

RULE

Department of Natural Resources Office of the Secretary

Beneficial Use of Dredged Material (LAC 43:I.700 and 723)

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 213.30 of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, with the general authority of the Department of Natural Resources and the secretary thereof under Chapter 8 of Title 36 and Subpart C of Part 2 of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, including R.S. 36:351 et seq., and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary hereby promulgates a new Rule to govern the Beneficial Use of Dredged Material, LAC 43:I.700 and 723.

The Rule governs the administration of the Beneficial Use of Dredged Material and set forth the standards and procedures for the secretary of the Department of Natural Resources to implement the requirements and authorizations under R.S. 49:213.30 for beneficially using material dredged pursuant to a use or activity for which a coastal use permit is required. The Rule will permit payment into a trust fund in-lieu of performing such beneficial use directly, with any such in-lieu payment to be used for other coastal restoration type purposes. Any such payments shall be remitted voluntarily and at the election of the applicant.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§700. Definitions

Beneficial Use of Dredged Material—use of dredged material excavated and not replaced pursuant to a proposed activity for which a coastal use permit is required, so as to protect, create, or enhance wetlands; use of material dredged pursuant to an alternative dredging activity to protect, create, or enhance wetlands, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands; or contribution to the Coastal Resources Trust Fund to replace, substitute, enhance, or protect ecological values, so as to offset failure to use the dredged material from the proposed activity to protect, create, or enhance wetlands.

Beneficial Use of Dredged Material Plan—(BUDM Plan) a document submitted to the secretary for approval as part of an application, specifying the beneficial use of dredged material proposed by the applicant.

Dredge or Dredging—(verb) the removal by excavation or any other means of native material, including soil, sand, mud, clay, and semisolid sediment, regardless of whether the material supports or is supporting vegetation, from any lands or water bottoms in the coastal zone of Louisiana.

Dredged Material—soil, mud, and/or other sediment that will be dredged pursuant to a proposed activity for which a coastal use permit or other authorization is required.

Master Plan—Integrated Ecosystem Restoration and Hurricane Protection: Louisiana's Comprehensive Master Plan for a Sustainable Coast, promulgated by the Coastal Protection and Restoration Authority pursuant to R.S. 49:213.1, et seq., as in effect on the date of submission of a complete application.

AUTHORITY NOTES: Promulgated in accordance with R.S. 49:214.21 -49:214:41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended Department of Natural Resources, Office of the Secretary, LR 35:2183 (October 2009).

§723. Rules and Procedure for Coastal Use Permits

A. - G.4.b. ...

H. Beneficial Use of Dredged Material

1. Requirement for Beneficial Use

a.i. An application for a coastal use permit or a general permit authorization for an individual activity that involves 25,000 cubic yards or more of dredging shall include a BUDM Plan. The application is incomplete until a BUDM Plan is submitted. The permit/authorization shall be conditioned upon compliance with the BUDM Plan approved by the secretary.

ii. Beneficial use is required only when the primary purpose of the proposed dredging is to facilitate the movement or mooring of vessels.

b. The proposed BUDM Plan shall set forth a plan for the beneficial use of dredged material, in accordance with the provisions of this Section. The applicant may meet the requirements of this Section through the following options or a combination thereof:

i. implementing a project for the beneficial use of the dredged material;

ii. providing for beneficial use of the dredged material on an existing coastal restoration project;

iii. conducting an alternative dredging activity whereby an equivalent volume of material is dredged at another location and put to a beneficial use; and/or

iv. making a contribution to the Coastal Resources Trust Fund.

c. The secretary may disallow conducting an alternative dredging activity or making a contribution to the Coastal Resources Trust Fund as options to meet the requirements of this Section if he finds that such activity or contribution would not replace, substitute, enhance, or protect ecological values sufficiently to offset failure to use the dredged material.

