



Jeb Bush
Governor

Department of Environmental Protection

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

Colleen M. Castille
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

July 1, 2005

Captiva Erosion Prevention District
c/o Stephen Keehn
Coastal Planning and Engineering, Inc.
2481 Boca Raton Boulevard
Boca Raton, Florida 33431

Permit Modification No. 0200269-005-EM
Permit No. 0200269-001-JC, Lee County
Captiva and Sanibel Islands Nourishment Project

Dear Mr Keehn:

Your request to modify Permit No. 0200269-001-JC has been received and reviewed by Department staff. The proposed permit modification is to replace a previously accepted permit drawing (containing an error) with a corrected drawing.

Department review of a submitted Notice to Proceed permit drawing revealed a discrepancy between the submitted drawing of Borrow Area IIIB and the previously accepted authorized drawing from permit 0200269-001-JC. Upon comparison, it was found that the original drawing contained an error in one of the coordinates. This unintended omission can be corrected in a minor modification to the final permit. There is no permit fee associated with a minor modification to correct such minor errors.

The permit will be modified to reflect the updated drawing and the drawing will be attached to this permit modification.

In Department review of permit plans and specifications, it was noted that the northern portion of the project (R-85 to R-98) contained an additional berm feature having a slope of 1:5 and crest elevation of 9.0 which was not included in the original permitted plans. However, permit modification 0200269-003-JC on March 24, 2005, stated that "during the 2004 hurricane season, Hurricane Charley caused 340,000 cubic yards of beach erosion in the project area between R-84 and R-118. Due to such a large erosion volume, changes in the fill design were made and the scheduled December 2004 commencement of construction did not occur." Thus, these changes were made to restore dunes lost since the hurricane season.

"More Protection, Less Process"

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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.

This letter of approval does not alter the **November 9, 2014** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawing must be attached to the original permit. The drawing that contains the error must be removed from the original permit drawings attached to the permit. The corrected drawing is attached to this modification and is clearly marked as "Previous Permit Drawing **REPLACED ON July 1, 2005**".

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

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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.

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;

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- (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.

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 Lainie Edwards at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7796.

Sincerely,



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


MKS/le

Attachment: 1 drawing

cc: Alison Hagerup, CEPD
Lucy Blair, E.A., DEP, South District
Trish Adams, USFWS- Vero Beach
Jennie Cowart, DEP, BBCS
Richard Spadoni, CPE
Dr. Robbin Trindell, FWCC, Imperiled Species Management Section
Nancy Douglass, FWCC
Jim Beever, FWCC – Punta Gorda
Mark Sramek, NMFS
Mike Nowicki, USACE -Jacksonville
Rebecca Roland, DEP, BBCS
Christina Staten, DEP, BBCS
Lizbeth Meigs, DEP, BBCS
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.

 7.1.05

Deputy Clerk

Date