



Jeb Bush
Governor

Department of Environmental Protection

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

David B. Struhs
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

October 8, 2001

Brevard County
c/o Virginia Barker, Beach Management Coordinator
Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

Permit No. 137212-005-JC, Brevard County
Project Description: Brevard County Shore Protection Project, SOUTH REACH
Permit Modification

Dear Ms. Barker:

Your request for a modification to the above referenced Joint Coastal Permit, issued pursuant to Chapter 161 and Part IV of Chapter 373, Florida Statutes, and Title 62, Florida Administrative Code, has been approved by the Department. Please read the enclosed permit and permit conditions closely before starting construction. Particularly note the permit conditions pertaining to written reports which must be submitted to the Department at specified times.

Please direct any questions regarding this document to me by letter at the above address (add Mail Station 300), or by telephone at (850) 487-4471, ext. 121.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith J. Mille".

Keith J. Mille
Environmental Specialist
Bureau of Beaches and Coastal Systems

KJM
enclosures

Virginia Barker
October 8, 2001
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Copies furnished to:

Kevin R. Bodge, Ph.D., P.E., Olsen Associates, Inc., 4438 Herschel St., Jacksonville, FL 32210
Tom Jenkins, Brevard County, 2725 Judge Fran Jamieson Way, Viera, Florida 32940
Richard Bonner, USACOE, Jacksonville
Osvaldo Rodriguez, USACOE, Jacksonville
DEP, Office of General Counsel
Terry Zable (E.A. SLERP), DEP - Central District Office, Orlando
Robbin Trindell, FWCC-BPSM
Russell Snyder, DEP-OBCS
Lethie Lanham, DEP-OBCS
Blair Witherington, FWCC-FMRI, 9700 South A1A, Melbourne Beach, Florida 32951
Rita Baker, STPS, P.O. Box 510988, Melbourne Beach, FL 32951
Llewellyn Ehrhart, Ph.D., University of Central Florida, Department of Biology, 4000 Central
Florida Blvd., Orlando, Florida 32816-2368
OBCS Permit Information Center
OBCS File



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CONSOLIDATED MODIFICATION OF JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE/AUTHORIZED ENTITY:

Brevard County
Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

Permit/Authorization No.: 137212-005-JC

Date of Issue: October 8, 2001

Expiration Date: November 22, 2014

County: Brevard County

Project: Brevard County Shore Protection
Project; SOUTH REACH

This major modification to the permit is issued under the authority of Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

The permit shall be modified as shown in the Activity Description, Specific Conditions, and Monitoring Required sections, with ~~strikethroughs~~ as deletions and underlines as additions.

ACTIVITY DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and ~~R-138~~ R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and ~~Space Coast Shoals Borrow Area I located between about 1.1 and 2.2 miles offshore of Patrick Airforce Base~~ Space Coast Borrow Area II located offshore between R-126 and R-130.5.

The elevation of the construction beach berm is to be +8.1 feet NGVD (+10.0 ft. MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 150 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events.

"More Protection, Less Process"

Printed on recycled paper.

Stormwater outfall improvements (to be authorized under a separate permit) will also be conducted prior to the second renourishment event.

The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act. This permit also constitutes certification of compliance with state water quality standards pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapter 253, Chapter 18-21, Section 62-343.075, F.A.C., and the policies of the Board of Trustees.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the nourishment activity qualifies for a Consent of Use for sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted, pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the borrow area activity requires a public easement for the use of those lands, pursuant to Chapter 253.77, F.S. The Department intends to issue the public easement, subject to the limits, conditions, and locations of work shown in the attached drawings, and is also subject to the General Conditions and Specific Conditions, which are a binding part of this permit.

The above named permittee is hereby authorized to construct the work in accordance with the permit project description and conditions, including water quality monitoring requirements, Plans and Specifications and other documents attached hereto or on file with the Department and made a part hereof. However, the final documents required to execute the public easement have been sent to the Division of State Lands. The Department intends to issue the public easement,

upon satisfactory execution of those documents. **You may not begin construction of this activity on state-owned, sovereign submerged lands until the public easement has been executed to the satisfaction of the Department.**

ACTIVITY LOCATION:

Located in Brevard County, Sections 25, 30, 31, Township 27 South, Range 38 East; Sections 5, 6, 7, 8 Township 28 South, Range 38 East; within the Atlantic Ocean, Class III Waters.

GENERAL CONDITIONS:

1. All activities authorized by this permit shall be implemented as set forth in the drawings incorporated by reference and all conditions and requirements of this permit. The permittee shall notify the Department in writing of any anticipated deviation from the permit prior to implementation so that the Department can determine whether a modification of the permit is required.
2. If, for any reason, the permittee does not comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Office of Beaches and Coastal Systems (Office) and the appropriate District office of the Department with a written report containing the following information: a description of and cause of noncompliance; and the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.
3. This permit does not eliminate the necessity to obtain any other applicable licenses or permits which may be required by federal, state, local or special district laws and regulations. This permit is not a waiver or approval of any other Department permit or authorization that may be required for other aspects of the total project which are not addressed in this permit.
4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of sovereignty land of Florida seaward of the mean high-water line, or, if established, the erosion control line, unless herein provided and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State. The permittee is responsible for obtaining any necessary authorizations from the Board of Trustees of the Internal Improvement Trust Fund prior to commencing activity on sovereign lands or other state-owned lands.
5. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.

6. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee. The issuance of this permit does not convey any vested rights or any exclusive privileges.

7. This permit or a copy thereof, complete with all conditions, attachments, plans and specifications, modifications, and time extensions shall be kept at the work site of the permitted activity. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

8. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel with proper identification and at reasonable times and in compliance with specified safety standards, access to the premises where the permitted activity is located or conducted for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department and to have access to and copy any records that must be kept under conditions of the permit; to inspect the facility, equipment, practices, or operations regulated or required under this permit; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules. Reasonable time may depend on the nature of the concern being investigated.

9. At least forty-eight (48) hours prior to commencement of activity authorized by this permit, the permittee shall submit to the Office and the appropriate District office of the Department a written notice of commencement of construction indicating the actual start date and the expected completion date.

10. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the State Historic Preservation Officer and the Office.

11. Within a reasonable time after completion of construction, the permittee shall submit to the Office of Beaches and Coastal Systems and the appropriate District office of the Department a written statement of completion and certification by a licensed professional engineer registered in the state of Florida. (*NOTE: Certification by a licensed professional engineer registered in the State of Florida is not required for written statements of completion submitted by the U.S. Army Corps of Engineers*). This certification shall state that: all locations and elevations specified by the permit have been verified; the activities authorized by the permit have been performed in compliance with the plans and specifications approved as a part of the permit, and all conditions of the permit; or shall describe any deviations from the plans and specifications, and all conditions of the permit. When the completed activity differs substantially from the permitted plans, any substantial deviations shall be noted and explained on two copies of as-built drawings submitted to the Department. For that part of the project construction undertaken by the U.S. Army Corps of Engineers, the Corps shall submit to the Department a written statement of completion, in lieu of this certification. This statement shall notify the Department that the work has been completed and shall include a description of the actual work completed under the

Corps' direction. If requested, the Department shall be provided a copy of any as-built drawings required of the Corps' contractor or survey performed by the Corps.

SPECIFIC CONDITIONS:

1. ~~Space Coast Shoals Borrow Area I shall not be utilized. At least 180 days prior to dredging of the Space Coast Shoals Borrow Area I, the permittee shall submit two complete sets of construction plans and specifications, certified by an engineer duly registered pursuant to Chapter 471, Florida Statutes, for Department review and approval. The plans shall include the following:~~
 - a. ~~Additional geotechnical information to adequately characterize and further define the sediment characteristics within the proposed boundaries of the Space Coast Shoals Borrow Area.~~
 - b. ~~A 3-dimensional map of the borrow area showing the precise location of any non-beach quality material.~~
 - c. ~~A description of the proposed methods of construction for dredging the Space Coast Shoals Borrow Area.~~
 - d. ~~A quality assurance plan to ensure adequate control over the dredge and fill placement areas.~~
2. Space Coast Shoals Borrow Area II is approved as shown on the attached drawings dated February 16, 2001 as revised 4/3/01. Fill material for beach nourishment shall not be dredged from the Space Coast Shoals Borrow Area until the construction plans outlined in Specific Condition No. 1 are submitted to the Department (Office of Beaches and Coastal Systems) and the Department issues a Notice to Proceed for the use of this borrow area.
3. Prior to commencement of construction, the permittee shall submit two copies of detailed final construction plans and specifications for all authorized activities and any processing fee as specified by Rule 62B-49.006, F.A.C., for authorization to conduct subsequent beach nourishment activities. These documents shall be signed and sealed by the design engineer, who must be registered in the State of Florida, and shall bear the certifications specified in Rule 62B-33.007(3)(b) and 62B-33.007(3)(n), Florida Administrative Code. *(NOTE: Certification by a licensed professional engineer registered in the State of Florida is not required for submittals by the U.S. Army Corps of Engineers).*
4. Pursuant to Chapter 161.141, prior to construction of the beach restoration project, the board of trustees must establish the line of mean high water for the area to be restored to establish the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean and the upland properties. No work shall commence until the Erosion Control Line has been executed to the satisfaction of the Department.
5. The terms, conditions, and provisions of the required Public Easement (Instrument No. 30340, BOT File No. 050220533) for the borrow area shall be met. Construction activity shall not commence within the Space Coast Shoals borrow area located 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.

6. At least 14 days prior to the commencement date, the permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with the permittee's contractors, and Department staff representatives. The permittee shall provide a minimum 7 days advance written notification to the following offices advising of the date, time, and location of the pre-construction conference.

DEP Office of Beaches and Coastal Systems
Mail Station 300
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
phone: (850) 487-4471
fax: (850) 488-5257

DEP Central District Office
Submerged Lands and Environmental Resources Program
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803-3767
phone: (407) 893-3311
fax: (407) 893-3075

FWC Bureau of Protected Species Management
620 South Meridian Street
Tallahassee, Florida 32399-1600
phone: (850) 922-4330
fax: (850) 921-4369

DEP Central District Branch Office
13 East Melbourne Ave., Suite A&B
Melbourne, Florida 32901
phone: (407) 984-4800
fax: (407) 984-4816

7. All derelict structures, including groins and debris currently serving no purpose, located within the area to be restored shall be removed to a location landward of the coastal construction control line prior to initiation of the restoration project.

8. Dredging equipment operating within the SNDSRA shall be equipped with real-time navigation control with maximum horizontal error of less than 5 meters. Sole reliance upon Loran-C navigation control shall not be permitted.

