

Coastal Use Permits: Their Increasing Necessity in Legacy Lawsuits and Things to Know When Applying for Them

Presented by:

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Purpose of Presentation

- Awareness
- Insight into the application process

Legacy Lawsuits

- General background
- Act 312 of 2006 enacted La. RS 30:29
- Act 779 of 2012 revised La. RS 30:29

Environmental Management Orders

La. Code of Civil Procedure art. 1552

Upon the request of any party in any civil action alleging environmental damage pursuant to R.S. 30:29, or the Department of Natural Resources, office of conservation, the court shall direct the attorneys for the parties to appear before the court to develop an environmental management order. The environmental management order shall authorize all parties to access the property allegedly impacted to perform inspections and environmental testing. The order shall require that all test results be submitted to all parties and the Department of Natural Resources, office of conservation, within thirty days of receipt thereof. Failure by a party to provide the results of testing to the other parties shall preclude that party from admitting those results into evidence in the civil action. The environmental management order shall include reasonable terms for all of the following:

1. Access to the property.
2. Investigation and environmental testing.
3. Sampling and testing protocols.
4. Specific time frames within which to conduct such testing and sampling.

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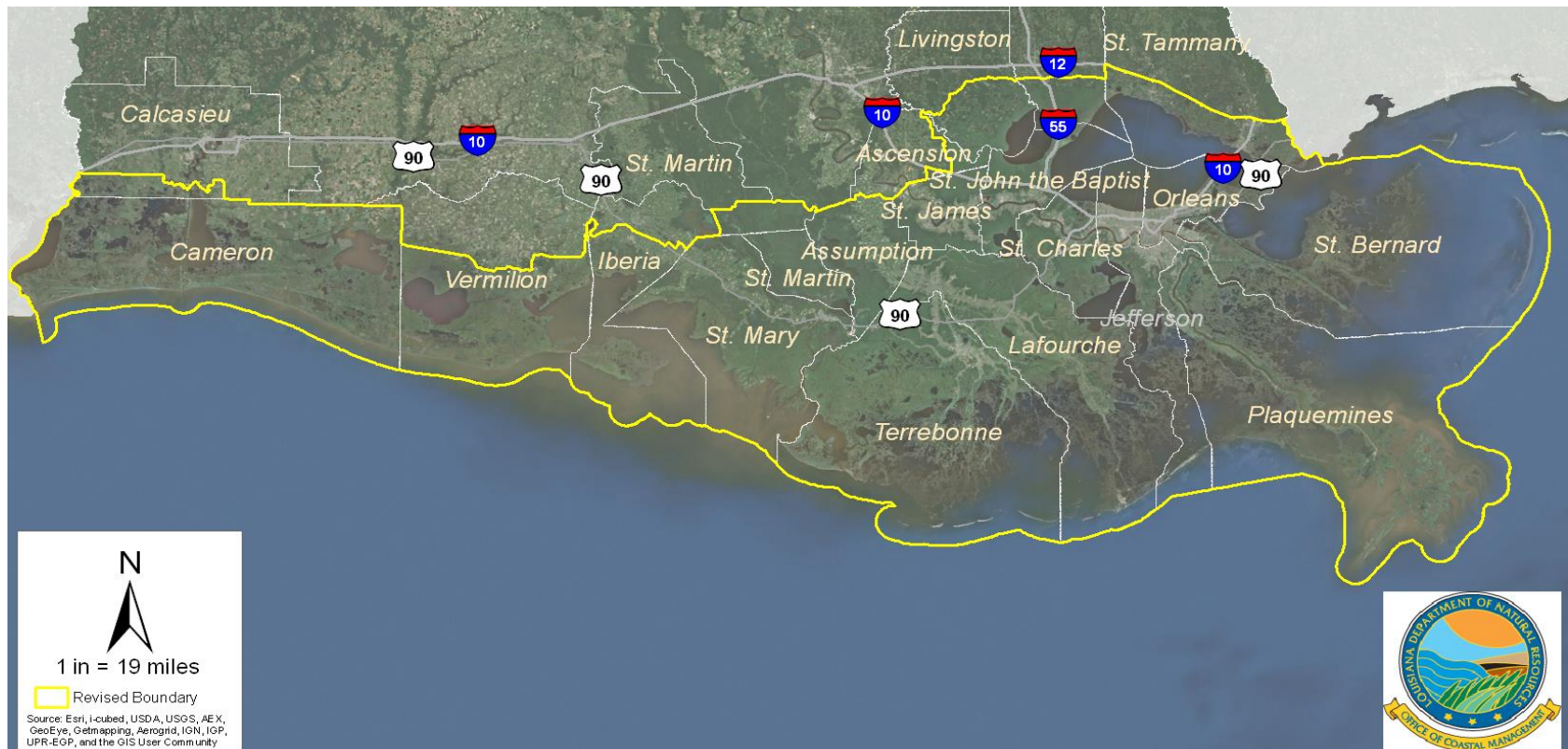
Environmental Management Orders: Negotiations

- Differing perspective
 - Testing protocol
 - Trigger for limited admissions

Coastal Use Permit

The Louisiana Coastal Zone

Parishes (all or parts of): Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion



Coastal Use Permit: Authority

- Authority

LDNR Office of Coastal Management (OCM) is charged with implementing the Louisiana Coastal Resources Program (LCRP) per the La. State and Local Coastal Resources Management Act of 1978, as amended (Act 361, La. R.S. 49:214.21 et seq.).

