. **Activities conducted under the above exemption must be constructed and operated using appropriate best management practices and in a manner that does not cause water quality violations, pursuant to rule 62-302, F.A.C.** This determination shall not be valid if the project results in water quality violations or if the basis for the exemption is found to be materially incorrect.

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The determination that your project qualifies for an exemption is based upon forms, drawings and documents provided to the Department as of August 19, 2009, and the statutes and rules that were in effect at that time. This determination is effective only for the specific activity proposed and may be invalid if site conditions materially change or if the governing statutes or rules are amended. In addition, any substantial alterations to the construction plans or location of the project should be submitted to the Department for review prior to commencement of work, as changes may result in the need for a permit. **In any event, this determination shall expire after one year.**

This project shall be subject to the specific conditions listed below:

SPECIFIC CONDITIONS:

1. No water quality mixing zone has been authorized for this vibracoring project. If an obvious turbidity plume is observed, the JCP Compliance Officer shall be notified immediately by phone at 850-414-7716 or by email at JCPCCompliance@dep.state.fl.us. Unless it is determined by the JCP Compliance Officer that the project can proceed without violating water quality standards, this exemption determination shall be revoked and an Environmental Resource Permit would be required to continue the vibracoring project.
2. During sea turtle nesting season, lighting on offshore or nearshore equipment shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the water's surface and marine turtle nesting beach while meeting all Coast Guard, EM 385-1-1, and OSHA requirements. Light intensity must be reduced to the minimum standard required by OSHA for the work area, in order not to misdirect marine turtles.
3. The activity shall not occur on or within 400 feet of hardbottom or seagrass communities, or otherwise impact these communities.

PROPRIETARY REVIEW – AUTHORIZATION APPROVED

The project is not exempt from the need to obtain the applicable proprietary authorization for activities that are on or over sovereign (state-owned) submerged lands, as described in Chapter 253, F.S., and Rule 18-21, F.A.C. The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Chapter 253.77, F.S. Under this authority, the Department has reviewed the proposed project, at the proposed locations, and has made the following proprietary determinations:

The vibracoring activity qualifies for a letter of consent under Rule 18-21.005 (1)(c), F.A.C., to conduct the activity on the specified sovereign submerged lands. This letter **constitutes proprietary authorization to perform this activity** as long as the work performed is located

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within the boundaries described in the application as of August 19, 2009, and is consistent with the attached General Consent Conditions.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from permitting requirements in Part IV of Chapter 373, and is not regulated under Chapter 161.041, F.S. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., as provided below. Be advised that neighboring property owners and other parties who may be substantially affected by the proposed activity allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in the attached notice.

The Department will not publish notice of this determination. **Publication of this notice by you is optional and is not required for you to proceed.** However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit.

If you wish to limit the time within which *all* substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the enclosed publication notice in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

If you wish to limit the time within which any *specific* person(s) may request an administrative hearing, you may provide such person(s), by certified mail, a copy of this determination, including the publication notice.

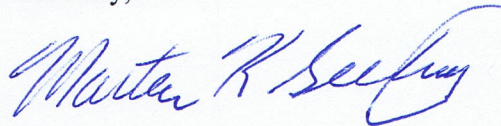
For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S. In the event you do publish this notice, within seven days of publication, you must provide, to the following address, proof of publication issued by the newspaper as provided in Section 50.051, F.S. If you provide direct written notice to any person as noted above, you must provide, to the following address, a copy of the direct written notice.

Department of Environmental Protection
Bureau of Beaches and Coastal Systems
3900 Commonwealth Boulevard, Mail Station 300
Tallahassee, Florida 32399-3000

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Please see the attached copy of the exemption language and note that all criteria of the rule must be met in order to qualify for this exemption. If you have any questions, please contact Dr. Merrie Beth Neely at (850) 413-7785. When referring to this project, please use both the project name and the file number listed above.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches and Coastal Systems

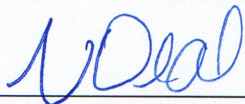
MKS/mbn

Enclosures: Drawing (1 page)
Exemption Citation
General Consent Conditions

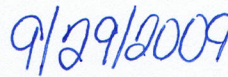
cc: Doug Fry, DEP, SLER	John F. Studt, CSI	Matt Miller, USACE, SAJ
Jim McAdams, USACE, SAJ	Mary Ann Poole, FWC, OPSC	Robbin Trindell, FWC, ISMS
Chantal Collier, DEP, CAMA	Joanna Walczak, DEP, CAMA	Michael Barnett, BBCS, Chief
Robert Brantly, BBCS, CE	El Kromhout, BBCS, CE	Jennifer Koch, BBCS, CE
Martin Seeling, BBCS, JCP	Jennifer Smith, DEP, SE District	Paden Woodruff, BBCS, BECP
Roxane Dow, BBCS, BECP	Rich Noyes, BBCS, BECP	Vladimir Kosmynin, BBCS, JCP
JCP Compliance Officer	Steve MacLeod, BBCS, JCP	Steve Higgins, Broward County
City Mgr, Town of Hillsboro Beach	City Mgr, Town of Deerfield Beach	Melany Larenas, CP&E
BBCS File (hardcopy)	Alex Reed, BBCS, BECP	

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



Date