2. Exceptions

a. A BUDM Plan is unnecessary under the following circumstances:

i. To the extent that dredged material will be replaced at the conclusion of the proposed activity, or in the case of a continuing activity, within a reasonable time after initiation of the proposed activity, as determined by the secretary;

ii. To the extent that the proposed activity is excavation of material for construction of a coastal protection project included within the Master Plan or associated Annual Plan(s); or

iii. As specifically approved by the secretary in writing, under exceptional circumstances and if the secretary expressly finds that beneficial use of dredged material is unnecessary to protect, create, or enhance wetlands.

b. If the applicant asserts an exception pursuant to this paragraph 2, the applicant shall submit a statement with the application setting forth the exception and the basis for its application to the proposed activity. If the exception is pursuant to paragraph 2.a.iii, the written approval of the secretary shall be attached.

3. General Provisions

a. Upon grant of a coastal use permit, beneficial use of dredged material in accordance with the BUDM Plan approved by the secretary shall be deemed compliance with § 707(B) of this Chapter. However, all other requirements of this Chapter, including the guidelines set forth in §§ 701-719, remain applicable.

b. The BUDM Plan shall be treated as part of the coastal use permit application in all respects and shall be subject to all requirements of the application process, including distribution, public notice of the application, public comment, consideration of public comment, public hearings, provision of additional information regarding incomplete or inaccurate applications, review, permit decision, and public notice of a permit decision.

c. In reviewing the BUDM Plan, the secretary shall consider:

i. The recommendations and comments of any state or federal agencies that demonstrated an interest, during application processing, in participating in the approval or disapproval of the BUDM Plan. The secretary shall also consider the recommendations and comments of the affected parish if the parish has an approved local program and if the parish demonstrated, during application processing, an interest in participating in approval or disapproval of the BUDM Plan; and

ii. The manner and extent to which a project for dredged material is proposed to be used, a proposed use for material dredged pursuant to an alternative dredging activity, and/or use of a proposed in-lieu contribution will protect, create, or enhance wetlands, including by having an anticipated positive impact on the ecological value of the Louisiana Coastal Zone and/or the hydrologic basin. The proposed project or use shall be designed to provide for the long-term viability of the coastal ecosystem.

d. The applicant shall obtain and provide to the secretary together with the BUDM Plan all permits or permissions required by any other state, federal, or local agency under any other law, regulation, or ordinance for any project or use proposed in the plan. In particular, if the project or use involves placement of material on state water bottoms, the applicant shall obtain or submit a copy of an approved reclamation permit from the State Land Office in accordance with their regulations and requirements. The secretary may accept the BUDM Plan and grant the permit subject to issuance of permits or permissions by other permitting bodies within a time period determined by the secretary.

e. The applicant shall attach to the BUDM Plan a written affirmation that the applicant has made all reasonable efforts to determine and identify persons who may be affected by the proposed project or use, and has obtained the

express consent to the proposed project or use or explaining the nature of any objection and providing contact information for the objecting person.

f. If the proposed project or use involves placement on private property of material dredged from state-owned property, the applicant shall obtain and provide to the secretary together with the BUDM Plan an exemption or waiver from the royalty payment required by state law; or shall make the appropriate payment upon approval of the plan and execution of the project, and submit documentation of payment to the secretary within 15 days of making the payment.

g. The applicant shall attach to the BUDM Plan a written affirmation that the applicant is solely responsible for, and agrees to defend, indemnify, and hold harmless all state and local agencies, officers, and employees from, any responsibility, liability, claim, judgment, or regulatory order or direction arising from the approved BUDM Plan or any activity undertaken by the applicant or its employees, agents, or contractors pursuant to or in relation to the approved BUDM Plan.

4. Implementation of Project for Beneficial Use of Dredged Material

a. An applicant electing to implement a project for the beneficial use of the dredged material shall submit a BUDM Plan proposing the implementation of a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands.

b. The BUDM Plan shall include:

i. statement of the nature and location of the proposed project;

ii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;

iii. statement of the manner and extent to which the project is expected or intended to protect, create, or enhance wetlands;

iv. statement of the manner and extent to which the project may or will create impacts that may require mitigation;

v. statement of the estimated time schedule for the project;

vi. statement of the estimated cost of the project;

vii. design and construction plan for the project; and

viii. any other information or statements required by the secretary.