9. For disposal of dredged material from the access lane to Borrow Area I, beach quality material (containing less than 10% fines) may be placed within the Beach Fill Area or the Canaveral Nearshore Disposal Area. Non-beach quality material will be placed offshore in the Canaveral Nearshore Disposal Area or in the Ocean Dredged Material Disposal Site (ODMDS). The dredged material will be handled such that only material containing less than 20% fines will be placed in the Canaveral Nearshore Disposal Area. Material containing greater than 20% fines will be placed in the ODMDS. During construction an on-site inspector with training in the determination of sediment characteristics will evaluate the suitability of dredged material with less than 20% fines for nearshore disposal vs. ocean disposal.

10. Best management practices shall be used at all times during construction to minimize turbidity at both the borrow and fill sites. When hydraulic pumping of fill sand onto the beach is utilized, these practices shall include constructing dikes parallel to the shore and landward of mean high water and discharging sand pumped from the borrow/unloader site

along the landward side of the dikes. When the sand/water slurry is hydraulically pumped onto the beach, the opening of the discharge pipe shall be at least 200 feet from the end of the dike where slurry water flows back into the open waters of the state.

11. The existing stormwater outflows (located at R-119.5, R-122.5, and R-123.5) shall be monitored after each significant rainfall event in order to gauge the degree to which flow occurred through the beach berm. In the event that flooding, or uncontrolled discharge and/or erosion through the berm becomes a prevalent problem, then alternate short-term approaches to manage the discharge shall be presented to the Department for review and approval as a permit modification.
12. No subsequent beach nourishment event shall be conducted until the Brevard County Board of County Commissioners has submitted for approval by the Department staff a comprehensive storm water management plan for the coastal zone of Brevard County. The plan is to provide for the redirection of stormwater flows away from the beach/dune system and the elimination of all the outfalls and/or storm water facilities located seaward of the dune or bulkhead line. The plan shall outline all funding, permitting and construction schedules. The plan must be fully implemented by the year 2010.
13. In order to ensure that manatees are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following conditions:
 - a. The contractor instructs all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s), and shall implement appropriate precautions to ensure protection of the manatee(s).
 - b. All construction personnel are advised that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act. The permittee and/or contractor may be held responsible for any manatee harmed, harassed, or killed as a result of construction activities.
 - c. Prior to commencement of construction, the prime contractor involved in the construction activities shall construct and display at least two temporary signs (placards) concerning manatees. For all vessels, a temporary sign (at least 8.5" X 11") reading "**Manatee Habitat/Idle Speed In Construction Area**" will be placed in a prominent location visible to employees operating the vessels. In the absence of a vessel, a temporary sign (at least 2' X 2') reading "**Warning: Manatee Habitat**" will be posted in a location prominently visible to land based, water-related construction crews.

A second temporary sign (at least 8.5" X 11") reading "**Warning, Manatee Habitat: Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-800-DIAL-FMP**" will be located prominently adjacent to the displayed issued construction permit. Temporary notices are to be removed by the permittee upon completion of construction.

- d. Siltation barriers shall be properly secured so that manatees cannot become entangled, and are monitored at least daily to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.
 - e. All vessels associated with the project operate at "idle speed/no wake" at all times while in the construction area and while in water where the draft of the vessel provides less than a four foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
 - f. If manatees are seen within 100 yards of the active daily construction/dredging operation all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment.
 - g. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol (1-800-DIAL-FMP) and to the FWCC Bureau of Protected Species Management (850) 922-4330.
 - h. The contractor maintains a log detailing sightings, collisions, or injuries to manatees should they occur during the contract period. A report summarizing incidents and sightings shall be submitted to the FWCC Bureau of Protected Species Management, 3900 Commonwealth Boulevard, Mail Station 245, Tallahassee, Florida 32399-3000 and to the U. S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912. This report must be submitted within 90 days of completion of the activities conducted in accordance with the permit.
14. In order to ensure that right whales are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following conditions:
- a. From December 1 to March 31 all vessels should post a dedicated observer to spot right whales in the southeastern critical habitat area. The southeastern critical habitat area extends from 31°15'N to 30°15'N out 15 miles offshore and from 30°15'N to 28°00'N out 5 miles offshore. If a whale is seen, the vessel speed should be reduced

(8 knots is suggested) and the vessel operator must stay 500 yards from the whale and take the necessary precautions to avoid the whale. Daily updates of whale sightings during this portion of the year are maintained by the St. Johns Bar Pilots Association available at (904) 246-6716 or on VHF marine channel 14; and,

- b. From December 15 through February 15 vessels shall proceed at reduced speeds (suggested 8 knots) in the southeastern right whale critical habitat area.

15. In order to ensure that marine turtles are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following conditions:

- a. All fill material placed shall be sand that is similar to that already existing at the beach site in both coloration and grain-size distribution. All such fill material shall be free of construction debris, rocks, or other foreign matter and shall not contain, on average, greater than 10 percent fines (i.e., silt and clay) (passing the #200 sieve) and shall be free of coarse gravel or cobbles.
- b. Construction operations within the South Reach Nearshore Disposal and Sand Rehandling Area (SNDRA) shall be started after September 31 and be completed before May 1. In the event that conditions suggest that nesting and hatching conclude earlier than September 31 for any given year (e.g., in the event of a hurricane or other catastrophic event), the permittee may request a minor modification of this condition.
- c. Beach nourishment shall be started after October 31 and be completed before May 1. During the May 1 through October 31 period, no construction equipment or pipes shall be stored on the beach.
- d. If the beach nourishment project will be conducted during the period from March 1 through April 30, daily early morning surveys for sea turtles shall be conducted within the period March 1 through April 30 that the project is being conducted, and eggs shall be relocated per the following requirements.
 - i. Nest surveys and egg relocations shall only be conducted by personnel with prior experience and training in nest survey and nest relocation procedures. Surveyors shall have a valid Florida Department of Environmental Protection marine turtle permit. Nest surveys shall be conducted daily between sunrise and 9 a.m. Surveys shall be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle nesting survey and protection measures.
 - ii. Only those nests that might be affected by construction activities shall be relocated. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation.

Nest relocations in association with construction activities shall cease when sand placement no longer threatens nests. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left in place unless other factors threaten the success of the nest. Any nests left in the active construction zone shall be clearly marked, and the actual location of the clutch determined. A circle with a radius of ten (10) feet, centered at the clutch, shall be marked by stake and survey tape or string. No construction activities shall enter this circle and no adjacent construction shall be allowed that might directly or indirectly disturb the area within the staked circle.

- e. If the beach nourishment project shall be conducted during the period from November 1 through November 30, then daily early morning surveys for late nesting sea turtles shall be conducted 65 days prior to project initiation and continue through September 30, and eggs shall be relocated per the preceding requirements.

(Note: marine turtle surveys, beach compaction and escarpment maintenance activities and reporting may be consolidated with the similar requirement of the Canaveral Sand By-Passing Project, Permit No. 05-222904-9)

- f. Reports on all nesting activity and marine turtle protection measures taken during construction shall be provided for the initial nesting season following the completion of construction, and for a minimum of two additional nesting seasons. Reports shall be submitted to the Department no later than 60 days after the completion of all monitoring activities, and shall include daily report sheets noting all activity, nesting success rates, the number of nests washed out or lost, hatching success of all relocated nests, hatching success of a statistically valid sample of nests left in place and all relocated nests, dates of construction, and names of all personnel involved in nest surveys and relocation activities. All such personnel shall be qualified as required above.
- g. Immediately after completion of the beach nourishment project and prior to March 1 for three subsequent years, sand compaction shall be monitored in the area of restoration in accordance with a protocol agreed to by the FWS, the Florida Department of Environmental Protection, and the applicant. At a minimum, the protocol provided 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 March 1. A report on the results of compaction monitoring and a description of the areas to be tilled shall be submitted to the department prior to any tilling actions being taken. An annual summary of compaction surveys and the actions taken shall be submitted to the Department. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified the previous year.

- i. Compaction sampling stations shall be located along shore-normal transects at 500-foot intervals across the entire project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area); one station shall be midway between the dune line and the high water line; and one stations shall be located just landward of the high water line. 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 reach depth shall be averaged to produce final values for each depth at each station. Reports shall include all 27 values for each transect line and the final 9 averaged compaction values.
 - ii. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled immediately prior to March 1. 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 contact with the Department shall be required to determine if tilling is required. If a few values exceeding 500 psi are present but are located randomly within the project area, tilling shall not be required.
- h. Visual surveys for escarpments along the beach fill area shall be made immediately after completion of the sand transfer operations and prior to March 1 of the following two years. In addition, weekly surveys of the project area shall be conducted during the two nesting seasons following completion of the beach nourishment.
- i. The number of escarpments and their location relative to DNR-DEP reference monuments shall be recorded during each weekly survey and reported relative to the length of the beach surveyed. Notations on the height of these escarpments shall be included (0 to 18 inches, 18 inches to 4 feet, and 4 feet or higher) as well as the maximum height of all escarpments.
 - ii. Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet shall be leveled to the natural beach contour by April 15. **The permittee shall provide documentation that authorization for incidental take during scarp removal has been obtained from the U.S. Fish and Wildlife Service prior to project initiation.** Any escarpment removal shall be reported relative to R-monument.
 - iii. If weekly surveys during the marine turtle nesting season document subsequent reformation of escarpments that exceed 18 inches in height for a distance of 100 feet, then the Department shall be contacted immediately to determine the

appropriate action to be taken. Upon written notification, the permittee shall level escarpments in accordance with mechanical methods prescribed by the Department.

- i. From March 1 through April 30 and November 1 through November 30, staging areas for construction equipment shall be located off the beach to the maximum extent practicable and no construction equipment shall be parked on the beach where it can hinder marine turtle nesting or hatchling emergence. In addition, all construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes on the beach shall be in such a manner so as to impact the least amount of nesting habitat and shall likewise not compromise the integrity of the dune systems.
- j. During the early (March 1- April 30) and latter (November 1 - November 30) portions of marine turtle nesting and hatching season, all on-beach lighting associated with the project shall be limited to the immediate area of active construction only and shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid excessive illumination. Lighting on offshore equipment shall be similarly minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid excessive illumination of the water, while meeting all U.S. Coast Guard and OSHA requirements. Shielded low pressure sodium vapor lights are highly recommended for lights on the beach and on offshore equipment that cannot be eliminated.
- k. In the event a hopper dredge is utilized for sand excavation, all conditions in the NMFS Biological Opinion for hopper dredging along the S.E. U.S. Atlantic Coast must be followed, and the Bureau of Protected Species shall be sent copies of the reports specified in the Biological Opinion.
- l. In the event an unmarked marine turtle nest or a dead, injured, or sick marine turtle is discovered during construction activities, the marine turtle permit holder and the Bureau of Protected Species Management shall be notified immediately such that appropriate conservation measures can be taken.

