



Florida Department of Environmental Protection

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

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

June 11, 2012

City of Delray Beach
Attn: Paul Dorling
100 N.W. First Avenue
Delray Beach, FL 33444

c/o Richard Spadoni
Coastal Planning and Engineering, Inc.
2481 N.W. Boca Raton BLVD
Boca Raton, FL 33431

Permit Modification No. 0303553-003-JN
Permit No. 0303553-001-JC, Palm Beach County
Delray Beach Nourishment Project

Dear Mr. Spadoni:

After an administrative review of Permit No. 0303553-001-JC, staff determined that a modification of Specific Condition 11, which references turtle monitoring requirements, is necessary. The original condition included an inadvertent error that will be corrected with this modification.

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 Bureau website:

http://bcs.dep.state.fl.us/env-prmt/palm_bch/issued/0303553_Delray_Beach_Nourishment/001_JC/

Background

The restoration of Delray Beach was authorized under Department Permit DBS-72-24, with the placement of 1,634,500 cubic yards of sand in 1973. Delray Beach was subsequently nourished in 1978 and 1984, under Permit Nos. DBS 75-10 and DBS 75-10M1. These projects involved the placement of 701,300, and 1,311,000 cubic yards of sand, respectively. The third

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nourishment of Delray Beach took place between November and December 1992, placing 1,188,000 cubic yards of sand over a distance of 1.7 miles, between R-180 and R-188A (under Coastal Construction Permit DBS890242 and Wetland Resource Permit No. 501662809). The fourth nourishment event occurred in March of 2002, and placed 1,230,000 cubic yards of sand over 1.9 miles of beach, between R-179 and R-188A, under **Joint Coastal Permit No. 0178582-001-JC**. In 2005, approximately 250,000 cubic yards of material was placed by the U.S. Army Corps of Engineers (Corps) to repair damages from the active 2004 hurricane season, under **Permit Modification No. 0178582-003-EM**.

On January 27, 2012 the Department issued **Permit No. 0303553-001-JC** to continue beach nourishments along 1.9 miles of beach fronting the City of Delray Beach, Florida, using two offshore borrow areas that run parallel to the beach and varying in width from 1,000 feet to 425 feet. The design template calls for an average construction berm width of approximately 100 feet.

On January 27, 2012, the Department granted **Variance 0303553-002-BV** to temporarily establish an expanded mixing zone that extends up to 1000 meters downcurrent from the point where water discharges from the dredge pipeline (at the beach placement site) reenters the Atlantic Ocean, but no more than 300 meters offshore.

Justification for Modification

The Department has completed an administrative review of the current Joint Coastal Permit for the Delray Beach Nourishment Project and has concluded that there was an unintentional error in one of the turtle monitoring conditions. The U.S. Fish & Wildlife Service's Biological Opinion for this project, dated September 30, 2011, requires marine turtle nest surveys and relocation for sand placement that occurs late in the nesting season. That requirement continues through November 30, not September 30 as stated in the permit condition.

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

SPECIFIC CONDITIONS

11. For dredge material placement projects that occur during the period from March 1 through April 30, daily early morning surveys (before 9 a.m.) shall be conducted for sea turtle nests and eggs shall be relocated per the following requirements. For sand placement projects that occur during the period from November 1 through November 30, daily early morning sea turtle nesting surveys (before 9am) shall be conducted 65 days prior to project initiation and continue through ~~September~~ November 30, and eggs shall be relocated per the following requirements.

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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 **January 27, 2022** 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 (F.S.), 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 (F.A.C.), 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

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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;
- (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;

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- (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.

If you have any questions regarding this matter, please contact Robert Halbert at Robert.Halbert@dep.state.fl.us or by telephone at (850) 921-7752.

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Sincerely,



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

MKS/BH

cc: Paul Dorling, City of Delray Beach
Danielle Fondren, DEP-BBCS
Lainie Edwards, DEP-BBCS
Rob Buda, DEP-BBCS
Roxane Dow, DEP-BBCS
El Kromhout DEP-BBCS
Robbin Trindell, FWC

Tori White, USACE
Jill King, DEP SE District
Bobby Halbert, DEP-BBCS
El Kromhout, DEP-BBCS
Mark Taynton, DEP_BBCS
BBCS 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.

 6/12/12
Deputy Clerk Date