- Intent

- Protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone
- Balance conservation and resources
- Help to resolve user conflicts
- Encourage coastal zone recreational values
- Determine the future course of coastal development and conservation

Coastal Use Permit: Regulations

- LCRP basic tool: Coastal Use Permit (CUP)
- Rules and regulations governing CUPs: Louisiana Administrative Code (LAC), Title 43, Part 1, Chapter 7 §723.
- Requires **persons planning public, private, or commercial projects within the coastal zone** to apply for authorization prior to construction of any project that is not exempt from the regulation.

Coastal Use Permit: Applicability

- Example projects:
 - Dredge and fill work, bulkhead construction, shoreline modification
 - Development projects including marinas, subdivisions, drainage facilities, industrial facilities, and energy infrastructure
- Exempt activities:
 - Agricultural, forestry, aquaculture activities on lands consistently used in the past for such activities; hunting, fishing, trapping, preservation of scenic, historic, and scientific areas for wildlife preserves
 - Normal maintenance or repair of existing structures, including emergency repairs (although after-the-fact permit may be required)
 - Activities that do not have a direct and significant impact on coastal waters (NDSI) – e.g., activities above 5 ft MSL or fastlands (areas protected by levee)
- Typical field activities for legacy litigation cases:
 - Soil boring/sampling
 - Groundwater monitor well installation and sampling
 - Surface water sampling
 - Test pits

Coastal Use Permit: Process

- Apply online using Joint Permit Application (JPA) form
 - Indicate CUP, Solicitation of Views (SOV), or Request for Determination (RFD)
 - CUP application will be forwarded to other agencies for comment/action. Other permits or clearances may be required.
- Real-time electronic notification of application status changes and comments
- Allows for online tracking of applications

Coastal Use Permit: Application Requirements

- Applicant/Agent information
- Landowner/Adjacent Landowner/Oyster Lease Holder names and mailing addresses (attach additional sheet(s) if necessary)
- Lat/Long of Project (attach additional sheet(s) if more than one point)
- Excavation/Fill Volumes and Types of Materials (native material, sand bags, etc.)
- Equipment Used (marsh buggy, shallow draft vessels, pipe lay barge, etc.)
- Alternatives
- Mitigation plan for unavoidable wetland impacts
- Plats (application drawings)

Coastal Use Permit: Application Plats

- Vicinity Map
 - Project location clearly marked on map scale appropriate to identify general location within CZ and exact location
- Plan View
 - Location and dimensions of ALL aspects of the proposed work (include graphic scale)
 - Mean high/low water levels
 - Existing and proposed structures
 - Access routes
- Cross Section
 - Mean high/low water levels
 - Water bottom elevation and/or water depth
 - Depth and width of dredging
 - Height and width of spoil/structure

Coastal Use Permit: Timing

- Acknowledgment of Completeness
 - 5 days to ... (until you get it right)
 - Most common cause of delays: unacceptable plats
- For a Complete Application
 - 7 days: activities that are exempt from permit requirements
 - 4 - 10 days: depending upon location: projects that are determined to have no direct or significant impacts to coastal resources
 - 10 - 15 days: authorizations for activities that qualify for a General Permit
 - Minimum of 45 days: activities that require full public notice

Coastal Use Permit: End Game

- Read and follow CUP conditions (e.g., type/route of access, prior notice to La. Dept. of Wildlife and Fisheries [LDWF])
- Follow up after project by submitting As-Built plats
- OCM will usually conduct a field visit one full growing season (over a year) after project to determine need for mitigation
- You may still need to work with other agencies
 - Corps of Engineers will usually issue a Programmatic General Permit (PGP). If non-CUP authorization, the Corps may choose to permit.
 - Parish may have its own requirements for issuing a Letter of No Objection (which will come after the CUP is issued). May be hearings, fees, bonds required.
 - Levee board will need to permit drilling within 1500 feet of centerline of levee. Work may be prohibited during high water periods.
 - LDWF may require nesting bird survey.

Significance in Litigation

1. Determine if your testing will occur in a coastal zone.

Significance in Litigation

2. Hire an expert familiar with the application process.

Significance in Litigation

3. Account for the application process in establishing testing deadlines for litigation purposes:
 - Include deadlines with more than enough time to get permits.
 - Don't include specific dates, but link all deadlines to the permit(s).

Significance in Litigation

4. Be transparent with opposing counsel with regard to your application process.

Significance in Litigation

5. If you believe that opposing counsel's experts aren't adhering to the permit, immediately contact the LDNR.

Coastal Use Permits

QUESTIONS?