



Department of Environmental Protection

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

Colleen M. Castille
Secretary

Jeb Bush
Governor

CERTIFIED - RETURN RECEIPT REQUESTED

February 8, 2006

Manatee County Board of County Commissioners
c/o Richard Spadoni, Senior Vice President
Coastal Planning and Engineering, Inc.
2481 N. W. Boca Raton Boulevard
Boca Raton, FL 33431

Permit Modification No. 0039378-007-EM
Permit No. 0039378-001-JC, Manatee County
Anna Maria Island Beach Restoration and Nourishment Project

Dear Mr. Spadoni:

Your request to modify Permit No. 0039378-001-JC has been received and reviewed by Department staff. The proposed permit modification is to update the Hardbottom Monitoring and Mitigation Plan for Manatee County, and to extend the permit expiration date by three months in order to complete the construction. The original proposal was to extend the expiration date to June 22, 2006, but later it was changed to June 1, 2006.

PERMIT HISTORY

On March 8, 2001, the Department issued a 5 year joint coastal permit (No. 0039378-001-JC) to construct a beach nourishment project and a beach restoration project along two reaches of Anna Maria Island. The 4.7-mile Beach Nourishment Project (previously restored in 1992) extends from R-12 to R-36. The project also includes the restoration and subsequent nourishment(s) of a 3,000 foot section of the beach, from R-7 to R-10, which was not part of the previous project. The permit requires the construction of 0.65 acres of artificial reef habitat as mitigation for unavoidable impacts to hardbottom communities from this project as well as unaddressed impacts from the previous project.

On March 8, 2001, the Department issued a variance (File No. 0039378-002-EV) from Rule 62-

"More Protection, Less Process"

Printed on recycled paper.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 2 of 15

4.244(5)(c), F.A.C., to establish an expanded mixing zone. This temporary mixing zone will measure 150 meters offshore and up to 500 meters down current from the point of discharge.

Modification No. 0039378-003-JC was issued on May 8, 2001 to correct a typographical error. The permit erroneously stated that the beach-tilling activities would occur until March 1, rather than the intended April 15.

Modification No. 0039378-004-JC was issued on January 7, 2004, to substitute limestone boulders for clean concrete in the construction of the mitigative artificial reef and to reduce the amount of required compensatory mitigation from 0.65 to 0.44 acres of artificial reef creation. The Department generally favors the use of limestone boulders over concrete material as artificial reef substrate because it is better at promoting colonization of epibenthic and endolithic communities associated with natural, nearshore hardbottom. The reduction in artificial reef area was based upon a revised assessment of hardbottom impacts. Analysis of pre-construction and post-construction aerial photography, and the results of the biological and sedimentation monitoring events conducted in January, June, and October of 2002, indicated that only a portion of the surveyed hardbottom impacts (totaling 0.65 acres) were actually attributed to the project. The results indicated that approximately 0.21 acres of nearshore hardbottom was covered by natural sand movement rather than fill equilibration. The modification stated that if the final, three year post-construction monitoring revealed burial of nearshore hardbottom communities in excess of 0.44 acres, additional compensatory mitigation will be required for the affected acreage, and a time lag coefficient will be applied to offset the temporal habitat loss.

On October 31, 2003, the Department issued Modification No. 0038378-005-JC to revise the reporting requirements in the Hardbottom Mitigation and Monitoring Plan. Department staff recommended this modification of the data analysis in the plan based upon the lack of replicate samples in the monitoring protocol and the small sample size (one square meter). The original protocol rendered the value of Shannon-Weaver diversity index calculation nearly meaningless in the required assessment of nearshore hardbottom habitat.

