



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

March 24, 2005

Captiva Erosion Prevention District
c/o Coastal Planning & Engineering, Inc.
2481 N.W. Boca Raton Blvd.
Boca Raton, FL 33431

Permit Modification Number:	0200269-003-EM
Permit Number:	0200269-001-JC, Lee County
Project Name:	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 modifications are to allow construction from R-115 to R-118 from February 1 through August 31, to allow beach and groin construction from May 1 through October 31, and to remove the specific permit condition pertaining to Bald Eagles.

FDEP permit number 0200269-001-JC and variance number 0200269-002-EV were issued to the Captiva Erosion Prevention District on November 9, 2004. The permit authorized construction of a beach nourishment project along the shorelines of Captiva and Sanibel Islands. The Captiva Island project area shoreline extends approximately 25,100 linear feet from FDEP control monument R-84 to R-109. The Sanibel Island project area shoreline extends approximately 8,500 linear feet from R-110 to R-118 with no fill placement at the location of the Clam Bayou temporary drainage channel (historic Old Blind Pass) between R-114 and R-115. The 10-year permit allows for subsequent nourishment events to be constructed.

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. The U.S. Fish & Wildlife Service also delayed submittal of an updated Biological Opinion for this project due to the interruptions of the hurricane season. As a

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result of those delays, construction is now scheduled to commence in April 2005 and extend into turtle nesting season. Specific Conditions 10(b) and 10(c) of permit number 0200269-001-JC do not allow summer construction of the beach or groin without sea turtle incidental take authorization from the U.S. Fish & Wildlife Service.

On October 26, 2004, Tim Gardner, the local eagle monitor, reported that the tree housing Bald Eagle Nest number LE-022B had been destroyed during Hurricane Charley. On January 20, 2005 Nancy Douglass, of the Florida Fish and Wildlife Conservation Commission (FWC), documented an adult in incubating posture on a nest in a Casurina (Australian Pine tree). With the reappearance of Bald Eagle nest LE-022B, the Department cannot approve the request to remove Specific Condition 11. Therefore, Specific Condition 11, pertaining to Bald Eagles, shall remain unchanged.

Brad Smith, of the Sanibel-Captiva Conservation Foundation, stated that the Bowman's Beach area is not designated as a critical wildlife area for shorebirds as stated in Specific Condition 12. The FWC concurs with Brad Smith's statement that the Bowman's Beach project area is not a critical wildlife area and has recommended that limited construction may occur from February 1 through August 31.

The updated Biological Opinion was issued on March 4, 2005, and it allows for incidental take of sea turtles. Therefore, Specific Condition 10 will be revised to reflect the provisions of the updated Biological Opinion, including deletion of the prohibition on construction during the marine turtle nesting season, which was previously found in Specific Conditions 10(b) and 10(c).

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

SPECIFIC CONDITIONS:

10. **Sea turtle monitoring.** 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 analogous to that which naturally occurs within the project location or vicinity in quartz to carbonate ratio, color, median grain size, and median sorting.
- b. Beach nourishment ~~shall~~ may be started at anytime during the year. ~~after October 31 and be completed prior to May 1.~~

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c. ~~Pending authorization for incidental take of sea turtles by the U.S. Fish & Wildlife Service, groin construction/rehabilitation and beach nourishment shall be started after October 31 and shall be completed before May 1. In the event that incidental take of sea turtles is authorized by the U.S. Fish & Wildlife Service for this project, c~~Construction-related activities for groin improvements and beach nourishment may occur on the nesting beach (seaward of existing coastal armoring structures or the dune crest) during sea turtle nesting season in accordance with the following conditions, except as required for shorebird protection. ~~Any additional terms and conditions included in the Incidental Take Permit (ITP) shall be incorporated into this permit through a minor modification.~~

i) A daily marine turtle nest survey of the nesting beach in the vicinity of the project (including areas of beach access) shall be conducted starting April 1 and continue through ~~October 31~~ November 30. Nesting surveys must be initiated 65 days prior to nourishment activities or by April 1, whichever is later. Nesting surveys must continue through the end of the project or through September 30, whichever is earlier.

