



Department of Environmental Protection

Jeb Bush
Governor

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

Colleen M. Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

June 22, 2004

Stephen Higgins
Beach Erosion Administrator
Broward County
218 S.W. 1st Avenue
Ft. Lauderdale, FL 33301

Permit Modification No. 0163435-009-JC
Permit No. 0163435-001-JC
Broward County Beach Nourishment (Segment III)
Modification to include Borrow Area I

Dear Mr. Higgins:

Your request to modify Permit No. 0163435-001-JC has been received and reviewed by Department staff. The proposed permit modification is to allow the use of Borrow Area I for the Segment III Shore Protection Project.

Permit No. 0163435-001-JC has already approved the use of Borrow Areas II, III, IV, and VI for the Segment III nourishment project. The use of Borrow Area I had been reviewed as part of the original application for the nourishment project, but final authorization had been postponed pending authorization by the Board of Trustees of the Internal Improvement Trust Fund. Following the Board's approval, the City of Deerfield Beach challenged the use of Borrow Area I because of potential adverse impacts to their shoreline. After they were provided assurances that impacts were unlikely and manageable and a Contingency Plan was required to remediate any adverse impacts to their beach, the City dropped their challenge. The excavation of Borrow Area I was then authorized in the Permit No. 0163435-005-JC for Segment II of the Broward County Beach Nourishment project. The Intent to Issue for Segment II stated:

Once the use of sand from Borrow Area I is approved for both segments in the Segment II permit, the permit for Segment III would have to be modified to list Borrow Area I as an approved sand source. Then the excavation and use of all five borrow areas will be approved for both segments of the Broward County Nourishment project.

The use of multiple borrow areas will help to rotate the dredging operation between the several borrow sites in order to minimize the potential sedimentation impacts. The borrow area rotation plan is designed to allow organisms on the adjacent hardbottom, which are adapted to naturally

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occurring levels of sedimentation, to recover from a small amount of sedimentation associated with overflow from the hopper dredge before the borrow site is used again. Adding Borrow Area I to the Segment III Nourishment project will help to minimize impacts to the hardbottom communities.

The project description shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The proposed project involves: 1) nourishment of the beach at John U. Lloyd State Park (JUL) from R-86 to R-92; 2) nourishment of the beach at Hollywood/Hallandale (H/H) from R-98 (Dania Beach Pier) to R-128 (Broward/Dade County line); 3) installation of a spur connected to the south jetty of Port Everglades Inlet; 4) installation of two T-head groins in JUL; 5) construction of 8.9 acres of artificial reef as mitigation; and 6) transplantation of scleractinian corals from the impacted areas to 0.67 acres of mitigation reef within Segment III. The total volume of renourishment is approximately 1.54 million cubic yards of material, which will be placed along 6.82 miles of the Broward County coastline. Beach compatible material will be obtained from five ~~four~~ discrete borrow areas (I, II, III, IV, and VI) located offshore of the central and northern portions of the Broward County.

The specific conditions shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

2. The terms, conditions, and provisions of the required Public Easement (Modified Instrument No. 30628, BOT File No. 060226866) for the borrow areas shall be met. Construction of this activity shall not commence on sovereign submerged lands, title to which is held by the Board of Trustees of the Internal Improvement Trust Fund, until all Public Easement documents have been executed to the satisfaction of the Department.

9. h. A Contingency Plan to remediate any adverse impacts to the shoreline resulting from the dredging of Borrow Area I. The approved Contingency Plan can be revised at any later time by written request of the permittee and with the written approval of the Department. As guidance for obtaining Departmental approval, the Plan should acknowledge that there is a potential for shoreline erosion occurring within adjacent areas of Segment I of the Broward County Beach Erosion Control Project as a result of dredging in Borrow Area I. The Plan should confirm that these areas will be specifically monitored, analyzed, and reported on as part of an approved Monitoring Plan. The Contingency Plan should provide that erosional problems that develop within contiguous shoreline areas of Segment I will be specifically addressed and appropriate remedial solutions developed and implemented. Remedial solutions to be considered should

include the placement of beach fill material, as applicable. Once approved by the Department, the permittee shall obtain all necessary permits and authorizations to conduct the remedial action(s).