Modification No. 0039378-006-JC was issued on August 26, 2004, to relocate the mitigative artificial reef placement site and to grant the request for an extension of time to complete construction of the artificial reef. The relocation was requested because physical changes in the Nearshore Artificial Reef placement site prevented compliance with the permit-mandated, 25-foot buffer from all existing artificial reef and natural hardbottom communities. Due to the additional time that was required to conduct the field evaluations for the new artificial reef placement site, the permittee also asked for an extension. Additionally, during review of the one-year and two-year biological monitoring reports and associated data/photographic documentation, Department staff determined that quarterly monitoring of the natural hardbottom during the third year post-construction was not necessary to evaluate the potential, long-term project-related impacts of sedimentation upon hardbottom communities. Therefore, staff

Notice of Permit Modification

Anna Maria Beach Restoration and Nourishment Project

Modification No. 0039378-007-EM

Page 3 of 15

modified the monitoring plan and permit to 2 (two) biannual monitoring events: one to be conducted in December 2004 and the final event to be conducted in June 2005.

JUSTIFICATION FOR MODIFICATION

The currently requested monitoring plan modification would allow Manatee County to acquire finer resolution benthic data using the Benthic Ecological Assessment for Marginal Reefs (BEAMR) *in situ* assessment method. The BEAMR protocol provides a higher level of physical and biological data acquisition than the current methods. The ability to detect changes and the comparative analysis is also superior using BEAMR verses the currently specified methods originally approved in the 2002 Monitoring Plan.

The permittee has also requested a three-month extension of the permit. This was requested because of the slow progress of the nourishment on the City of Anna Maria section of the permit. The contractor had been forced to cease construction activities on many occasions due to repeated adverse wave conditions and equipment maintenance requirements. The contractor's dredge cannot operate in wave heights exceeding three feet. Winter storms and high wave heights (> 3 feet) have been documented to continue throughout the month of March. Therefore, the contractor cannot remobilize for work until the first of April, when documented conditions have shown fewer storms and average wave heights of less than three feet. Thus, the completion date for the project will be delayed by several months.

STAFF ASSESSMENT

Staff has reviewed the modification request and concurs that the plan amendments in the hardbottom monitoring program will yield a more comprehensive set of data than the current method, and will aid in the Department's evaluation of project related effects to the nearshore resources. The amendments are expected to improve the quality of data collection, and have no impact on the required conditions or monitoring requirements.

The Fish and Wildlife Conservation Commission (FWC) was concerned that extending the permit expiration date to June 22, 2006 could result in unacceptable impacts to marine turtle nests in the project area. The requested extension would constitute construction during the 2006 turtle nesting season. In previous work conducted for this project during turtle nesting season, the majority of marine turtle nest relocation efforts were unsuccessful in producing hatchlings. Of the 97 loggerhead nests reported in the Anna Maria project area in 2005, 63 nests were relocated for project construction. Of the 63 nests relocated, approximately 88% perished after relocation due to predation, inundation, or erosion.

Notice of Permit Modification

Anna Maria Beach Restoration and Nourishment Project

Modification No. 0039378-007-EM

Page 4 of 15

To avoid additional negative impacts to marine turtle nests from this project while allowing project completion, FWC has provided additional specific conditions to the permit in order to ensure higher protection for the marine turtles. These conditions include protection of an area not authorized for nourishment activities, which has historically been documented to have high turtle nesting occurrences (R-10 through R-12). In addition, the conditions will require early pipe set-up on the beach in order to expedite the starting remobilization, expedient removal of the pipe upon completion, additional tilling regulations, and the relocation of the stockpiling area to the south bay side of the island where turtle nesting frequencies are lower. An on-site meeting will be required to review the additional minimization measures for both sea turtles and shorebirds.

In the southern portion of the beach (R-26 to R-31), which has not been completed, all construction activities must cease and equipment must be off the beach by June 1st. In the northern section of incomplete beach (R-7 to R-10), turtle nesting frequencies have historically been higher. Therefore, in the R-7 to R-10 section of beach nourishment authorized by the permit, construction activities must cease by May 15th, and all equipment shall be moved off the beach by this date. With the implementation of these additional protection measures, and the revised conditions listed below, FWC and DEP staff recommend approval of the modification.

