

PRIVATE AIDS TO NAVIGATION: Regulatory and Statutory Requirements for Aids to Navigation and Other Signage

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This memo outlines the regulatory and statutory requirements for approval and installation of aids to navigation and other signage. Agency contacts and forms required for the application process are also included. Basically, permission must be sought from four groups: U.S. Coast Guard (USCG), U.S. Army Corps of Engineers (USACOE), Department of Environmental Protection (DEP) Division of Law Enforcement, and DEP Submerged Lands. The USACOE will conduct a simultaneous review of any proposed aids to navigation, and the contacts at each of these agencies recommended that they each copied when applications are sent to other agencies.

The USCG should probably be involved before any signage decisions are made so that harbor management planners may benefit from any anecdotal and practical experience of USCG staff. Further, some other agencies will automatically approve or expedite approval of signage if the USCG has already given the green light.

The USCG's authority to regulate aids to navigation and other signage stems from 14 U.S.C. § 81. Specific requirements for making application for an aid to navigation are set out in the Code of Federal Regulations. Any non-federal marine aids to navigation are termed "private aids to navigation."¹ A copy of the required "Private Aids to Navigation Application" is attached to this memo and marked "Attachment 1." "Attachment 2" is a list of the private aids to navigation specifications and conditions. Three copies of the application should be submitted to the USCG District Commander in the Miami office.² Among other requirements, the application should include the proposed position and sketch of the aid and the name and address of the person or entity charged with installation and maintenance of the aid.³ Upon approval of the application, a signed copy will be returned to the applicant.⁴ All aids must be maintained by the applicant and are subject to USCG inspection without prior notice.⁵ Finally, the USCG provided a list of sources for private aids to navigation which is included in this memo as "Attachment 3."

Aids to navigation and other signs are considered an obstruction to navigation, and the Army, through the USACOE has the authority to regulate such obstructions.⁶ In recognition that

¹ 33 C.F.R. § 66.01-1(b) (1996).

² 33 C.F.R. § 66.01-5 (1996).

³ 33 C.F.R. § 66.01-5(a-i) (1996).

⁴ 33 C.F.R. § 66.01-15 (1996).

⁵ 33 C.F.R. § 66.01-20 (1996).

⁶ 33 U.S.C.S. § 403 (1997).

aids to navigation pose minimal impacts, such aids are covered under a “nationwide permit,” a type of general permit which requires less time and paperwork than other permits.⁷ Nationwide Permit 1 authorizes “placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard.”⁸ These aids must have no more than a minimal adverse effect on navigation and must be properly maintained.⁹ USACOE rules require that the District Engineer be notified of the proposed aids before they are installed.¹⁰ The District Engineer then has thirty days to give notice if the proposed aids do not fall within the nationwide permit provision.¹¹ The notification to the District Engineer should include the name and contact information of the permittee, the location of the proposed aids and a brief description of the proposed aids.¹² While this notification may be in the form of a letter,¹³ Ron Silver of the USACOE’s Jacksonville office stated that applicants should send the USACOE a copy of the application required by DEP’s Division of Law Enforcement because it contains the same information.

Aids to navigation and other signage are known generally as “uniform waterway markers” in Florida’s statutes and rules. Pursuant to § 327.40, Florida Statutes, DEP has established rules governing uniform waterway markers in Florida.¹⁴ Any markers placed on state submerged lands pursuant to this chapter do not require a lease from the Board of Trustees of the Internal Improvement Trust Fund.¹⁵ An application must be submitted to the Division of Law Enforcement to obtain approval for any uniform waterway markers.¹⁶ A copy of the application, and an informational sheet showing standards for certain uniform waterway markers, is included in this memo as “Attachment 4.” The application must include a map showing the approximate location of the proposed markers, a description of the proposed markers and their purpose, and a list of those responsible for installation and maintenance of the markers.¹⁷ Further, the application must include an agreement indemnifying DEP against any claims from alleged negligence in the placement, maintenance or operation of the markers.¹⁸ As mentioned above, this application may also serve as notice to the USACOE under Nationwide Permit 1.

Finally, DEP’s submerged lands office must be consulted regarding aids to navigation. Pursuant to Florida Statute § 403.813(2)(k), no permit under Chapter 373 or Chapter 403 is required for “[t]he installation of aids to navigation and buoys associated with such aids, provided the devices” have been approved by DEP’s Division of Law Enforcement pursuant to § 327.40,

⁷ 33 C.F.R. § 330.1(b) (1997).

⁸ 61 Fed. Reg. 65,913 (1996).

⁹ 61 Fed. Reg. 65,920 (1996).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 61 Fed. Reg. 65,921 (1996).

¹⁴ § 62N-23, F.A.C. (1998).

¹⁵ § 327.40(3) (1997).

¹⁶ § 324.40 (1997); § 62N-23.003(2), F.A.C. (1997).

¹⁷ § 62N-23(2)(a-d), F.A.C. (1998).

¹⁸ § 62N-23(2)(e), F.A.C. (1998).

Florida Statutes.¹⁹ However, two requirements may remain. First, if the area marked will involve use of state-owned lands, such as for a permanent mooring area, one must obtain a lease or authorization for public use from the Board of Trustees of the Internal Improvement Trust Fund.²⁰ (Note: I am double-checking on the details of this procedure.) Second, if the activity marked may have adverse impacts on water quality, the applicant must complete the water quality certification required by an Environmental Resource Permit.²¹ [I am also verifying this statement.]

Contact Information:

USCG: Joe Embres, Chief
Seventh Coast Guard District
909 S.E. First Ave.
Miami, FL 33131
(305) 536-4566/ 530-7655 (F)

USACOE: Lee, Collier, and Charlotte Counties
Chip Clough
(941) 334-1975
Ft. Myers, FL

Sarasota and Manatee Counties
Joe Bachelor
(813) 840-2908
Tampa, FL

DEP Division of Law Enforcement: Tara Alford
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3000
(850) 488-5600 X 136

DEP Submerged Lands: Lucy Blair
2295 Victoria Ave., Ste. 364
Ft. Myers, FL 33901
(941) 332-6975

¹⁹ § 403.813(2)(k), Fla. Stat. (1997).

²⁰ § 253.77(1), Fla. Stat. (1997).

²¹ § 373.414 (1997).