ii) Only those nests that may be affected by beach nourishment 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 beach nourishment activities shall cease when construction activities no longer threaten nests.

iii) 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. Such nests will be 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 which might directly or indirectly disturb the area within the staked circle.

iv) Nests deposited within areas within the groin construction area shall be marked and left in place unless other factors threaten the success of the nest. Such nests will be 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

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activities shall enter this circle and no adjacent construction shall be allowed which might directly or indirectly disturb the area within the staked circle.

v) No construction activity may commence until completion of the marine turtle survey each day.

vi) It is the responsibility of the permittee to ensure that the project area and all access sites are surveyed for marine turtle nesting activity. All nesting surveys, nest relocations, screening or caging activities, etc., shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by the Fish and Wildlife Conservation Commission (FWC), pursuant to Florida Administrative Code 68E-1.

d. Immediately after completion of the beach fill placement event and prior to April 15 for 3 subsequent years (or prior to February if in an area with snowy plover nesting) if placed sand still remains on the beach, the beach shall be tilled as described below. During the 3 years following each fill placement event, the permittee may measure sand compaction in the area of restoration in accordance with a protocol agreed to by the FWC, the Department, the U.S. Fish & Wildlife Service, and the applicant to determine if tilling is necessary. At a minimum, the protocol provided under i) and ii) below shall be followed. If required, the area shall be tilled to a depth of 24 inches. All tilling activity must be completed prior to April 15. An annual summary of compaction surveys and the actions taken shall be submitted to the FWC. If the project is completed during the nesting season, tilling shall not occur in areas where nests have been left in place or relocated unless authorized by the U.S. Fish and Wildlife Service in an Incidental Take Statement. A report on the results of compaction monitoring shall be submitted to the FWC prior to any tilling actions being taken. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.

i) Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area) and one station shall be midway between the dune line and the high water line (normal wrack line).

ii) At each station, the cone penetrometer shall be pushed to a depth

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of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lay over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

iii) If the average value for any depth exceeds 500 psi for any two or more adjacent stations, then that area shall be tilled prior to April 15. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the FWC shall be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling shall not be required.

iv) Compaction measurements and tilling shall not occur within or adjacent to areas being utilized for nesting by shorebirds.

e. Visual surveys for escarpments along the beach fill area shall be made immediately after completion of the beach nourishment project and prior to April 1 (or February 1 if in an area with snowy plover nesting) for the following three years if placed sand still remains on the beach. All scarps shall be leveled or the beach profile shall be reconfigured to minimize scarp formation. In addition, weekly surveys of the project area shall be conducted during the two nesting seasons following completion of fill placement as follows:

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 (e.g., 50% scarps). Notations on the height of these escarpments shall be included (0 to 2 feet, 2 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

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inches in height for a distance of 100 feet shall be leveled to the natural beach contour by April 15. Any escarpment removal shall be reported relative to R-monument.