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

SPECIFIC CONDITIONS:

7. Per the revised "Anna Maria Island Beach Nourishment Project - Hardbottom Mitigation and Monitoring Plan" dated ~~August 2004~~ November 2005, the permittee shall construct a 0.44-acre, limestone boulder mitigation reef. The limestone boulder artificial reef shall be placed approximately 1,000 feet north of the existing nearshore mitigation reef, which was constructed in 1992 and 1993. The boulders shall be placed in a single layer to approximate the 1-foot vertical relief (after subsidence) exhibited by the impacted nearshore hardbottom. The average diameter of the boulders shall be large enough to remain stable (3 to 4 feet), and no more than 5% of the boulders shall be greater than 5 feet in diameter. The distance between individual boulders shall not exceed five feet. The selected placement area shall be underlain by bedrock, with an overlying sand layer that is shallow enough to minimize subsidence of the limestone boulders, and achieve the target vertical relief of approximately 1 foot (after subsidence). In order to prevent damage to established reef communities, a 25-foot wide buffer from all existing artificial reef and/or natural hardbottom communities shall be maintained during boulder placement.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 5 of 15

Pursuant to Chapter 370.25, Florida Statutes (F.S.), the permittee shall require the selected artificial reef contractor to complete the attached "Material Cargo Manifesto" form required by the FWC, Division of Marine Fisheries Artificial Reef Program. This form shall be maintained on board the vessel during transport of artificial reef material over state waters. The permittee shall also complete the attached "Material Placement Report" and submit the form to the FWC, Division of Marine Fisheries Artificial Reef Program, within 30 days of deployment.

9. Quarterly monitoring events shall be performed during the first year after mitigative artificial reef construction to examine seasonal trends in succession and diversity and for direct comparison to the quarterly monitoring results of the 1992 artificial reef monitoring program. Results of the mitigative reef monitoring will be presented in a one-year post-construction report. The report will evaluate the species diversity and density of epibenthic organisms at the mitigative artificial reef compared to the natural hardbottom that it is intended to replace, and will also include a comparison to the established, epibenthic communities associated with the low relief, concrete material of the Nearshore Artificial Reef. The comparison shall include a discussion of differences in epibenthic and endolithic colonization (i.e. boring organisms such as the clionid sponges), which may be potentially attributed to differing construction materials (concrete versus limestone boulders), and a discussion of differences in fish populations at the three sites (limestone boulder mitigation reef, low-relief concrete material at the Nearshore Artificial Reef site, and natural nearshore hardbottom).

Per the revised mitigation and monitoring plan dated ~~August 2004~~ November 2005, if it is determined that after one year of monitoring the newly created mitigation reef, the species diversity and abundance is not similar to the nearshore hardbottom that it is intended to replace, then a second year of biannual monitoring (winter/summer) will be performed. Upon completion of the second year of monitoring, a final, two-year, post-construction report will be prepared to statistically evaluate succession, dominance and persistence of the limestone boulder epibenthic community compared to the natural, nearshore hardbottom and the low-relief concrete material at the Nearshore Artificial Reef site. If the final, two-year post-construction report finds that epibenthic/endolithic species diversity and abundance, and fish utilization at the limestone boulder artificial reef are not similar to the natural, nearshore hardbottom, the permittee shall utilize the results of the mitigation monitoring program to develop a list of recommendations for future design of effective mitigation of nearshore hardbottom habitat along the Florida Gulf coast. A formal list of recommendations to create suitable replacement habitat for nearshore hardbottom epibenthos and fish communities and a draft nearshore hardbottom mitigation plan for the Florida Gulf coast shall be provided to the Bureau of Beaches and Coastal Systems within 60 days of completion of the two-year, post-construction survey with a Copy to the FWC, Division of Marine Fisheries Artificial Reef Program.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 6 of 15

The authorized Hardbottom Mitigation and Monitoring Plan dated March 2001 and revised August 2004 shall be further revised as indicated in the attached version dated August 2004 November 2005 (~~striketroughs~~ are deletions, underlines are additions). All mitigation construction activities, biological monitoring, and reporting requirements shall be fulfilled as described in the attached plan.