5. Providing for Use on Existing Coastal Restoration Project

a. An applicant electing to provide for use of the dredged material on an existing coastal restoration project shall submit a BUDM Plan proposing a specific project for which the dredged material will be used in a manner to protect, create, or enhance wetlands. The project may be one being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

i. statement of the nature and location of the project for which the dredged material is proposed to be used;

ii. statement of the means by which the material is proposed to be stored pending use and transported to storage

and to the project, including the type of equipment proposed to be used;

iii. statement of the manner in which the material is proposed to be used in the project, including the type of equipment proposed to be used;

iv. statement of the estimated time schedule for use of the material for the project;

v. statement whether the project is included in the Master Plan or associated Annual Plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;

vi. statement of the manner in which the project is expected or intended to protect, create, or enhance wetlands;

vii. statement of the manner in which use of the dredged material for the project is expected or intended to protect, create, or enhance wetlands;

viii. statement of the manner and extent to which use of the material and transportation of the material to the project may or will create impacts that may require mitigation;

ix. contact information for project managers for each state, federal, and/or local agency and each private entity involved in the project;

x. written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the dredged material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;

xi. estimated cost to the applicant for transporting or otherwise processing the material for the proposed project; and

xii. any other information or statements required by the secretary.

6. Conducting an Alternative Dredging Activity

a. An applicant electing to conduct an alternative dredging activity and beneficially use material dredged pursuant to that activity shall submit a BUDM Plan proposing a specific alternative dredging activity, a specific use of material to be dredged pursuant to that activity, and disposition of the dredged material from the proposed activity.

i. The volume of material dredged and used pursuant to the alternative activity shall be equal to or greater than the volume of dredged material from the proposed activity.

ii. The material dredged pursuant to the alternative activity may be used for an independent activity not associated with a project, a project being implemented pursuant to the Master Plan, or a specific project to be conducted by a public or private entity.

b. The BUDM Plan shall include:

i. statement of the nature and location of the alternative dredging activity;

ii. statement of the means by which material dredged pursuant to the alternative activity is proposed to be stored pending use and transported to storage and to the site of use, including the type of equipment proposed to be used;

iii. statement of the nature and location of the proposed site of use of the material.

iv. statement of the manner in which the material is proposed to be used, including the type of equipment proposed to be used;

v. statement of the estimated time schedule for the proposed use of the material;

vi. statement whether the proposed use is for a project included in the master plan or associated annual plan(s), page reference if so, and specific citation of the project by name, number, and/or other appropriate identifying information;

vii. statement of the manner in which the proposed use is expected or intended to protect, create, or enhance wetlands;

viii. statement of the manner and extent to which the proposed alternative dredging activity, use of the material, and transportation of the material to the site of use may or will create impacts that may require mitigation;

ix. if the proposed dredging activity or use involves an agency or person other than the applicant, contact information for project managers for each state, federal, and/or local agency and each private entity involved in the proposed dredging activity and use;

x. if the proposed use is for a project or other activity being conducted by an agency or person other than the applicant, written agreement signed by the agency or person charged with construction of the project, and by the prime contractor responsible for constructing the project, if applicable, agreeing to the proposed use of the material for the project in the proposed time frame, and setting forth the authority of the persons signing the agreement to enter such an agreement;

xi. statement of the estimated cost to the applicant for the proposed alternative dredging activity, use of the material dredged pursuant to that activity, and transportation or other processing of the material for the proposed use;

xii. design and construction plan for the proposed alternative dredging activity and for the proposed use of the material dredged pursuant thereto;

xiii. statement of the proposed manner of disposition of the dredged material from the proposed activity; and

xiv. any other information or statements required by the secretary.