The monitoring requirements shall be revised as follows:

14. Physical Monitoring.

Pursuant to 62B-41.005(16), F.A.C., physical monitoring of the project is required through acquisition of project-specific data to include, at a minimum, topographic and bathymetric surveys of the beach, offshore, and borrow site areas, aerial photography, and engineering analysis. The monitoring data is necessary in order for both the project sponsor and the Department to regularly observe and assess, with quantitative measurements, the performance of the project, any adverse effects which have occurred, and the need for any adjustments, modifications, or mitigative response to the project. The scientific monitoring process also provides the project sponsor and the Department information necessary to plan, design, and optimize subsequent follow-up projects, potentially reducing the need for and costs of unnecessary work, as well as potentially reducing any environmental impacts that may have occurred or be expected.

Prior to issuance of the first Notice to Proceed, the permittee shall submit a detailed Physical Monitoring Plan subject to review and approval by the Department as required in Specific Condition 9.c. The Physical Monitoring Plan shall indicate the project's predicted design life.

A monitoring plan that combines or uses monitoring from other projects or annual county-wide monitoring would be considered. Data collection for this permit may overlap other project monitoring, and consolidation of data collection should be considered. However, monitoring submittals must clearly identify all permits and conditions, and contracts with DEP that the submittals are intended to satisfy. This will allow for more efficient accounting by all parties and permit compliance accounting by the department.

The approved Monitoring Plan can be revised at any later time by written request of the permittee and with the written approval of the Department. For all subsequent beach nourishment projects following the initial nourishment to be performed under this permit, the Monitoring Plan shall specify a renewal of the same monitoring and monitoring cycle for the beaches and affected borrow site(s).

As guidance for obtaining Department approval, the plan shall generally contain the following items:

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- a. Topographic and bathymetric profile surveys of the beach and offshore shall be conducted within 90 days prior to commencement of construction, and within 60 days following completion of construction of the project. Thereafter, monitoring surveys shall be conducted annually for a period of three (3) years, then biennially until the next beach nourishment event or the expiration of the project design life, whichever occurs first. The monitoring surveys shall be conducted during a spring or summer month and repeated as close as practicable during that same month of the year. If the time period between the immediate post-construction survey and the first annual monitoring survey is less than six months, then the permittee may request a postponement of the first monitoring survey until the following spring/summer. A prior design survey of the beach and offshore may be submitted for the pre-construction survey if consistent with the other requirements of this condition.

The monitoring area shall include profile surveys at each of the Department of Environmental Protection's DNR reference monuments within the bounds of the beach fill area and along at least 5,000 feet of the adjacent shoreline on both sides of the beach fill area. For those project areas that contain erosion control structures, such as groins or breakwaters, additional profile lines shall be surveyed at a sufficient number of intermediate locations to accurately identify patterns of erosion and accretion within this subarea. All work activities and deliverables shall be conducted in accordance with the latest update of the *OBBCS Statewide Coastal Monitoring Program, Regional Data Collection and Processing Plan, Monitoring Plan Technical Specifications for Topographic and Bathymetric Surveying*.

The influence of Borrow Areas I and II on the adjacent beach shall be monitored in the same manner as the beach fill areas, and the results analyzed for possible adverse effects. These areas extending from Boca Raton Inlet through Hillsboro Inlet shall be specifically monitored, analyzed, and reported as part of an approved Monitoring Plan. Prior to the issuance of a Notice to Proceed, the permittee shall submit a Contingency Plan to remediate any adverse impacts to the beach resulting from the dredging of Borrow Areas I and II. Remedial solutions to be considered should include the placement of beach fill material, as applicable. This Plan shall be subject to review and approval by the Department. The approved Contingency Plan can be revised at any later time by written request of the permittee and with the written approval of the Department.

Not only the areas of the beach fill, but the entire Segment III shoreline from the Port Everglades Inlet shall be monitored in order to capture the effect of the project on the non-nourished areas and other geographical features.

- b. Bathymetric surveys of the borrow area(s) shall be conducted within 90 days prior to commencement of construction, and within 60 days following completion of construction of the project concurrently with the beach and offshore surveys required above. Thereafter, monitoring surveys of the borrow areas shall be dependent on their location. Borrow sites located in tidal inlet shoals or in nearshore waters above the depth of closure for littoral transport processes shall be at two (2) year intervals concurrently with the beach and offshore surveys required above. A prior design survey of the borrow area may be submitted for the pre-construction survey if consistent with the other requirements of this condition.