13. Immediately after completion of the each fill placement event and prior to April 15 for 3 subsequent years if placed sand still remains on the beach, the beach shall be tilled as described below. During the 3 years following each fill placement event, the permittee may measure sand compaction in the area of restoration in accordance with a protocol agreed to by the FWC, the Department, the U.S. Fish & Wildlife Service, and the applicant to determine if tilling is necessary. At a minimum, the protocol provided under a and b below shall be followed. If required, the area shall be tilled to a depth of 36 inches. All tilling activity must be completed prior to April 15. An annual summary of compaction surveys and the actions taken shall be submitted to the FWC. If the project is completed during the nesting season, tilling shall not occur in areas where nests have been left in place or relocated unless authorized by the U.S. Fish and Wildlife Service in an Incidental Take Statement. A report on the results of compaction monitoring shall be submitted to the FWC prior to any tilling actions being taken. An annual summary of compaction surveys and the actions taken shall be submitted to the FWC. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.

- a. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area) and one station shall be midway between the dune line and the high water line (normal wrack line).
- b. At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lay over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 7 of 15

- c. If the average value for any depth exceeds 500 psi for any two or more adjacent stations, then that area shall be tilled prior to April 15. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the FWC shall be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling shall not be required.
 - d. To the degree possible, tilling of each nourished beach section shall occur immediately after completion of construction.
 - i) All sea turtle nests deposited in previously nourished beach shall be left in situ, marked in accordance with Special Condition # 10c and avoided during tilling.
 - ii) Once tilling is completed, no movement of vehicles or heavy equipment, and no equipment storage shall occur on the tilled beach.
 - iii) The permittee shall contact DEP and FWC if all tilling is not completed by May 15 to determine if tilling should proceed at that time.
22. Activities many occur on the nesting beach seaward of the primary dune or coastal armoring structure through May 15, 2006, in the north project area (DNR Monument R-7 through R-10) and through June 1, 2006, in the south project area (R-26 through R-31), provided the following minimization measures are met:
- a. No activity including driving of vehicles or heavy equipment, pipe movement, stockpiling, heavy equipment storage, or project lighting shall occur on the beach from DNR monument R-10 to R-12 at any time during project construction.
 - b. Placement of pipe and other on-shore preparations and equipment placement, including remobilizing the pipeline, shall be initiated within the last two weeks of March so that the beach placement of sand can begin on April 1. Connection of the offshore pipeline shall also occur in this timeframe if weather conditions allow.
 - c. Pumping of offshore sand onto the beach must begin no later than April 1 unless otherwise approved by DEP, due to circumstances beyond the control of the permittee. In the event that sand pumping does not begin prior to or on April 1, no additional construction activity shall occur on the beach after May 1 through October 31 on any area unless specifically authorized and with appropriate marine turtle minimization measures.