MONITORING REQUIRED:

1. Water Quality

Parameter: Turbidity - Nephelometric Turbidity Units (NTUs)

Borrow Site:

Frequency: Every 6 hours, or, if a hopper dredge is used then approximately midway through each fill cycle while the dredge is actively dewatering or discharging overflow,

during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: 500 meters from the dredge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

Beach Nourishment Site:

Frequency: Once every 6 hours during a beach disposal operation, during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: At least 500 meters up-current from the point where discharge water is re-entering waters of the State (discharge point), clearly outside of the influence of any turbid plume, during daylight hours only. Samples shall be collected at the surface and one meter above the bottom, at the same distance offshore as the compliance station.

Compliance: At a point no more than 150 meters downcurrent from the discharge point within the densest portion of any visible turbidity plume caused by the construction activities. If a plume is not visible, the samples shall be collected 50 m from the shoreline. Samples shall be collected from the surface and one meter above the bottom.

Disposal at the Nearshore Disposal and Sand Rehandling Area (NDSRA):

Frequency: Approximately every 6 hours between 15 and 30 minutes after disposal of a bargeload of material during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: 500 meters from the disposal barge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the barge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

Dredging at the Nearshore Disposal and Sand Rehandling Area (NDSRA):

Frequency: Approximately every 6 hours during a dredging operations during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed..

Background: 500 meters from the dredge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance sites greater than 29 NTUs above the associated background turbidity levels, construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels.

Copies of all reports shall be submitted to the Office of Beaches and Coastal Systems in Tallahassee on a weekly basis within seven days of collection. The data shall be submitted under a cover letter containing the following information: (1) permit number; (2) a statement describing the methods used in collection, handling, storage and analysis of the samples; (3) a map indicating the sampling locations; and (4) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data. Monitoring reports shall also include the following information for each sample that is taken: a) time of day samples taken; b) depth of water body; c) depth of sample; d) antecedent weather conditions; e) tidal stage and direction of flow; and f) wind direction and velocity.

The above information may be submitted on the Corps' Turbidity Monitoring Test Report form, Section 01131, Appendix No. A.

2. Hydrographic Monitoring

a. Topographic and bathymetric profile surveys of the project area shall be conducted immediately prior to construction, immediately following completion of construction, and annually thereafter for a period of three (3) years, then every other year thereafter until the next beach nourishment. During this monitoring period, additional surveys may be required following a major storm as determined by the Department. These surveys shall include profiles at each of the Department of Environmental Protection's DNR reference monuments from R-116 through R-140 in Brevard County. All profiles shall be measured along the same azimuths

previously surveyed by the Department and commence at the reference monument and extend seaward at least 1,500 feet or to a depth of -30.0 ft. NGVD, whichever is farther.

b. Bathymetric surveys of the borrow area shall be conducted immediately following completion of construction and during the third annual monitoring event. Grid lines shall be spaced a maximum of 250 feet apart and extend a minimum of 250 feet beyond the boundaries of the borrow area.

c. Bathymetric surveys of the South Reach Nearshore Disposal and Sand Rehandling Area (SNDSRA) shall be conducted at approximately 250-ft. alongshore spacing (R-monuments and quarter-points) extending a minimum of 2500 ft. landward, and 500-ft. seaward of the rehandling area's limits. This shall be done prior to the initial transfer of sand to the shoreline and at intervals not greater than 45 days during construction activities. The pre-construction survey shall include the entire area as described above. Surveys during construction shall include only those portions of the disposal area used for construction, extending to a minimum of 500-ft. to all sides of the active work areas(s). The post-construction survey shall use line spacing no greater than 500 ft. throughout the entire rehandling area, and approximately 250 ft. within the areas actually used for construction activities.

d. If any dredging of the Space Coast Shoals Borrow Area is conducted, topographic and bathymetric profile surveys of the beach adjacent to the borrow area shall be conducted immediately prior to construction, immediately following completion of construction, and annually thereafter for a period of three (3) years, then every other year thereafter until the next beach nourishment. During this monitoring period, additional surveys may be required following a major storm as determined by the Department.. These surveys shall include profiles at each of the Department of Environmental Protection's DNR reference monuments from R-65 through R-75 ~~R-62 through R-72~~ in Brevard County. All profiles shall be measured along the same azimuths previously surveyed by the Department and commence at the reference monument and extend seaward at least 1,500 feet or to a depth of -30.0 ft. NGVD, whichever is farther.

e. Two sand samples shall be obtained immediately following completion of construction at a reference monument line approximately every 1,000 feet within the beach fill project area. Each sample shall be tested for grain size distribution and shell content. Samples shall be collected from approximately 1 ft. below the surface of the dry construction berm at (1) approximately 20 feet from the landward toe of the dune and (2) midway across the top of the berm width. This shall amount to no less than 52 samples taken throughout the 51,800 linear ft. project length. If patches of inconsistent material are observed between profiles while taking these samples, a visual description of the sediment irregularities, including the location, magnitude, and general characterization should be provided to the Department. Upon further review, the Department may require additional sediment sampling.

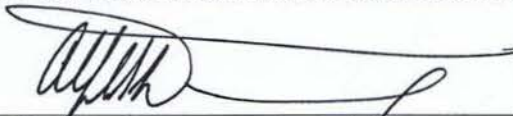
f. The permittee shall submit an engineering report and the monitoring data to the Office of Beaches and Coastal Systems within 60 days of completion of the post-construction

survey and each annual survey. The survey data should be submitted on floppy disk in an ASCII format stored according to the department's standards for file structure (contact the Office staff for additional information on specific requirements) and include all survey control information.

- i. The report should summarize the performance of the beach fill project, including a characterization of the sand actually placed on the beach, identify erosion and accretion patterns within the project limits and along the adjacent shorelines, verify the analyses that were conducted in the development of the design of the project, and identify any adverse impacts which would be attributable to the project.
- ii. Appendices should include plots of survey profiles and graphical presentations of volumetric and shoreline position changes for both the monitoring area and at each profile survey. Results should be analyzed for changes between annual surveys and cumulatively since project construction.
- iii. In addition to the monitoring information collected by the permittee, the reports shall also include information regarding the periodic placement of dredged material on the beach from sand-bypassing and maintenance dredging of Port Canaveral and the effects of this material on the beach restoration project. A consolidated monitoring program may be conducted in conjunction with the Canaveral Sand Bypassing Project.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

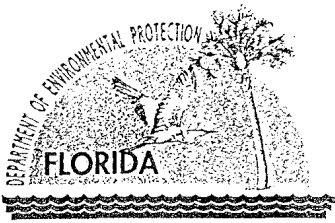


Alfred B. Devereaux, Jr., Director
Office of Beaches and Coastal Systems

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.

Sandra K Powell 10-8-01
Deputy Clerk Date



Department of Environmental Protection

Jeb Bush
Governor

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

David B. Struhs
Secretary

April 11, 2002

Virginia Barker, Staff Specialist IV
Brevard County Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

RECEIVED
APR 15 2002

Permit Modification No. 0137212-006-JC
Permit No.137212-001-JC, Brevard County
Brevard County Shore Protection Project; SOUTH REACH,

Dear Ms. Barker:

Your request to modify Permit No.137212-001-JC, submitted by Dr. Kevin Bodge on March 14, 2002, has been received and reviewed by Department staff. The proposed permit modification is to increase the elevation of the approved construction berm by up to 0.8 feet without increasing the volume of fill material. This would result in a narrower construction berm.

The purpose of this modification is to ensure the project's design provision of storm protection benefit in light of recent storm erosion and the resultant increased vulnerability of upland properties to wave overtopping and end-losses of the construction berm. The application for this permit modification stated the following:

Pre-construction surveys of the beach indicate severe erosion of the dune face and steepening of the beach profile caused by prolonged nor'easter and tropical storm waves in the Fall of 2001. The foundations of the habitable structures along the south end of the project area are within 15 to 25 feet of the eroded dune face. Continued run-up of waves to the base of the dune face, which begins at or about +10.8 ft mlw, will result in accelerated dune erosion and associated critical damage to the existing properties.

The incidence and elevation of wave overtopping progressively increases toward the south of the Brevard County Shore Protection Project because both the wave energy and nearshore profile steepness increases with increasing southward distance from the sheltering effect of Canaveral Shoals. Increased end-losses of the fill due to southerly transport potential, which increases southward from Patrick Air Force Base, are also anticipated.

Increasing the construction berm elevation will decrease the frequency and severity of wave overtopping of the berm and potential erosion of the existing dune face and upland property.

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Brevard County Shore Protection Project; South Reach
Permit Modification No. 0137212-006-JC
Page 2

This will likewise increase the longevity of the berm and decrease end-losses, thus better maintaining the project's design storm protection benefits between renourishments. While the existing plan's provision of a minor dune feature will beneficially affect protection of the existing, eroded dune face, the modest size of this feature (about 1 cy/ft) is not anticipated nor intended to withstand frequent wave overtopping.

It is additionally noted that an increased construction berm elevation will beneficially affect marine turtle nesting success by decreasing the severity of tidal inundation of nests due to wave overtopping. Turtle nesting density increases significantly toward the south in Brevard County -- typically reaching over 300 nests per kilometer along the project area's south end. Tidal inundation of the North Reach berm by Tropical Storm Gabrielle in mid-September of last year resulted in the loss of essentially all of the remaining (late summer) marine turtle nests, numbering about 75 nests, along the project berm.

The Florida Fish & Wildlife Conservation Commission also reviewed this proposal and found that it would not be expected to have an adverse effect on marine turtles or their nesting habitat.

The project description (as previously modified by Permit Modification Nos. 137212-002, -004, and -005) shall be revised as follows (underlines are additions and ~~strikethroughs~~ as deletions):

PROJECT DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

The elevation of the construction beach berm is to be +8.1 to +8.9 feet NGVD (+10.0 to +10.8 ft. MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130~~150~~ and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events. Stormwater outfall improvements (to be authorized under a separate permit) will also be conducted prior to the second renourishment event.

Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
Permit Modification No. 0137212-006-JC
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The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

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. 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 requested. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification(s).

This letter of approval does not alter the November 22, 2014 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 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.

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Brevard County Shore Protection Project; South Reach
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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.

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.

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Brevard County Shore Protection Project; South Reach
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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;
- (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; 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.

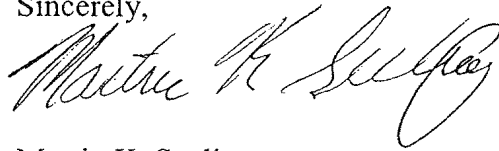
When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in rule 62-110.106, F.A.C., a person may request a copy of the agency action. The

Notice of Permit Modification
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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.