7. In-Lieu Contribution

a. In lieu of constructing a project, providing for use on another project, or conducting an alternative dredging activity for the beneficial use of dredged material, the applicant may elect to make a contribution in accordance with this section. An applicant electing to make an in-lieu contribution shall submit a BUDM Plan proposing the contribution in accordance with this section.

b. The amount of the contribution shall be the greater of \$1 or 1.5% of the average of the 12 monthly postings by the United States Department of Energy, Energy Information Administration of the Cushing, Oklahoma West Texas Intermediate Spot Price FOB (dollars per barrel) for crude oil for the fiscal year (July – June) immediately preceding the date of submission of a complete application, per cubic yard of dredged material that will not be replaced at the conclusion of the proposed activity, or within a reasonable time after initiation of the proposed activity in the case of a continuing activity. However, the amount of the

contribution shall be limited to one-third of the cost of the dredging component of the proposed activity, unless the dredging is to be accomplished by "prop washing" or any variation thereof, in which case the amount of the contribution shall be limited to one-third of the cost to perform traditional excavation-type dredging of the same volume of material.

c. Prior to issuance of the final coastal use permit or other authorization, an applicant electing to make an in-lieu contribution shall remit payment to the department payable to Louisiana Department of Natural Resources.

d. For a continuing activity for which a coastal use permit or other authorization has been issued and the applicant has elected to make an in-lieu contribution, the contribution shall be paid at the time each individual dredging incident authorized by the permit is approved. The applicant shall remit payment to the department payable to Louisiana Department of Natural Resources.

e. In-lieu contributions are designed to provide a cost-effective mechanism for permit applicants to meet the performance standards established by R.S. 49:214.30(H) without sacrificing safeguards to the coastal ecosystem and opportunities for multiple uses of the coastal zone. In accordance therewith, such contributions shall be paid into the Coastal Resources Trust Fund as provided by R.S. 49:214.40.

i. The department shall keep records clearly showing all deposits to, payments from, and the current net amount in the Coastal Resources Trust Fund attributable to in-lieu contributions.

ii. The secretary may use the funds in the Coastal Resources Trust Fund attributable to in-lieu contributions for the following purposes:

(a). creation of long term management strategy disposal areas for beneficial use of dredged material;

(b). creation of vegetated wetlands, including coastal forests;

(c). creation or enhancement of barrier islands, barrier shorelines, or associated dunes;

(d). structural or non-structural shoreline modifications to hydrology to achieve the creation, enhancement or protection of coastal wetlands, barrier islands, beaches or dune assemblages; or

(e). any other purpose that the secretary determines will result in creation, enhancement, or protection of coastal wetlands.

iii. The secretary shall adopt a method whereby the success of each project undertaken with these funds is determined and monitored.

iv. Funds in the Coastal Resources Trust Fund attributable to in-lieu contributions may not be used for administrative purposes.

8. Non-Compliance.

a. Compliance with the requirements of this section is a condition of approval of the application and of any permit issued to the applicant. If an application is approved and the applicant fails to comply with applicable provisions of this section, the applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

b. If an application is approved and in the applicant does not comply with the approved BUDM Plan, the

applicant shall be deemed to be in violation of the permit and subject to all applicable penalties.

9. Miscellaneous

a. The secretary shall determine whether to cumulate activities sought to be permitted through multiple applications, for purposes of determining whether the 25,000-cubic-yard threshold is exceeded. This determination shall be made on the basis of whether the activities would normally be considered to be parts of a single economic activity and/or whether the applicant has sought to evade the beneficial use requirement.

b. The secretary may approve the accrual of mitigation credits resulting from the beneficial use of dredged material. Any mechanism adopted by the secretary for this purpose shall conform to state mitigation regulations in Subpart C of this Part. The secretary shall also make every reasonable effort to have the mechanism adopted for this purpose conform to federal mitigation regulations of the U.S. Army Corps of Engineers as set forth at 33 CFR Parts 320-330 and the U.S. Environmental Protection Agency as set forth at 40 CFR Part 120.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21-49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, L.R. 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended Department of Natural Resources, Office of the Secretary, LR 35:2184 (October 2009).

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RULE

Department of Natural Resources Office of the Secretary

Coastal Use Permit Extensions (LAC 43:I.723)

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 213 of Chapter 2 of Title 49 of the Louisiana Revised Statute of 1950, with the general authority of the Department of Natural Resources under Chapter 8 of Title 36 of the Louisiana Revised Statutes of 1950 and, Coastal Resources Management Act of 1978, La. R.S. 49:214.21 and with the Administrative Procedure Act, La. R.S. 49:950 et seq., the secretary hereby amends the rules that govern the extension of Coastal Use Permits, LAC 43:I.723.