Notice of Permit Modification

Anna Maria Beach Restoration and Nourishment Project

Modification No. 0039378-007-EM

Page 8 of 15

- d. All construction equipment, pipes (except for the functioning pipeline) and other material shall be removed from each beach section within three days of construction completion, and by June 1 (south section) / May 15th (north section). Tilling may still be required as stated in Specific Condition #13.
23. All sections of beach that were nourished in 2005 must be tilled immediately. To do this, all pipe should be removed from the beach and relocated to a storage area off site. Tilling should then be completed as quickly as possible, to comply with Specific Condition #13 and the Terms and Conditions of the Biological Opinion. Additional tilling may be required prior to removal of all equipment from the beach at the completion of fill placement.
24. The permittee shall schedule an on-site meeting with the contractor, the ACOE project manager, and representatives from U.S. Fish and Wildlife Service, the DEP, and the FWC. At least two weeks notice shall be given for this meeting, which should occur prior to March 15, 2006, so that all parties can review the required minimization measures for sea turtles and shorebirds.
25. No construction activity, heavy equipment, stockpiling, or storage of equipment shall occur on the marine turtle nesting beach on the north side of the Island near the Anna Maria City Pier; no vessels associated with this project shall be moored offshore of this beach. All staging shall occur from the Docking Areas on the sound side of Longboat Pass.
26. **Shorebird Protection Measures.** The following conditions are required to minimize impacts to shorebirds.
- a. **Shorebird Surveys.** Shorebird surveys should be conducted by trained, dedicated individuals (Shorebird Monitor) with proven shorebird identification skills and avian survey experience. Credentials of the Shorebird Monitor will be submitted to FWC for approval. Shorebird Monitors will use the following survey protocols:
1. *Nesting Season Surveys.* Shorebird Monitors should review and become familiar with the general information and data collection protocols outlined on the FWC's Beach-Nesting Bird Website (<http://myfwc.com/shorebirds/>). An outline of what data should be collected, including downloadable field data sheets, is available on the website.
- i) The nesting season is generally 1 April – 1 September, but some nesting may occur through September. In addition, the imperiled snowy plover (*Charadrius alexandrinus*) may nest as early as February along the west coast and panhandle of

Notice of Permit Modification

Anna Maria Beach Restoration and Nourishment Project

Modification No. 0039378-007-EM

Page 9 of 15

Florida. Nesting season surveys shall begin on April 1 (or February 15 in snowy plover habitat) or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later, and be conducted daily throughout the construction period.

- ii) Nesting season surveys shall be conducted in all potential beach-nesting bird habitat within the project boundaries that may be impacted by construction or pre-construction activities during the nesting season. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded.
- iii) Surveys for detecting new nesting activity will be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt nesting behavior or cause harm to the birds or their eggs or young.
- iv) Surveys should be conducted by traversing the length of the project area and visually inspecting, using binoculars or spotting scope, for the presence of shorebirds exhibiting breeding behavior. If an ATV or other vehicle is needed to cover large project areas, the vehicle must be operated at a speed <6 mph, shall be run at or below the high-tide line, and the Shorebird Monitor will stop at no greater than 200 meter intervals to visually inspect for nesting activity.
- v) Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor will notify the Regional Biologist of the FWC within 24 hours. All breeding activity will be reported to the Beach-Nesting Bird website within one week of data collection.
- vi) Observations of non-breeding shorebirds should be reported to the Shorebird-Seabird Occurrence Database, as described below.

2. Non-Breeding Shorebird Surveys. Data collected on non-breeding shorebirds should be compatible with, and reported to, the Shorebird-Seabird Occurrence Database (<http://myfwc.com/shorebirds>).

- i) Surveys for non-breeding shorebirds should begin 14 days prior to construction commencement and be conducted once every 2 weeks for at least one year post-construction. Data collected during these surveys will provide valuable information on the use of nourished beaches to shorebirds.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 10 of 15

ii) Surveys for non-breeding shorebirds will include all potential shorebird habitat within the project boundary.

iii) Data should be entered into the database within one month of collection.

b. Buffer Zones and Travel Corridors. Within the project area, the permittee shall establish a 300 ft-wide buffer zone around any location where shorebirds have been engaged in nesting behavior, including territory defense. Any and all construction activities, including movement of vehicles, should be prohibited in the buffer zone.

i) The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.

ii) Site-specific buffers may be implemented upon approval by FWC as needed. Reasonable and traditional pedestrian access should not be blocked where nesting birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when nesting was initiated within 300 feet of an established beach access pathway. The permittee shall work with FWC staff to determine if pedestrian access can be accommodated without compromising nesting success.

iii) The permittee should post designated buffer zones with clearly visible signs around the perimeter; signs are available from the FWC Regional Biologist. If pedestrian pathways are approved within the 300-foot buffer zone, these should be clearly marked. These markings shall be maintained until nesting is completed or terminated. In the case of solitary nesters, nesting is not considered to be completed until all chicks have fledged.