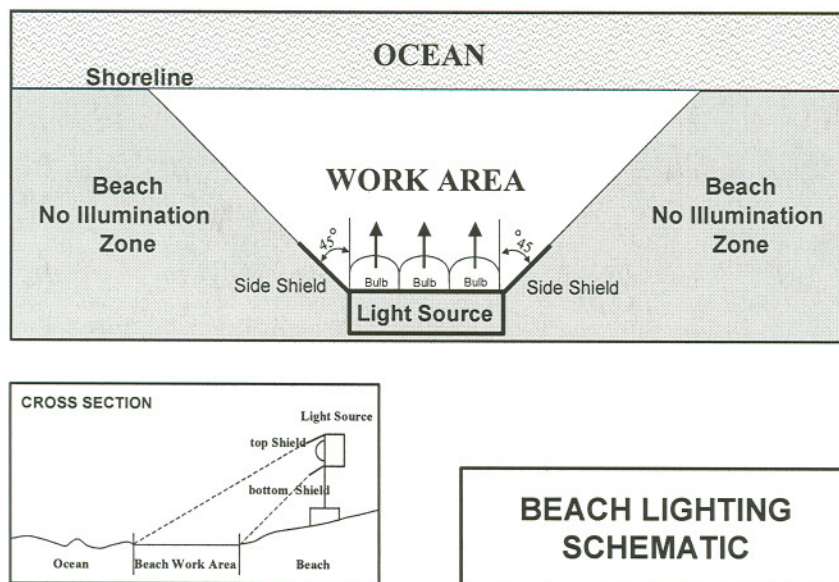
iii) If weekly surveys during the marine turtle nesting season document subsequent reformation of escarpments that exceed 18 inches in height for a distance of 100 feet, the FWC shall be contacted immediately to determine the appropriate action to be taken. Escarpments that exceed 18 inches in height for a distance of 100 feet shall be reported in writing to the Department and FWC within 3 days of the survey. This report shall include the number and location of nests in the vicinity of the escarpment. Upon written notification, the permittee shall level escarpments in accordance with mechanical methods prescribed by the FWC.

iv) No scarp removal shall occur within or adjacent to areas being utilized for nesting by shorebirds.

f. From April 1 through October 31, staging areas for construction equipment shall be located off the beach. Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. 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 or interfering with nesting shorebirds.

g. From April 15 through October 31, all project lighting shall be limited to the immediate area of active construction only and shall be the minimal lighting necessary to comply with U.S. Coast Guard and/or OSHA requirements. Stationary lighting on the beach and all lighting on the dredge shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to minimize illumination of the nesting beach and water (Figure 1).

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h. A lighting survey shall be conducted from the renourished berm prior to April 1 of the first nesting season following nourishment. A report summarizing all lights visible, using standard survey techniques for such surveys, shall be submitted to FWC by April 15 and documenting all compliance and enforcement action. Additional lighting surveys shall be conducted as required to ensure compliance with the Beach Lighting Ordinance on private, commercial, and public property. All violations must be addressed and, if possible, remediated prior to sea turtle nesting season.

i. Reports on all nesting activity shall be provided for the initial nesting season following the completion of construction and for a minimum of two additional nesting seasons. Monitoring of nesting activity shall include daily surveys and any additional measures authorized by the FWC. Reports submitted shall include daily report sheets noting all activity, nesting success rates, hatching success of all relocated nests, hatching success of all nests left in place (if any), dates of construction and names of all personnel involved in nest surveys and relocation activities. Data should be reported separately for the nourished areas and for an equal length of adjacent beach that is not nourished, if available, in accordance with the Table 1. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets). All reports should be submitted by January 15 of the following year.

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Table 1
Marine Turtle Monitoring for Beach Restoration Projects

The following monitoring is required for beach restoration projects. Reports summarizing the nesting should be submitted to the Tequesta office with a copy to the Tallahassee office by January 15 of the subsequent year. Data for nesting activity on the nourished beach and on an

Characteristic	Parameter	Measurement	Variable
Nesting Success	False crawls - number	Visual assessment of all false crawls	Number and location of false crawls in fill areas and nonfill areas: any interaction of the turtle with obstructions, such as groins, seawalls, or scarps, should be noted.
	False crawl - type	Categorization of the stage at which nesting was abandoned	Number in each of the following categories: emergence-no digging, preliminary body pit, abandoned egg chamber.
	Nests	Number	The number of marine turtle nests in filled and nonfilled areas should be noted. If possible, the location of all marine turtle nests shall be marked on map of project, and approximate distance to sea walls or scarps measured using a meter tape. Any abnormal cavity morphologies should be reported as well as whether turtle touched groins, seawalls, or scarps during nest excavation
		Lost Nests	The number of nests lost to inundation, erosion or the number with lost markers that could not be found.
	Lighting Impacts	Disoriented sea turtles	The number of disoriented hatchlings and adults shall be documented and reported in accordance with existing FWC protocol for disorientation events.

equal length of beach that is not nourished shall be reported separately, and should include numbers of nests lost to erosion or washed out. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets).