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

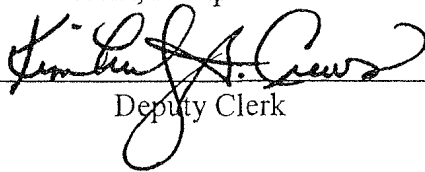
Sincerely,

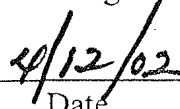


Martin K. Seeling
Environmental Administrator
Office of Beaches and Coastal Systems

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.


Deputy Clerk


Date

Copies furnished to:

Kevin R. Bodge, Ph.D., P.E., Olsen Associates, Inc., 4438 Herschel St., Jacksonville, FL 32210
Tom Jenkins, Brevard County, 2725 Judge Fran Jamieson Way, Viera, Florida 32940
Richard Bonner, USACOE, Jacksonville
Osvaldo Rodriguez, USACOE, Jacksonville
DEP, Office of General Counsel
Terry Zable (E.A. SLERP), DEP - Central District Office, Orlando
Deborah Valin, DEP - Central District Branch Office, Melbourne
Robbin Trindell, FWCC-BPSM
Vladimir Kosmynin, DEP-OBCS
Russell Snyder, DEP-OBCS
Lethie Lanham, DEP-OBCS
Jennifer Brown, PBS&J-OBCS
OBCS File



Department of Environmental Protection

Jeb Bush
Governor

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

David B. Struhs
Secretary

April 23, 2002

Virginia Barker, Staff Specialist IV
Brevard County Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

Permit Modification No. 0137212-007-JC
Permit No.137212-001-JC, Brevard County
Brevard County Shore Protection Project; SOUTH REACH,

Dear Ms. Barker:

Your request to modify Permit No.137212-001-JC, submitted by Dr. Kevin Bodge on March 14, 2002, has been received and reviewed by Department staff. The proposed permit modification is to address existing storm water outfalls within the limits of the South Reach beach nourishment project.

The proposed modification entails installation of termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill. The outfalls are an interim measure, pending submittal of a comprehensive storm water management plan as required in Specific Condition #11 of the permit. Details of the installation, and the structures' locations, are illustrated in the *attached permit drawings* (5 sheets).

Each pipe termination will consist of a perforated 48-inch diameter (approximate) vertical riser attached to the end of the existing outfall pipe. The riser will have a grate at the top and is open at the bottom. Filter fabric material will prevent sand from entering the pipe through the grate and openings, but will allow water to flow out. The top grate will be below the upland drain (curb) elevation, to allow overflow in the event of heavy rain, but at least 1 to 2 ft above the elevation of the local beach fill sand. The top grate will be locked (to prevent unintended access). The bottom will be at or just above the mean high water elevation.

All of the existing structures and proposed terminations are landward of the Erosion Control Line. All are located within the design profile of the federal shore protection project (i.e., that portion of the beach fill that is to be maintained by nourishment). As such, and considering the extreme landward location of the structures, erosion and undermining is not reasonably anticipated. All of the proposed work is located within the zone for which construction easements for the beach fill project have already been obtained and certified to the Corps; and,

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the subject work is an integral part of the beach fill activity as described in the easement document.

Each of the structures and proposed terminations are within a small, 25-ft wide dune-fill feature that will be constructed with the beach nourishment project along the toe of the eroded dune face. The risers' location will generally fall at or landward of the crest of this small (2.5-ft high) dune. The dune is intended to be planted with native vegetation at a later date.

The purpose of the proposed termination risers is (1) to prevent the beach fill from burying and blocking the outfall pipes with sand, and (2) to minimize uncontrolled discharge of storm water across the beach berm. The former will decrease the likelihood of localized flooding of S.R. A1A and the latter will decrease the frequency and severity of wash-outs of the beach after heavy rainfalls. This will, in turn, better maintain the integrity of the overall beach nourishment project and increase project life between renourishments, better maintain lateral beach access, decrease offshore losses of sand, and decrease the potential for washout of marine turtle nests by minimizing uncontrolled drainage flow across the beach berm.

The Florida Fish & Wildlife Conservation Commission reviewed this proposal and found that it would not be expected to have an adverse effect on marine turtles or their nesting habitat if the following conditions are met: nests within 50 feet of the modified stormwater outfalls will be marked and monitored for one nesting season; and no outfall construction activity is allowed between May 1 and November 1.

The stormwater engineering staff from the Department's Central District Office also reviewed this proposal and found that the project involves improvements to existing stormwater outfalls, which have historically discharged onto the beach. The proposed activity would involve placing perforated vertical termination risers onto the pipe ends, which would prevent the stormwater from discharging directly onto the beach. The vertical termination pipes would allow small storm events to infiltrate into the beach sand, while larger events would cause the discharge to occur up through the overflow grate and prevent erosion from occurring. Based on the information provided, the Department confirms that the above referenced activities would not exceed the stormwater permitting threshold as defined in Rule 40C-42 F.A.C.

The proposed activities extend seaward of the coastal construction control line (CCCL), and therefore, are subject to the provisions of 161.053, F.S. However, because the proposed activities in this case are being regulated under the JCP program, a CCCL permit would not be required for the proposed structures pursuant to s. 161.053(9), F.S.

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

PROJECT DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

The elevation of the construction beach berm is to be +8.1 to +8.9 feet NGVD (+10.0 to +10.8 ft. MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events. Stormwater outfall improvements (to be authorized under a separate permit) will also be conducted prior to the second renourishment event.

The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

The permittee is also authorized to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill, as specified in the attached drawings.

The specific conditions shall be revised as follows (underlines are additions):

14. In order to ensure that marine turtles are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following conditions:
 - m. Marine turtles nests shall be marked and monitored for one nesting season within 100' corridors extending from the MHW line to each of the modified stormwater outfalls.

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. 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 requested. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification(s).

This letter of approval does not alter the November 22, 2014 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 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.

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;
- (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; 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.

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
Office of Beaches and Coastal Systems

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.

Deputy Clerk

_____ Date

Copies furnished to:

Kevin R. Bodge, Ph.D., P.E., Olsen Associates, Inc., 4438 Herschel St., Jacksonville, FL 32210
Tom Jenkins, Brevard County, 2725 Judge Fran Jamieson Way, Viera, Florida 32940
Richard Bonner, USACOE, Jacksonville
Osvaldo Rodriguez, USACOE, Jacksonville
DEP, Office of General Counsel
George Gionis, DEP - Central District Office, Orlando
Deborah Valin, DEP - Central District Branch Office, Melbourne
Robbin Trindell, FWCC-BPSM
Vladimir Kosmynin, DEP-OBCS
Russell Snyder, DEP-OBCS
Lethie Lanham, DEP-OBCS
Jennifer Brown, PBS&J-OBCS
OBCS File



Department of Environmental Protection

Jeb Bush
Governor

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

David B. Struhs
Secretary

October 25, 2002

Virginia Barker, Staff Specialist IV
Brevard County Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

Permit Modification No. 0137212-008-JC
Permit No. 137212-001-JC, Brevard County
Brevard County Shore Protection Project; SOUTH REACH.

Dear Ms. Barker:

Your request to modify Permit No. 137212-001-JC, submitted by Dr. Kevin Bodge on July 24, 2002, has been received and reviewed by Department staff. The modification is to elevate the landward edge of the construction berm, along the project's dune feature, by 1.5 feet from +10.0 ft to +11.5 ft MLW (i.e., from +8.1 ft to +9.6 ft NGVD '29). The elevation of the seaward edge of the construction berm would remain unchanged at +10.0 ft MLW (+8.1 ft NGVD). The width of the construction berm would remain unchanged at about 100-ft seaward of the dune feature. This modification would result in a mild upward slope of the berm crest, from +10.0 ft to +11.5 ft, across a 100-ft width, for a uniform slope of about 1.5%. The elevation of the project's dune feature would be raised by 1.0 ft to partially reflect the increased elevation of the berm along the dune edge. This change would affect the northern 5,000± feet of the project fill area, which has not yet been constructed, from approximately R118.3 to R123. Construction of this remaining portion of the project fill is to be completed between November 1, 2002 and April 30, 2003.

The purpose of the recommended modification is to improve the project's physical performance and longevity and to improve marine turtle nesting success. Observation of the project along the approximate 3-mile length constructed earlier this year indicates that the existing +10.0 ft MLW construction berm elevation is prone to wave overtopping during spring tides and modest surf. On several occasions this summer, wave overtopping has led to significant ponding of water across the berm which, in turn, results in frequent and severe run-outs that rapidly erode the berm and prematurely compromise the project's intended function. The ponding also presents a potential for prolonged seawater inundation of existing marine turtle nests (thus increasing the potential for drowning of the eggs/hatchlings) and increases the occurrence of non-nesting emergences (false crawls).

Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
Permit Modification No. 0137212-008-JC
Page 2 of 6

The Florida Fish & Wildlife Conservation Commission also reviewed this proposal and found that it would not be expected to have an adverse effect on marine turtles or their nesting habitat.

The project description (as previously modified by Permit Modification Nos. 137212-002, -004, -005, -006, -007) shall be revised as follows (underlines are additions and ~~strikethroughs~~ as deletions):

PROJECT DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

The elevation of the construction beach berm from R-123 to R-139 is to be +8.1 to +8.9 feet NGVD (+10.0 to +10.8 ft. MLW). From R-118.3 to R-123, the landward edge of the construction berm, along the project's dune feature, will be +9.6 feet NGVD '29 (+11.5 ft MLW), while the elevation of the seaward edge of the construction berm would be +8.1 feet NGVD (+10.0 ft MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events. Stormwater outfall improvements (to be authorized under a separate permit) will also be conducted prior to the second renourishment event.

The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project

Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
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is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

The permittee is also authorized to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill, as specified in the attached drawings.

The specific conditions shall be revised as follows (underlines are additions):

16. Marine turtle nesting data for this area shall be itemized and presented separately in the project monitoring reports.

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. 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 requested. 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 November 22, 2014 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 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

Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
Permit Modification No. 0137212-008-JC
Page 4 of 6

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.

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.

Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
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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;
- (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; 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.

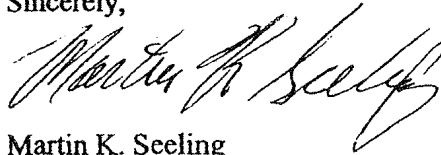
This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office 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.

**Notice of Permit Modification
Brevard County Shore Protection Project; South Reach
Permit Modification No. 0137212-008-JC
Page 6 of 6**

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.