iv) No construction activities, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.

v) FWC-approved travel corridors should be designated and marked outside the buffer areas. Heavy equipment, other vehicles, or pedestrians may transit past nesting areas in these corridors. However, other activities, such as stopping or turning, shall be prohibited within the designated travel corridors adjacent to the nesting site.

vi) Where such a travel corridor must be established within the project area it should avoid critical areas for shorebirds (known nesting sites, wintering grounds, FWC-designated Critical Wildlife Areas, and USFWS-designated critical piping plover

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 11 of 15

habitat) as much as possible, and be marked with signs clearly delineating the travel corridor from the shorebird buffer areas described above.

vii) To the degree possible, the permittee should maintain some activity within these corridors on a daily basis, without directly disturbing any shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction. Passive methods to modify nesting site suitability must be approved by the FWC Wildlife Diversity Conservation Biologist for that region.

c. **Notification.** If shorebird nesting occurs within the project area, a bulletin board will be placed and maintained in the construction area with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that “BIRD NESTING AREAS ARE PROTECTED BY THE FLORIDA THREATENED AND ENDANGERED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS.”

d. **Beach Contours.** All tilling and scarp removal should be done outside the shorebird nesting season. It is the responsibility of the contractors to avoid tilling or scarp removal in areas where nesting birds are present.

i) Shorebird monitoring shall be conducted on all sites to be tilled for two days prior to the actual tilling. Any shorebird nests documented on site shall be marked and protected during tilling.

ii) A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling.

iii) The slope between the mean high water line and the mean low water line must be maintained in such a manner as to approximate natural slopes.

e. **Placement of Equipment and Sand.** If it will be necessary to extend construction pipes past a known shorebird nesting site or over-wintering area for piping plovers, then whenever possible those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a known shorebird nesting site during the shorebird nesting season.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 12 of 15

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also 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. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached Hardbottom Mitigation and Monitoring Plan (revised November 2005), we are notifying all necessary parties of the modification.

This letter of approval also alters the expiration date of the permit from March 8, 2006, to **May 15, 2006**, for the R-7 to R-10 section of beach fill, and to **June 1, 2006**, for the R-26 to R-31 section of beach fill. It does not alter the other Specific or General Conditions, or monitoring requirements of the permit. This letter 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 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,

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 13 of 15

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 Rule 62-110.106(3), 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.

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:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) 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;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 14 of 15

- (e) 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
- (g) 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.

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.

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. 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.

Notice of Permit Modification
Anna Maria Beach Restoration and Nourishment Project
Modification No. 0039378-007-EM
Page 15 of 15

If you have any questions regarding this matter, please contact Lainie Edwards at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7796.

Sincerely,



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

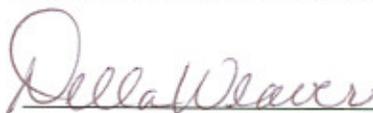
MKS/le

Attachment: Hardbottom Mitigation and Monitoring Plan (revised November 2005)

cc: Charlie Hunsicker, Manatee County
Jennifer Davis, CPE
Craig Kruempel, CPE
Melissa Green, CPE
Rob Baron, CPE
Cece McKiernan, DEP, Southwest District
Steve West (Field Eng.), DEP, BBCS
Vladimir Kosmyrin, DEP, BBCS
Michael Barnett, DEP, BBCS
JCP Compliance Officer, DEP, BBCS
Catherine Florko, DEP, BBCS
Roxanne Dow, DEP BBCS
Robert Brantly, DEP BBCS
Robbin Trindell, FWC, ISMS
Keith Mille, FWC
Mike Nowicki, USACE, Jacksonville
Eric Gasch, USACE Jacksonville
Paul Karch, USACE Jacksonville
BBCS Permit 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.

 2/8/06
Deputy Clerk Date