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j. In the event a hopper dredge is utilized for sand excavation, all conditions in the National Marine Fisheries Service (NMFS) *Biological Opinion for Dredging of Gulf of Mexico Navigation Channels and Sand Mining Borrow Areas Using Hopper Dredges by COE Galveston, New Orleans, Mobile, and Jacksonville Districts* (Consultation Number F/SER/2000/01287) must be followed, and the FWC shall be sent copies of the reports specified in the Biological Opinion.

k. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately and the permitted person responsible for egg relocation for the project should be notified so the eggs can be moved to a suitable relocation site.

l. Upon locating a dead, injured, or sick endangered or threatened sea turtle specimen, initial notification must be made to the FWC at 1-888-404-FWCC. Care should be taken in handling sick or injured specimens to ensure effective treatment and care and in handling dead specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered or threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

m. To the maximum extent practicable, all excavations and temporary alteration of beach topography shall be filled or leveled to the natural beach profile prior to 9:00 pm each day. During any period when excavated trenches must remain on the beach at night, nighttime sea turtle monitoring by the sea turtle permit holder shall be required in the project area in order to further reduce possible impacts to nesting and hatchling sea turtles. Nighttime monitors shall record data on false crawls, successful nesting, and any additional activities of nesting or hatchling sea turtles in the project area.

n. If any nesting turtles are sighted on the beach during daylight hours, construction activities must cease immediately until the turtle has returned to the water, and the sea turtle permit holder responsible for nest monitoring has marked any nest that might have been laid for avoidance.

o. On-beach access to the groin construction site shall be restricted to the wet sand below mean high water.

p. In the event a groin structure fails or begins to disintegrate, all debris and

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structural material shall be removed from the nesting beach and deposited off-site immediately.

11. The proposed work may occur within the secondary protection zone (within 1,500 feet) of bald eagle nest LE-022B. If beach nourishment is scheduled to occur during bald eagle nesting season (October 1 through May 15), consultation with staff of the Florida Fish and Wildlife Conservation Commission (FWC) and U.S. Fish & Wildlife Service shall be required at least 15 days prior to initiation of construction activities. If the nest is determined to be active at the time of the proposed beach nourishment, the permittee shall request a permit modification from the Department to reflect additional restrictive and/or prohibitive conditions for the protection of the bald eagle nest recommended by the FWC and USFWS.

12. **Shorebirds.** In order to ensure that nesting shorebirds are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following conditions:

a. ~~No~~ Beach nourishment, operation, transportation or storage of equipment or materials ~~is authorized~~ should be limited in important shorebird habitat, including ~~the critical wildlife area at~~ Bowman's Beach, from R-116 to R-118 and an adjacent buffer area, from R-116 to R-115, from February 1 through August 31 and in an adjacent buffer area, from R-116 to R-115. Construction activities will be prohibited or limited within the buffer zone to minimize impacts to shorebirds engaged in courtship or nesting behavior on the adjacent beach, or in areas where piping plovers occur or winter migrants congregate in significant numbers.

i) Any and all construction activities, including movement of vehicles, should be ~~prohibited~~ limited in the buffer zone.

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

iii) Modifications to this buffer zone may be implemented upon approval by FWC as needed.

iv) Designated buffer zones must be posted with clearly marked signs around the perimeter. These markings shall be maintained until nesting is completed or terminated, the chicks fledge, or piping plovers or winter migrants depart.