Borrow areas shall be monitored pre and post construction, as indicated above, and at four (4) year intervals concurrent with the beach and offshore profile surveys required above.

Survey grid lines across the borrow area(s) shall be spaced to provide sufficient detail for accurate volumetric calculations but spaced not more than a maximum of 500 feet apart, and shall extend a minimum of 500 feet beyond the boundaries of the borrow site. For borrow sites located in tidal inlet shoals, bathymetric surveys of the entire shoal complex, including any attachment bars, shall be conducted unless otherwise specified by the Department based upon the size of the shoal and the potential effects of the dredging on inlet processes. In all other aspects, work activities and deliverables shall be consistent with the BBCSWR Statewide Coastal Monitoring Program, Regional Data Collection and Processing Plan, Monitoring Plan Technical Specifications for Bathymetric Surveying.

- c. Aerial photography of the beach shall be taken concurrently with the post-construction survey and each annual and biennial monitoring survey required above, as close to the date of the beach profile surveys as possible, and during approximate low water tide on that date. The limits of the photography shall include the surveyed monitoring area as described above. The photography shall be color vertical photos with a 30% forward overlap, taken from an elevation of 3,000 feet (1:6,000 negative scale) and centered on the local shoreline. A digital scan of the color photos at a rate of 21 microns with a pixel size of 0.4 feet shall be made and submitted in TIF format (uncompressed) on CD or DVD.
- d. The permittee shall submit an engineering report and the monitoring data to the Bureau of Beaches and Coastal Systems ~~Wetland Resources~~ within 90 days following completion of the post-construction survey and each annual or biennial monitoring survey. The survey data and control information should be submitted on electronic media such as floppy disk, or CD-ROM, in an ASCII format stored

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as specified in the *Statewide Coastal Monitoring Program, Regional Data Collection and Processing Plan, Monitoring Plan Technical Specifications*.

The report shall summarize and discuss the data, the performance of the beach fill project, and identify erosion and accretion patterns within the monitored area. In addition, the report shall include a comparative review of project performance to performance expectations and identification of adverse impacts attributable to the project.

Appendices should include plots of survey profiles and graphical representations of volumetric and shoreline position changes for the monitoring area. Results should be analyzed for patterns, trends, or changes between annual surveys and cumulatively since project construction.

Monitoring reports and data shall be submitted to the Bureau of Beaches and Coastal Systems ~~Wetland Resources~~ in Tallahassee. Failure to submit reports and data in a timely manner constitutes grounds for revocation of the permit. When submitting any monitoring information to the Bureau Office, please include a transmittal cover letter clearly labeled with the following at the top of each page: **"This monitoring information is submitted in accordance with Item No. [XX] of the approved Monitoring Plan for the Broward County Beach Nourishment Project (Segment III) Permit No. 0163435-001-JC [XX] for the monitoring period [XX]."**

After thorough review the staff has determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Staff also finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and is expected to be of environmental benefit, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **May 12, 2008** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for

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petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with rule 28-106.205, F.A.C.

In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(1), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

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Under section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S.

In accordance with rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- The name and address of each agency affected and each agency's file or identification number, if known;
- The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- A statement of when and how the petitioner received notice of the agency decision;
- A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

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This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition. When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice.

If you have any questions regarding this matter, please contact me at the letterhead address or by telephone at (850) 487-4471, ext. 104.

Sincerely,



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

cc: Tim Rach, DEP, Southeast District
Mark Latch, DEP Rec & Parks, Tallahassee
Jackie Thompson, BBCS
Bob Brantly, BBCS
Paden Woodruff, BBCS
Ralph Clark, BBCS
Vladimir Kosmynin, BBCS
Jennifer Brown, BBCS
Kacky Andrews, DEP CAMA
Robbin Trindell, FWCC, BPSM
Trish Adams, USFWS
Ron Meidema, EPA
George Getsinger, NMFS

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Jocelyn Karazsia, NMFS
FWC-Division of Law Enforcement
John Studt, South Permits Branch, USACE
Steve Attis, Vone
Linda Shelley
Chris Creed, OAI
Norman Beumel, CPE
Dan Clark, Cry of the Water
BBCS Permit Information Center (file)

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.

Della Weaver 6/22/04
Deputy Clerk Date