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 Wetland Resources

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

Monica M. House 10/25/02
Deputy Clerk

Copies furnished to:

Kevin R. Bodge, Ph.D., P.E., Olsen Associates, Inc., 4438 Herschel St., Jacksonville, FL 32210
Tom Jenkins, Brevard County, 2725 Judge Fran Jamieson Way, Viera, Florida 32940
Richard Bonner, USACOE, Jacksonville
Osvaldo Rodriguez, USACOE, Jacksonville
DEP, Office of General Counsel
Terry Zable, DEP - Central District Office, Orlando
Deborah Valin, DEP - Central District Branch Office, Melbourne
Robbin Trindell, FWCC-BPSM
Vladimir Kosmynin, DEP-BBWR
Russell Snyder, DEP-BBWR
Lethie Lanham, DEP-BBWR
Jennifer Brown, PBS&J-BBWR
BBWR File



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

December 20, 2004

Ms. Virginia Barker
Brevard County Office of Natural Resource Management
2725 Judge Fran Jamieson Way, Bldg. A
Viera, Florida 32940-6605

Permit Modification No. 0137212-009-EM
Permit No. 0137212-005-JC, Brevard County
Brevard County Shore Protection Project – South Reach

Dear Ms. Barker:

Your request to modify Permit No. 0137212-005-JC has been received and reviewed by Department staff. The proposed permit modification is to apply a particular berm design to the entire reach and update sediment quality guidelines.

The original permit issued in 1999 (Permit No. 0137212-001-JC) authorized a berm of +8.1 feet NGVD '29 (+10 feet MLW), with a 1:15 foreshore slope, between DEP Reference Monuments R-118.3 and R-138. The Department granted a major modification in October 2001 (Permit No. 0137212-005-JC), which superseded the original permit, but adhered to the original template plus a tapered extension from R-138 to R-139.

In April 2002, a minor modification (006-JC) approved a berm height increase to +8.9 feet NGVD, while reducing the seaward extent of the profile to maintain the original design volume. This modification also alludes to the inclusion of a 2.5-foot dune feature to protect the existing dune face, a design originally requested in June 2001. While no explicit approval of the dune feature was given, the Department expressed no objection.

Between seasonal dredging events, minor modification 008-JC authorized a template change in October 2002 effective for the beach section that had not yet been restored (R-118.3 to R-123). This design included a berm height increase from +8.9 feet to +9.6 feet NGVD over a distance of

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Brevard County Shore Protection Project – South Reach
Permit Modification No. 0137212-009-EM
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100 feet from the seaward toe of the berm (slope 1:66.7). The dune crest was elevated one (1) foot to +11.6 feet NGVD.

The restoration authorized under this permit was completed in April 2003. The post-construction geotechnical monitoring report estimates that 1.73 million cubic yards of sand were placed along 3.8 miles of shoreline. Subsequent maintenance events were expected to occur every six years, however erosion was greatly accelerated due to Hurricanes Frances and Jeanne, which passed through the area on September 4 and September 25, respectively. As the project is eligible for emergency federal funds through the U.S. Army Corps of Engineers (USACE), the permittee plans to replenish the entire reach with approximately 600,000 cubic yards of sand from the currently authorized borrow areas.

While the permittee is authorized to conduct nourishment activities under the present permit, this minor modification applies, to the entire reach, those template changes authorized under Permit No. 0137212-008-JC, and depicted in the attached drawing of a typical profile. Decreasing the seaward extent of the design profile will preserve the original template volume. Increased berm height will provide additional upland protection from storm surge and wave overtopping. A minor beach slope is reported to reduce backshore ponding and scarping, helping to prevent false crawls by sea turtles and/or nest take.

The rule that establishes criteria for ‘beach-quality’ material has been revised since permit issuance. Condition changes below conform the permit to the current requirements of Rule 62B-41.007(2)(j), F.A.C. Sediment analysis of material from the approved borrow sites suggests that material from approved borrow areas comply with the rule revision.

The permittee is urged to revisit the permit conditions carefully to ensure that all deliverables are submitted in a timely fashion, including final plans and specifications, which are required prior to each construction event.

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

PROJECT DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection’s DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6

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Brevard County Shore Protection Project – South Reach
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miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

~~The elevation of the construction beach berm from R-123 to R-139 is to be +8.1 to +8.9 feet NGVD (+10.0 to +10.8 ft MLW).~~ From R-118.3 to R-123-139, the landward edge of the construction berm along the project's dune feature, will be +9.6 feet NGVD '29 (+11.5 ft MLW), while the elevation of the seaward edge of the construction berm would be +8.1 feet NGVD (+10.0 ft MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events. Stormwater outfall improvements (~~to be authorized under a separate~~ Permit No. 0137212-007-JC) will also be conducted prior to the second renourishment event.

The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the previously attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

The permittee is also authorized to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill, as specified in the attached drawings.

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The specific conditions shall be revised as follows:

SPECIFIC CONDITIONS:

9. For disposal of dredged material from the access lane to Borrow Area I, beach quality material (defined in Rule 62B-41.007(2)(j), F.A.C. containing less than 10% fines) may be placed within the Beach Fill Area or the Canaveral Nearshore Disposal Area. Non-beach quality material will be placed offshore in the Canaveral Nearshore Disposal Area or in the Ocean Dredged Material Disposal Site (ODMDS). The dredged material will be handled such that only material containing less than 20% fines will be placed in the Canaveral Nearshore Disposal Area. Material containing greater than 20% fines will be placed in the ODMDS. During construction an on-site inspector with training in the determination of sediment characteristics will evaluate the suitability of dredged material with less than 20% fines for nearshore disposal vs. ocean disposal.
13. c. Prior to commencement of construction, the prime contractor involved in the construction activities shall construct and display at least two temporary signs (placards) concerning manatees. For all vessels, a temporary sign (at least 8.5" X 11") reading "**Manatee Habitat/Idle Speed In Construction Area**" will be placed in a prominent location visible to employees operating the vessels. In the absence of a vessel, a temporary sign (at least 2' X 2') reading "**Warning: Manatee Habitat**" will be posted in a location prominently visible to land based, water-related construction crews.
- A second temporary sign (at least 8.5" X 11") reading "**Warning, Manatee Habitat: Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-888-404-FWCC800-DIAL-FMP**" will be located prominently adjacent to the displayed issued construction permit. Temporary notices are to be removed by the permittee upon completion of construction.
- g. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol (1-888-404-FWCC800-DIAL-FMP) and to the FWCC ~~Bureau of Protected~~Imperiled Species Management Section (850) 922-4330.
15. a. All fill material placed shall be sand that is similar to that already existing at the beach site in both coloration and grain-size distribution. All such fill material shall be free of construction debris, rocks, or other foreign matter and shall not contain, on average, greater than ~~40~~5 percent fines (i.e., silt and clay) (passing the ~~#230200~~ sieve) and shall be free of coarse gravel or cobbles

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The monitoring conditions shall be revised as follows:

MONITORING REQUIRED

2. Hydrographic Monitoring

- e. Two sand samples shall be obtained immediately following completion of construction at a reference monument line approximately every 1,000 feet within the beach fill project area. Each sample shall be tested for grain size distribution and shell content. Samples shall be collected from approximately 1 ft. below the surface of the dry construction berm at (1) approximately 20 feet from the landward toe of the dune and (2) midway across the top of the berm width. This shall amount to no less than ~~4252~~ samples taken throughout the ~~20,000~~^{51,800} ~~linear~~ ft. project length. If patches of inconsistent material are observed between profiles while taking these samples, a visual description of the sediment irregularities, including the location, magnitude, and general characterization should be provided to the Department. Upon further review, the Department may require additional sediment sampling.

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 drawings, we are notifying all necessary parties of the modifications.

This letter of approval does not alter the **November 22, 2014** 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 petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

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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 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.

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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.

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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.

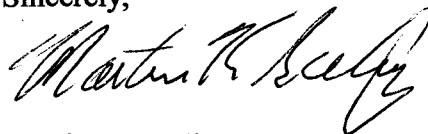
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

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.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 487-4471, ext. 104.

Sincerely,



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

MKS/smm

Enclosure: Template revision sketch

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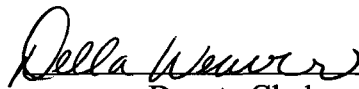
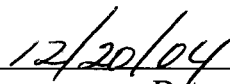
Cc:

Kevin Bodge, Olsen Associates, Inc.
Robbin Trindell, FWC-ISMS
Osvaldo Rodriguez, USACE, CESAJ-DP-B
Irene Sadowski, USACE, CESAJ-RD-NA-M
Dave Herbster, DEP, Central District
Paden Woodruff, BBCS-BECP

Phil Sanders, BBCS-BECP
John McDowell, BBCS-CCCL
Robert Brantly, BBCS-CE
James LaGrone, BBCS-CE
Christina Staten, BBCS-JCP
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.

 _____  _____
Deputy Clerk Date



Florida Department of Environmental Protection

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

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

February 5, 2010

Brevard County
Office of Natural Resources Management
2725 Judge Fran Jamieson Way, Building A-219
Viera, FL 32940

c/o

Kevin Bodge, PhD, P.E.
Senior Engineer/Vice President
Olsen Associates, Inc.
4438 Herschel Street
Jacksonville, FL 32210

**Permit Modification No. 0137212-011-JN
Permit No. 0137212-005-JC, Brevard County
Brevard County Shore Protection Project - South Reach
(Rainbow Discharge Demonstration)**

Dear Dr. Bodge:

Your request to modify Permit No. 0137212-005-JC was received on November 17, 2009, and has been reviewed by Department staff. The proposed permit modification is to allow, during one dredge event in 2010 only, the option of placing approximately 5,000 cubic yards of beach-quality sand into the nearshore using a "rainbow discharge" method.

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0137212-005-JC, dated June 11, 2001, available at the Bureau website:
http://bcs.dep.state.fl.us/env-prmt/brevard/issued/0137212_Brevard_County_Shore_Protection_Project/

BACKGROUND

On October 8, 2001, the Department issued Permit No. 0137212-005-JC to Brevard County for the Brevard County South Reach Shore Protection Project. This permit was a major

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modification that superseded Permit No. 0137212-001-JC. The Permittee was authorized to construct AND maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline in Brevard County, between the Department's range monuments R-118.3 and R-139. Three borrow sources were approved for the South Reach, including Canaveral Shoals Borrow Area I, located about 1.6 miles east-southeast of Cape Canaveral, Canaveral Shoals Borrow Area II, located about 4.5 miles east-southeast of Cape Canaveral and Space Coast Borrow Area II, located offshore between R-126 and R-130.5. The Permittee was also authorized to utilize a 2,450-foot by 4,500 foot Nearshore Disposal and Sand-Rehandling Area (NDSRA), centrally located along the project area between R-126 and R-130.5, approximately 3,400 feet from the shoreline, between the -34 and -44-foot (NGVD) contours.