The Rule amends the Coastal Use Permit Extension rules with regard to the process for requesting an extension of the term to initiate a coastal use permit and the term to complete the use of a coastal use permit. The Rule amends the existing provision of LAC 43:I. Chapter 7, Subchapter C which prohibits a coastal use permit recipient from requesting an extension of the term to complete use of a coastal use permit and authorizes a request to extend the term to complete use pursuant to the same guidelines set forth for requesting an extension of the term to initiate a coastal use permit. The Rule will authorize the secretary to issue an administrative order to extend the terms to initiate or complete use of a coastal use permit up to thirty days, without public notice of the request, a public comment period, or further formality upon a showing of good cause. The Rule will also authorize the Secretary to modify, suspend or extend the terms of all or an individual coastal use permit when an executive order or proclamation has been issued declaring an emergency.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

- A. - B.8.c. ...
- C. Permit Application, Issuance, and Denial
 - 1. - 8.c. ...
 - 9. Conditions of Permit
 - a. - c.ii ...
 - d. The term of issuance of permits shall be as follows.
 - i. The term to initiate a coastal use permit shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance.
 - ii. Repealed.
- D. Modification, Suspension or Revocation of Permits
 - 1. - 4. ...
 - 5. Extension
 - a. The term to initiate a coastal use permit or the term to complete the use of a coastal use permit may be extended, notwithstanding the provision of Subparagraph j below, as follows:

- i. The term to initiate a coastal use permit may be extended for an additional 2 years beyond the term set forth in Subsection C.9.d.

- ii. The term to complete the use may be extended for up to a total of an additional 3 years beyond the term for completion of use set forth in Subsection C.9.d.

- iii. A grant of an extension request for the term to initiate a coastal use permit does not automatically extend the term to complete use of a coastal use permit. Requests to extend the term to initiate a coastal use permit and complete use of the same permit may be submitted separately or together in accordance with Subparagraph f. Each request shall include the appropriate fee consistent with schedule of fees set forth in Subparagraphs f-g. Each request shall be considered separately consistent with Subparagraph a.iv.

- iv. The secretary may, in his discretion, upon a showing of good cause and upon receipt of a complete request for an extension, grant a permittee an extension up to 30 days beyond the last day of the term to initiate work on a use pursuant to a permit, or 30 days beyond the last day of the term to complete the permitted use without public notice of the request, a public comment period, or further formality, except that notice required in Subparagraph i below, of the secretary's decision to grant or deny the extension shall be made.

- b. The secretary shall review extension requests subject to this Part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

- c. If the secretary determines that extension may be considered, the Permits, Mitigation and Support Division shall cause to be issued for public comment, for a period of 10 days, a notice containing a brief summary of the original permit in accordance with Subparagraph i below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

- d. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

- e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

- f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. A nonrefundable extension request fee in the amount of \$80 shall be included with such a request, and the request must be received by the Permits,

Mitigation and Support Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall be eligible for consideration for extension, however a permittee who fails to make a timely request for an extension shall not engage in any activity requiring a coastal use permit past the original permit expiration date until an extension of the lapsed permit or a new permit is granted.

g. If the appropriate fees are not included along with the request for an extension to initiate a coastal use permit and/or to complete the use, the request will be considered incomplete, and returned to the permittee.

h. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

i. The Permits, Mitigation and Support Division shall issue notice of the extension request to all members of the joint public notice mailing list, and shall publish notice that the extension request has been granted or denied in the bi-weekly status report that is published in the state journal as well as mailed to joint public notice mailing recipients.

j. The secretary may issue administrative orders that modify, suspend, or extend the terms of all coastal use permits, or the secretary may order or delegate the authority to order modification, suspension, or extension of an individual permit when, in either case, the permits are in an area where an executive order or proclamation is issued declaring an emergency, and the need for the modification, suspension, or extension is related to the emergency.

E. - G.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21- 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, L.R. 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources, Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), LR 35:2187 (October 2009).

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