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- v) No Construction activities or stockpiling of equipment shall be allowed within the buffer area

- b. Shorebird surveys should be conducted by trained, dedicated individuals using accepted, appropriate ecological survey procedures (for example, see “*Breeding Season Population Census Techniques for Seabirds and Colonial Waterbirds Throughout North America*” at URL: <http://www.mp2-pwrc.usgs.gov/cwb/manual/>). The shorebird nesting season generally is 1 April – 1 September, but some nesting may occur through September. In addition, the imperiled snowy plover (*Charadrius alexandrinus*) may nest as early as February along the west coast and panhandle of Florida.
 - i) Nesting season surveys shall begin on February 1 or 45 days prior to construction commencement, whichever is later, and be conducted daily throughout the construction period or through September if no shorebird nesting activity is observed.
 - ii) For projects conducted in piping plover habitat, surveys to detect piping plovers or concentrations of other wintering or migratory shorebirds should begin 14 days prior to construction commencement and be conducted once every 2 weeks.
 - iii) Each shorebird species observed, a rough estimate of numbers of each species, the location of the birds, and their activity (e.g., foraging, resting, nesting, courtship behavior) should be logged and reported to the FWC Regional Wildlife Diversity Conservation Biologist monthly.
 - iv) The FWC Regional Wildlife Diversity Conservation Biologist shall be contacted at (863) 648-3205 within 24 hours if shorebird nesting occurs within or immediately adjacent to the project area.

- c. Buffer Zones and Travel Corridors. Within the project area, the permittee shall establish a 300 ft-wide buffer zone around any location where shorebirds have been engaged in courtship or nesting behavior, or around areas where piping plovers occur or winter migrants congregate in significant numbers. Any and all construction activities, including movement of vehicles, should be prohibited in the buffer zone.
 - i) The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.

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- ii) Site-specific buffers may be implemented upon approval by FWC as needed.
 - iii) Designated buffer zones must be posted with clearly marked signs around the perimeter. These markings shall be maintained until nesting is completed or terminated, the chicks fledge, or piping plovers or winter migrants depart.
 - iv) No construction activities or stockpiling of equipment shall be allowed within the buffer area.
 - v) FWC-approved travel corridors should be designated and marked outside the buffer areas. Heavy equipment, other vehicles, or pedestrians may transit past nesting areas in these corridors. However, other activities such as stopping or turning, shall be prohibited within the designated travel corridors adjacent to the nesting site.
 - vi) Where such a travel corridor must be established within the project area it should avoid critical areas for shorebirds (known nesting sites, wintering grounds, FWC-designated Critical Wildlife Areas, and USFWS-designated critical piping plover habitat) as much as possible, and be marked with signs clearly delineating the travel corridor from the shorebird buffer areas described above.
 - vii) To the degree possible, the permittee should maintain some activity within these corridors on a daily basis, without directly disturbing any shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction. Passive methods to modify nesting site suitability must be approved by the FWC Wildlife Diversity Conservation Biologist for that region.
- d. Notification. If shorebird nesting occurs within the project area, a bulletin board will be placed and maintained in the construction area with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that “BIRD NESTING AREAS ARE PROTECTED BY THE FLORIDA THREATENED AND ENDANGERED SPECIES ACT AND THE FEDERAL MIGRATORY BIRD ACT”.

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e. Tilling. All tilling and scarp removal should be conducted outside the shorebird nesting season. If necessary, contractors should contact the FWC Regional Wildlife Diversity Conservation Biologist at (863) 648-3205 to obtain data on known shorebird nesting areas. It is the responsibility of the contractors to avoid tilling or scarp removal in areas where nesting birds are present.

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

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

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

g. The proposed Shorebird Management Plan (SMP) shall be revised and resubmitted to the FWC for approval prior to any construction activity. This plan shall include:

i) Monitoring of shorebirds onsite during and after project construction;

ii) Methods for post-construction site management;

iii) Mitigation for unavoidable impacts to shorebirds or their habitats.

After thorough review of your application, staff finds that the approved portion of the requested modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the approved 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 alteration does not reduce the design adequacy of the project. Since the approved modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated

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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 9, 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.

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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.

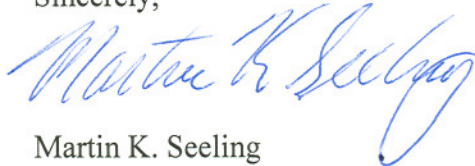
This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office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

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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

cc: Richard Spadoni, CPE
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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.

 3/24/05
Deputy Clerk Date