Under Permit 0137212-005-JC, the elevation of the construction beach berm was to be +8.1 feet NGVD (+10.0 ft. MLW). The width of the initial construction beach berm, which included advance nourishment, varied between 150 and 165 feet. The seaward slope of the fill template was one (1) vertical on 15 horizontal. The initial restoration event was estimated to require approximately 1.6 million cubic yards of sand. Subsequent nourishment was predicted to require approximately 600,000 cubic yards of sand every six years. Stormwater outfall improvements were to be conducted prior to the second nourishment event under subsequent permit or permit modification.

On April 11, 2002, the Department issued minor Permit Modification No. 0137212-006-JC to increase the berm height to +8.9 feet NGVD, while reducing the seaward extent of the profile to maintain the original design volume. This modification also alludes to the inclusion of a 2.5-foot dune feature to protect the existing dune face, a design originally requested in June 2001. While no explicit approval of the dune feature was given, the Department expressed no objection.

On April 23, 2002, the Department issued Permit Modification No. 0137212-007-JC to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing stormwater drains within the limits of the permitted beach fill template.

On October 25, 2002, the Department issued Permit Modification No. 0137212-008-JC to raise the landward edge of the berm elevation to +9.6 feet NGVD (+11.0 feet MLW), while reducing the seaward elevation of the berm back to +8.1 feet NGVD, which created a sloped berm with a grade of approximately 1.5%. The dune crest was also elevated by approximately one (1) foot, to an elevation of +11.6 feet NGVD. Increased berm height was to provide additional upland protection from storm surge and wave overtopping. A minor beach slope was reported to reduce backshore ponding and scarping, helping to prevent false crawls by sea turtles and/or nest take. This modification was issued after a portion of the initial dredging project was complete, so it was only applied to the section of the South Reach that had not yet been restored (R-118.3 to R-123). The permit modification included a set of 15 revised permit drawings that replaced the original set of drawings included with Permit No. 0137212-005-JC; however, the revised set did not incorporate nor replace the drawings included as part of Permit Modification No. 0137212-007-JC. The new set of 15 drawings included a typical depiction of the dune feature.

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On December 20, 2004, the Department issued Permit Modification No. 0137212-009-EM to authorize, for the entire South Reach, the elevated and sloped berm design previously approved for a portion of the reach under Permit Modification No. 0137212-008-EM. This modification also updated sediment quality guidelines.

On March 7, 2005, the Permittee applied for a modification to temporarily stockpile up to 150,000 cubic yards of additional sand fill placement along the northern end of the South Reach, and extend the South Reach construction window through May 14, 2005 (File No. 0137212-010-EM). The Permittee withdrew the request on April 5, 2005.

The (initial) beach restoration, authorized under this permit, was completed in April 2003. The post-construction geotechnical monitoring report estimated that the Permittee placed 1.43 million cubic yards of sand along 3.8 miles of shoreline. Subsequent maintenance events were expected to occur every six years, however, erosion was greatly accelerated due to Hurricanes Frances and Jeanne, both of which passed through the area in September 2004. To replenish the system, the Permittee placed approximately 580,000 cubic yards of sand within the South Reach project area in April 2005. As of the date of this letter, the Permittee plans to commence another nourishment event in early February 2010.

On November 17, 2009, the Permittee submitted an application for the subject modification to conduct a small-scale (2,000 to 4,500 cubic yard) demonstration of a “rainbow discharge” placement method just offshore of range monuments R-122 and R-139 (Melbourne Beach), at depths of approximately -15 to -29 feet NAVD (-11.7 to -25.7 feet MLLW). The Permittee wishes to conduct this demonstration in conjunction with the larger nourishment project that was originally scheduled to occur from January to April 2010. Beach-quality sediment (less than 2% fines), mixed in a seawater slurry, would be sprayed in a 50-foot to 100-foot-wide arc that extends 100 feet to 400 feet from the foredeck of the hopper dredge. This is intended to deposit a layer of sand that is one foot or less in thickness in the nearshore. The demonstration activity would be conducted during daylight hours.

On December 9, 2009, the Permittee requested a permit modification to further improve the stormwater outfall system that discharges at this beach by replacing existing pipe with permeable “exfiltration” pipe (File No. 0137212-012-JN). The request for these stormwater improvements was separated from the subject modification to avoid delays in approval of the “rainbow discharge” activity. The application for these stormwater outfall improvements (File No. 0137212-012-JN) is currently under separate review.

PERMITTEE’S JUSTIFICATION OF MODIFICATION

As stated in the request letter, the proposed activity is to demonstrate the feasibility and impacts of rainbow discharge, sprayed from a hopper dredge, to form a thin layer of fill on the nearshore seabed. The Permittee is exploring economical construction alternatives to modest-scale beach

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nourishment projects that would have minimal impact to the marine turtle nesting beach. Specifically, the County is considering the use of this construction alternative in the future along the southern shoreline of Brevard County, between Spessard Holland Park and Sebastian Inlet State Park, which includes part of the Archie Carr National Wildlife Refuge.

Placing sand onto the beach is not allowed during the main portion of marine turtle nesting season. The Permittee anticipates that placement in the nearshore area (i.e., the active littoral zone) would augment shore protection through dissipation of wave energy and natural shoreward migration of the sand onto the beach, without adversely impacting the marine turtle nesting beach. A hopper dredge has been the equipment of choice when using the approved offshore sand sources for beach projects in this area, but these dredges cannot necessarily get close enough to shore (due to draft limitations) to allow direct release of the dredged material in the nearshore. This limitation might be addressed if the hopper dredge had the ability to spray dredged material from a safe access depth to a shallow, nearshore placement site. The Permittee also believes that it might be possible for the nearshore placement by the rainbow discharge to temporarily affect the wave break in a way that would improve surfing. The County believes, based on the engineering analysis conducted by their consultant, that the most cost-effective means by which to accomplish these project objectives is to employ hopper-dredge rainbow discharge.

STAFF ASSESSMENT

The Department's review of the proposal led staff to suggest that the rainbow method of discharge could generate more turbidity than the direct release method, where the bottom doors or the "split hull" of barges or hopper dredges are opened and the load is quickly released. The sprayed slurry must travel down through the entire water column rather than being released 10 to 20 feet below the water line, which means settling may take longer to occur. Conversely, the sprayed slurry may be placed in shallower depths than the bottom-dumped material, meaning that the depth of the water through which sediment must travel will be equivalent for both the direct release method and rainbow discharge method. However, the shallower areas may also be subject to greater disturbance and, hence, longer settling times due to greater wave influence. The rapid release of material during typical bottom dumping has the potential for generating a pulse of turbidity that is more concentrated than a plume generated by surface-sprayed slurry, which is discharged more slowly over a larger area.

Despite the potential for some increase in turbidity, the Department recognizes that the shoal material to be used is clearly beach-quality sand with a low percentage of fines (less than 2% passing the #230 sieve). Nourishment activities using this material since 2000 have not generated turbidity that violates water quality standards. The maximum volume of approximately 5,000 cubic yards is expected to take less than two (2) hours to release, so any plume will be relatively short in duration. Further, the total amount of material may be discharged over the course of up to three (3) separate intervals, which would further reduce the duration of any individual turbidity plume. Therefore, the Department is reasonably assured that there will not be any violations of the state water quality standard for turbidity, which is 29

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NTUs above background levels. Nonetheless, the permit has been modified to require increased monitoring at the edge of the mixing zone so that the Department can clearly document and better understand the potential for turbidity generation using the rainbow discharge method.

The Department notes that the area proposed for the rainbow discharge activity has bottom depths of -15 to -29 feet NAVD, which is primarily deeper than the approximate depth of closure (-17.4 feet NAVD). While a depth of -31.4 feet NAVD has been used as the depth of closure during previous storm analysis, the physical monitoring reports for this project show negligible changes in bathymetry between June 2006 and July 2008 seaward of the non-storm depth of closure. The equipment scheduled for use during the demonstration project is the hopper dredge Liberty Island, which may not be able to operate at depths shallower than -29 feet NAVD. This is approximately 1000 feet seaward of areas at the normal depth of closure, but the vessel is not expected to discharge the slurry more than 400 feet from the ship's bow. Thus, based on the proposed placement location and sand volume, staff expects that it will be difficult to measure the effectiveness of the demonstration project as a sand placement alternative.

Because this application is not being processed as an experimental Joint Coastal Permit, the Department is not requiring additional monitoring (other than turbidity monitoring) to test the feasibility of this alternative or any of the associated hypotheses regarding additional benefits. The Permittee may wish to conduct additional monitoring on their own to document any additional benefits.

The Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the proposed activity and determined that the existing permit conditions are sufficient to protect sea turtles and manatees from any significant risk of adverse impact due to the rainbow discharge method. There are no benthic resources of concern (e.g., hardbottom or submerged aquatic vegetation) within the project area or the potential mixing zone for the proposed activity.

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

PROJECT DESCRIPTION:

The permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

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From R-118.3 to R-139, the landward edge of the construction berm along the project's dune feature, will be +9.6 feet NGVD '29 (+11.5 ft MLW), while the elevation of the seaward edge of the construction berm would be +8.1 feet NGVD (+10.0 ft MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent nourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between nourishment events. Stormwater outfall improvements (authorized under Permit Modification No. 0137212-007-JC) will also be conducted prior to the second nourishment event.

The permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the previously attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

In 2010, the Permittee is authorized to conduct a one-time only trial of the "rainbow discharge" method of nearshore fill placement, where approximately 5,000 cubic yards of sand will be sprayed (in a slurry) from the dredge onto the surface of the water. The demonstration will occur immediately offshore of the approved Melbourne Beach placement site, between R-122 and R-139, at locations with depths between -15 to -29 feet NAVD (-11.7 to -25.7 feet MLLW).

The permittee is also authorized to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill, as specified in the attached drawings.

The monitoring requirements shall be revised as follows:

MONITORING REQUIRED:

1. Water Quality

Parameter: Turbidity - Nephelometric Turbidity Units (NTUs)

Borrow Site:

Frequency: Every 6 hours, or, if a hopper dredge is used then approximately midway through each fill cycle while the dredge is actively dewatering or discharging overflow, during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: 500 meters from the dredge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

Beach Nourishment Site:

Frequency: Once every 6 hours during a beach disposal operation, during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: At least 500 meters up-current from the point where discharge water is re-entering waters of the State (discharge point), clearly outside of the influence of any turbid plume, during daylight hours only. Samples shall be collected at the surface and one meter above the bottom, at the same distance offshore as the compliance station.

Compliance: At a point no more than 150 meters downcurrent from the discharge point within the densest portion of any visible turbidity plume caused by the construction activities. If a plume is not visible, the samples shall be collected 50 m from the shoreline. Samples shall be collected from the surface and one meter above the bottom.

Disposal at the Nearshore Disposal and Sand Rehandling Area (NDSRA):

Frequency: Approximately every 6 hours between 15 and 30 minutes after disposal of a bargeload of material during daylight hours only. Should measurements

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of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed.

Background: 500 meters from the disposal barge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the barge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

Dredging at the Nearshore Disposal and Sand Rehandling Area (NDSRA):

Frequency: Approximately every 6 hours during a dredging operations during daylight hours only. Should measurements of the turbidity show an increase to a level approaching the 29 NTU limit, then more frequent, or nighttime measurements, shall be resumed

Background: 500 meters from the dredge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

Nearshore Placement Site, using Rainbow Discharge (i.e., Surface Spray):

Frequency: At least two (2) times for each discharge episode, starting approximately 10 to 20 minutes after rainbow discharge begins (once the turbidity plume reaches the edge of the mixing zone), and again every 20 minutes until discharge has ceased, plus at least one measurement AFTER rainbow discharge has ceased.

Background: At least 500 meters from the disposal barge or hopper dredge in the opposite direction of the prevailing current flow, clearly outside the influence of any turbid plume. Samples shall be collected from the surface and 1 meter above the bottom.

Compliance: No more than 150 meters downcurrent from the barge or hopper dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and 1 meter above the bottom.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity

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levels at the compliance sites greater than 29 NTUs above the associated background turbidity levels, construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any turbidity exceedance and corrective actions (planned or implemented) shall be reported immediately to JCPcompliance@dep.state.fl.us. The permit number, project name and the phrase “**water quality violation**” should be included in the subject line, though this does not necessarily indicate a permit violation.

Copies of all reports shall be submitted to the ~~Office~~Bureau of Beaches and Coastal Systems in Tallahassee on a weekly basis within seven days of collection. The data shall be submitted under a cover letter containing the following information: (1) permit number; (2) a statement describing the methods used in collection, handling, storage and analysis of the samples; (3) a map indicating the sampling locations; and (4) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data. Monitoring reports shall also include the following information for each sample that is taken: a) time of day samples taken; b) depth of water body; c) depth of sample; d) antecedent weather conditions; e) tidal stage and direction of flow; and f) wind direction and velocity.

~~The above information may be submitted on the Corps’ Turbidity Monitoring Test Report form, Section 01131, Appendix No. A.~~

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, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **November 22, 2014**, expiration date, 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.

NOTICE OF RIGHTS

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 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.

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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:

- (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;
- (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.

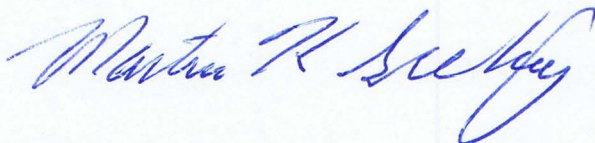
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This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure 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.

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.

If you have any questions regarding this matter, please contact Mr. Steven MacLeod at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7806.

Sincerely,



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

MKS/smm

cc: Virginia Barker, Brevard County
Michael McGarry, Brevard County
Osvaldo Rodriguez, USACE, Jacksonville
Matthew Miller, USACE, Jacksonville
Robbin Trindell, FWC, ISMS
Laurinda Brown, FWC, ISMS
Mary Duncan, FWC, ISMS
Major Andy Love, FWC, NE Region
Dave Herbster, DEP, SE District Office
JCP Compliance Officer, BBCS-JCP
BBCS Permit File (hardcopy)

Michael Barnett, BBCS-Chief
Robert Brantly, BBCS-CE
El Kromhout, BBCS-CE
Paden Woodruff, BBCS-BECP
Alex Reed, BBCS-BECP
William (Guy) Weeks, BBCS-BECP
Roxane Dow, BBCS-BECP
Martin Seeling, BBCS-JCP
Merrie Beth Neely, BBCS-JCP
JCP Compliance Officer, BBCS-JCP

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.

NO Deal

2 | 5 | 2010

Deputy Clerk

Date



Florida Department of Environmental Protection

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

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Mimi A. Drew
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

December 13, 2010

Brevard County
Attn: Robbyn C. Spratt, P.E.
Watershed Management Program
Natural Resources Management Office
2725 Judge Fran Jamieson Way, Building A-219
Viera, Florida 32940

**Permit Modification No. 0137212-012-JN
Permit No. 0137212-005-JC, Brevard County
Brevard County Shore Protection Project - South Reach
(Watson Drive Outfall Improvements)**

Dear Ms. Spratt:

Your request to modify Permit No. 0137212-005-JC, was received on December 9, 2009, and revised on November 5, 2010. The Department has now completed its review of the revised application. The permit modification is to reduce the stormwater discharge onto the beach for the Watson Drive outfall at Sunrise Park near DEP Monument R-121.5 through the use of exfiltration pipes located landward of the dune. This permit modification authorizes the coastal construction aspects of this project under Chapter 161, Florida Statutes (F.S.). The application for the stormwater aspects of this project, under Part IV of Chapter 373, F.S., is being processed by the Department's Central District office (File No. 05-0298478-001).

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0137212-005-JC, dated June 11, 2001, available at the following Bureau website:

http://bcs.dep.state.fl.us/env-prmt/brevard/issued/0137212_Brevard_County_Shore_Protection_Project/

BACKGROUND

On October 8, 2001, the Department issued Permit No. **0137212-005-JC** to Brevard County for the federally-authorized Brevard County South Reach Shore Protection Project. This permit was a major modification that superseded Permit No. **0137212-001-JC**. The Permittee was

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authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline in Brevard County, between the Department's range monuments R-118.3 and R-139. Three borrow sources were approved for the South Reach, including Canaveral Shoals Borrow Area I, located about 1.6 miles east-southeast of Cape Canaveral, Canaveral Shoals Borrow Area II, located about 4.5 miles east-southeast of Cape Canaveral and Space Coast Borrow Area II, located offshore between R-126 and R-130.5. The Permittee was also authorized to utilize a 2,450-foot by 4,500 foot Nearshore Disposal and Sand-Rehandling Area (NDSRA), centrally located along the project area between R-126 and R-130.5, approximately 3,400 feet from the shoreline, between the -34 and -44-foot (NGVD) contours.

Under Permit No. 0137212-005-JC, the elevation of the construction beach berm was to be +8.1 feet NGVD (+10.0 ft. MLW). The width of the initial construction beach berm, which included advance nourishment, varied between 150 and 165 feet. The seaward slope of the fill template was one (1) vertical on 15 horizontal. The initial restoration event was estimated to require approximately 1.6 million cubic yards of sand. Subsequent nourishment was predicted to require approximately 600,000 cubic yards of sand every six years. Stormwater outfall improvements were to be conducted prior to the second nourishment event under subsequent permit or permit modification.

On April 11, 2002, the Department issued minor Permit Modification No. **0137212-006-JC** to increase the berm height to +8.9 feet NGVD, while reducing the seaward extent of the profile to maintain the original design volume. This modification also alludes to the inclusion of a 2.5-foot dune feature to protect the existing dune face, which was a design originally requested in June 2001. While no explicit approval of the dune feature was given, the Department expressed no objection.

On April 23, 2002, the Department issued Permit Modification No. **0137212-007-JC** to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing stormwater drains within the limits of the permitted beach fill template. As of October 2006, the improvements at Tampa Avenue (R-127.6) and Fifth Avenue/US 192 (R-123.3) were completed according to design. In 2003, a riser at Watson Drive (R-121.6) was constructed, but the Permittee reports that this outfall was re-designed at the request of FDOT to include an in-line (straight) discharge pipe. Flow through this in-line discharge pipe continued to cause some erosion.

On October 25, 2002, the Department issued Permit Modification No. **0137212-008-JC** to slope the beach berm to a grade of approximately 1.5% by raising the landward edge of the berm elevation to +9.6 feet NGVD (+11.0 feet MLW) and reducing the seaward elevation of the berm back to +8.1 feet NGVD. The dune crest was also elevated by approximately one (1) foot, to an elevation of +11.6 feet NGVD. This slope was intended to reduce backshore ponding, foreshore scarping, false crawls by sea turtles, and sea turtle nest take. Increased berm height was to provide additional upland protection from storm surge and wave overtopping. This modification was issued after a portion of the initial dredging project was complete, so it was only applied to

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the section of the South Reach that had not yet been restored (R-118.3 to R-123). The permit modification included a set of 15 revised permit drawings that replaced the original set of drawings included with Permit No. 0137212-005-JC; however, the revised set did not incorporate nor replace the drawings included as part of Permit Modification No. 0137212-007-JC. The new set of 15 drawings included a typical depiction of the dune feature.

On December 20, 2004, the Department issued Permit Modification No. **0137212-009-EM** to authorize, for the entire South Reach, the elevated and sloped berm design previously approved for a portion of the reach under Permit Modification No. 0137212-008-EM. This modification also updated sediment quality guidelines.

On March 7, 2005, the Permittee applied for a modification (File No. 0137212-010-EM) to temporarily stockpile up to 150,000 cubic yards of additional sand fill along the northern end of the South Reach, and to extend the South Reach construction window through May 14, 2005. The Permittee withdrew the request on April 5, 2005.

On February 5, 2010, the Department issued Minor Modification No. **0137212-011-JN** to conduct a small-scale (2,000 to 4,500 cubic yard) demonstration of a “rainbow discharge” placement method just offshore of range monuments R-122 and R-139 (Melbourne Beach), at depths of approximately -15 to -29 feet NAVD (-11.7 to -25.7 feet MLLW). Beach-quality sediment (with less than 2% fines), mixed in a seawater slurry, would be sprayed in a 50-foot to 100-foot-wide arc that extended 100 feet to 400 feet from the foredeck of a hopper dredge. This was intended to deposit a layer of sand that was one foot or less in thickness in the nearshore. The demonstration activity was authorized for one time only in 2010.

The (initial) beach restoration, authorized under Permit No. 0137212-005-JC, was completed in April 2003. The post-construction geotechnical monitoring report estimated that the Permittee placed 1.43 million cubic yards of sand along 3.8 miles of shoreline. Subsequent maintenance events were expected to occur every six years; however, erosion was greatly accelerated due to Hurricanes Frances and Jeanne, both of which passed through the area in September 2004. To replenish the system, the Permittee placed approximately 580,000 cubic yards of sand within the South Reach project area in April 2005. The Permittee completed the most recent nourishment event in April 2010 using approximately 636,000 cubic yards of sand.

On December 9, 2009, the Permittee requested the subject permit modification (File No. 0137212-012-JN) to further improve the stormwater outfall system that discharges at this beach. The outfall system plan included the replacement of a portion of the existing pipe leading to the outfall structure with perforated “exfiltration” pipe. The perforated exfiltration section of the pipe would be located landward of the existing dune. The original outfall system plan also included alterations to the outfall structure that would raise the discharge elevation and detain additional stormwater. However, the outfall is subject to Florida Department of Transportation (FDOT) jurisdiction, and FDOT expressed serious concern that the initially-proposed system would cause adverse flooding of U.S. Highway A1A during heavy rain events. Therefore, the

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Permittee officially revised their design in November 2010 to maintain the existing (impermeable) discharge pipe and outfall riser, and modify the system landward of the dunes to route water through a set of three (3) parallel perforated pipes to be installed in the upland. The majority of the modifications to the stormwater system would occur seaward of the Coastal Construction Control Line (CCCL).

PERMITTEE’S JUSTIFICATION FOR MODIFICATION

The work represents continued implementation of the Brevard County Stormwater Management Improvement Plan as previously submitted to the Department per Specific Condition Nos. 11 and 12 of Permit No. 0137212-005-JC for the South Reach Shore Protection Project.

STAFF ASSESSMENT

The Department conceptually approved the *Summary of Brevard County Beach Outfalls: Existing Conditions and Proposed Plan of Improvements* (Outfall Plan), revised October 2, 2009, in satisfaction of Specific Conditions 11 and 12 of Permit No. 0137212-005-JC. The Outfall Plan indicated that 91.3% of all storm events would be treated by the originally-proposed improvements at the Watson Drive outfall. The revised plan to create an upland exfiltration system and maintain the current riser would treat 91.5% of all storm events, calculated using the same method that was applied in the Outfall Plan. In order to maintain similar hydraulics in the storm sewer collection system and address Florida Department of Transportation (FDOT) concerns regarding the increase for potential flooding, the exfiltration system will have a secondary connection back to the outfall pipe. Thus, the revised design will provide essentially the same level of treatment as was previously approved by the Department and, unlike the original design, is acceptable to the FDOT.

The only minor alteration to be performed seaward of the primary dune is replacement of the existing wood decking with a more secure bolted overflow grate and filter cloth. Therefore, no heavy machinery will be required on or within the beach or dune system for the proposed improvements. The revised drawing reflects that a 60-inch diameter outfall riser has been constructed. While this is larger than the 48-inch diameter riser that was shown in the original drawing for three different outfalls (Permit Modification No. 0137212-007-JC), the Permittee indicated that the larger-diameter riser does not affect the performance of the improved system because the additional treatment is provided in the exfiltration pipes prior to any discharge to the outfall.

A small amount of material (approximately 420 cubic yards) will need to be transported off-site to accommodate the new exfiltration system. The Permittee has confirmed that retention of the material on site will not be practical, and does not anticipate that the material will be beach compatible. Although compatibility has not been reviewed by the Department, the volume lost from the system seaward of the Coastal Construction Control Line is not considered significant.

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

PROJECT DESCRIPTION:

The ~~p~~Permittee is authorized to construct and maintain a beach restoration project along 3.4 miles of the Atlantic Ocean shoreline commencing at about Flug Avenue in the Town of Indialantic and extending to Spessard Holland Park in the Town of Melbourne Beach, in Brevard County (between the Department of Environmental Protection's DNR reference monuments R-118.3 and R-139). Approximately 1.6 million cubic yards of sand will be dredged from an offshore borrow area to initially construct the beach restoration project. Three borrow sources have been developed for the South Reach: Canaveral Shoals Borrow Area I located about 1.6 miles east-southeast of Cape Canaveral; Canaveral Shoals Borrow Area II located about 4.5 miles east-southeast of Cape Canaveral; and Space Coast Borrow Area II located offshore between R-126 and R-130.5.

From R-118.3 to R-139, the landward edge of the construction berm along the project's dune feature, will be +9.6 feet NGVD '29 (+11.5 ft MLW), while the elevation of the seaward edge of the construction berm would be +8.1 feet NGVD (+10.0 ft MLW). The width of the initial construction beach berm, which includes advance nourishment, varies between 130 and 165 feet. The seaward slope of the fill template is 1 vertical on 15 horizontal. Subsequent renourishment requirements are predicted to be 601,000 cubic yards, every six years. Beach tilling and grading activities will be conducted between renourishment events. Stormwater outfall improvements (authorized under Permit Modification No. 0137212-007-JC) will also be conducted prior to the second nourishment event.

The ~~p~~Permittee is also authorized to utilize a 2,450 ft. by 4,500 ft. Nearshore Disposal and Sand-Rehandling Area (NDSRA) central located along the project area between R-126 and R-130.5 about 3,400-ft. from the shoreline, between the -34 ft. and -44 ft. (NGVD) contours. This will allow placement of sand dredged from the project's offshore borrow area to a seabed stockpile, and then subsequently dredge and place the stockpiled material upon the beach.

A one-time only trial excavation through the proposed Space Coast Shoals I borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during November 2000. Trial excavation and sampling shall be conducted in accordance with the previously attached letter and sketch drawing dated October 23, 2000 from Dr. Kevin Bodge.

A one-time only trial excavation through the proposed Space Coast Shoals II borrow area by a pass of the hopper dredge being used for the Brevard County (North Reach) project is authorized during January or February 2001. Trial excavation and sampling shall be

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conducted in accordance with the letter protocol dated October 23, 2000 and January 2, 2000 from Dr. Kevin Bodge.

In 2010, the Permittee is authorized to conduct a one-time only trial of the “rainbow discharge” method of nearshore fill placement, where approximately 5,000 cubic yards of sand will be sprayed (in a slurry) from the dredge onto the surface of the water. The demonstration will occur immediately offshore of the approved Melbourne Beach placement site, between R-122 and R-139, at locations with depths between -15 to -29 feet NAVD (-11.7 to -25.7 feet MLLW).

The ~~p~~Permittee is also authorized to construct and maintain stormwater termination pipes (percolation risers) at the ends of four (4) existing storm water drains within the limits of the permitted beach fill, as specified in the attached drawings. In connection with the Watson Drive outfall, the Permittee is further authorized to install three (3) parallel exfiltration pipes and associated junction boxes landward of the dune system and seaward of the Coastal Construction Control Line. Installation and maintenance of the Watson Drive exfiltration system is also subject to DEP Permit No. 05-0298478-001.

The Specific Conditions shall be revised as follows:

6. At least 14 days prior to the commencement date for beach nourishment, the ~~p~~Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with the ~~p~~Permittee's contractors, and Department staff representatives. The ~~p~~Permittee shall provide a minimum 7 days advance written notification to the following offices advising of the date, time, and location of the pre-construction conference.

~~DEP Office~~Bureau of Beaches and Coastal Systems
JCP Compliance Officer
Mail Station 300
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
phone: (850) 487-4474 414-7716
~~fax: (850) 488-5257~~
e-mail: JCPcompliance@dep.state.fl.us

~~FWC Bureau of Protected~~ Imperiled Species Management Section
620 South Meridian Street
Tallahassee, Florida 32399-1600
phone: (850) 922-4330
fax: (850) 921-4369
e-mail: marineturtle@myFWC.com

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DEP Central District Office
Submerged Lands and Environmental Resources Program
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803-3767
phone: (407) 894-7555
fax: (407) 897-2966
~~phone: (407) 893-3311~~
~~fax: (407) 893-3075~~

~~DEP Central District Branch Office~~
~~13 East Melbourne Ave., Suite A&B~~
~~Melbourne, Florida 32901~~
~~phone: (407) 984-4800~~
~~fax: (407) 984-4816~~

12. The Permittee shall implement the Outfall Plan entitled *Summary of Brevard County Beach Outfalls: Existing Conditions and Proposed Plan of Improvements*, revised October 2, 2009. Alternative improvement strategies for specific outfalls may be accepted with written approval from the Department if they provide improved levels of treatment. No subsequent beach nourishment event shall be conducted until the Brevard County Board of County Commissioners has submitted for approval by the Department staff a comprehensive storm water management plan for the coastal zone of Brevard County. The plan is to provide for the redirection of stormwater flows away from the beach/dune system and the elimination of all the outfalls and/or storm water facilities located seaward of the dune or bulkhead line. The plan shall outline all funding, permitting and construction schedules. The plan ~~must~~ shall be fully implemented by the year 20152010. An annual summary of the status of improvements to all 17 outfalls shall be submitted to the Department's JCP Compliance Officer by February 28 of each year until the improvements are completed. Unless reflected elsewhere in this permit, the Permittee shall obtain separate permits or permit modifications from the Department for authorization to construct the improvements described by the Outfall Plan.

The permit drawings shall be revised as follows:

- Attached Sheet 1 of 1 shall be added. Existing Sheet 2 of 5 that was originally included as part of Permit Modification No. 0137212-007-JC shall no longer apply to the Watson Drive outfall.

There are no proposed changes to the General Conditions of the permit, but **the Permittee is reminded** to adhere to the noticing requirements of the General Conditions when commencing

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and completing construction of the outfall improvements, or otherwise altering the design authorized by this permit modification.

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 drawing, we are notifying all necessary parties of the modification(s).

This letter of approval does not alter the **November 22, 2014**, expiration date, Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawing 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.

NOTICE OF RIGHTS

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

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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 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;

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- (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.

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If you have any questions regarding this matter, please contact Mr. Steven MacLeod at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7806.

Sincerely,

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

MKS/smm

Attachment: Sheet 1 of 1

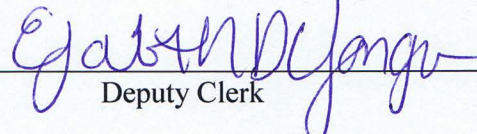
cc (via e-mail):

Virginia Barker, Brevard County
Michael McGarry, Brevard County
Kevin Bodge, Olsen Associates
Osvaldo Rodriguez, USACE, Jacksonville
Mary Ann Poole, FWC, OPSC
Robbin Trindell, FWC, ISMS
George Marek, FDOT, District 5
Christine Webb, FDOT, District 5
Dave Herbster, DEP, Central District
Debra Laisure, DEP, Central District
John McDowell, BBCS-CCCL
Molly Edson, BBCS-CCCL
BBCS Permit File (hardcopy)

Michael Barnett, BBCS-Chief
Gene Chalecki, BBCS-Admin.
Robert Brantly, BBCS-CE
Subarna Malakar, BBCS-CE
El Kromhout, BBCS-CE
Paden Woodruff, BBCS-BECP
Alex Reed, BBCS-BECP
William (Guy) Weeks, BBCS-BECP
Roxane Dow, BBCS-BECP
Martin Seeling, BBCS-JCP
Stephanie Gudeman, BBCS-JCP
JCP Compliance Officer, BBCS-JCP

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.

 12/13/10
Deputy Clerk Date