



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

October 26, 2012

Eric P. Summa, Chief
Environmental Branch
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, FL 32207

Permit Modification No. 0238664-006 -JN
Permit No. 0238664-001-JC, Pinellas County
Sand Key Beach Nourishment, Minor Modification

Dear Mr. Summa:

Your request to modify Permit No. 0238664-001-JC, was received on August 17, 2012, and has been reviewed by Department staff. The proposed permit modification is to extend the template for the Sand Key Beach Nourishment project to include fill from R-107 to R-108, along the dry beach only.

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 A Joint Coastal Permit, Variance and Authorization to Use Sovereign Submerged Lands*, dated July 6, 2011, available at the Bureau website:

<http://bcs.dep.state.fl.us/env-prmt/Pinellas/>

On July 6, 2011, the Department issued Permit No. **0238664-001-JC** to U.S. Army Corps of Engineers (Corps) to nourish 8.7 miles (14.0 km) of beach on Sand Key. That included two beach fill segments from R-56 to R-66 and from 85 feet north of R-71A to R-107. A one-mile gap between the segments (from R-66 to R-71A) was not filled. The project was authorized to occur multiple times, on an as-needed basis, with the first event requiring approximately 1,017,000 cubic yards of beach-compatible sand.

Variance No. **0238664-002-EV** was also granted to the Corps on July 6, 2011, in association with Permit No. 0238664-001-JC. The variance authorized an expanded turbidity mixing zone

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that extends 150 meters offshore (or 300 meters offshore if there is no nearshore hardbottom) and up to 1,500 meters downcurrent from the point of discharge at the beach placement site.

File Nos. **0238664-003-EE** and **0238664-004-BE** were de minimus exemptions granted to Pinellas County for the collection of geotechnical vibracores.

On April 18, 2012, the Department issued Modification No. **0238664-005-JN** to add a dune feature to the Sand Key Beach Nourishment Project. The additional dune would extend between 4 feet south of R-60 and 182 feet south of R-61A. The dune required an additional 2,000 cubic yards of beach compatible sediment from the previously authorized borrow site.

On September 5, 2012, the Department received a request to modify Sand Key Beach Nourishment Permit (File No. **0238664-007-JN**) to include Egmont East Borrow Area as a sand source for the beach nourishment project. That application is still pending.

Modification Justification / Staff Assessment

Department staff has reviewed the requested modification, and has determined that the extension of the beach fill template is not expected to cause unnecessary impacts to the coastal environment and that the expansion will help to stabilize Sand Key. The extended portion of the beach fill template is completely landward of the mean high water (MHW) line, approximately 300 feet landward of the closest nearshore hardbottom. Therefore, filling the extended template is not expected to cause impacts to hardbottom adjacent to Sand Key.

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

PROJECT DESCRIPTION:

The project is to nourish 8.7 miles (14.0 km) of beach on Sand Key. This includes two beach fill segments: from R-56 to R-66 and from 85 feet north of R-71A to R-107. Between R-107 and R-108, fill will only be placed landward of the mean high water line. A one-mile gap between the segments (from R-66 to R-71A) will not be filled. The project is authorized to occur multiple times, on an as-needed basis, with the first event requiring approximately 1,017,000 cubic yards of beach-compatible sand. The sand will be dredged from an offshore borrow area located in federal waters. The project has a design berm elevation of +4.1 feet (1.3 m) NAVD88, with a one-foot construction tolerance to a maximum elevation of +5.1 feet NAVD88 (1.6 m). Berm widths and volumes vary from each section. An additional 2,000 cubic yards of beach-compatible sand will be placed between 4 feet south of R-60 and 182 feet south of R-61A for the

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purpose of dune nourishment, with a dune crest elevation of 7.1 feet (NAVD) and a crest width of 7.5 feet.

The set of approved permit drawings shall be revised as follows:

- Sheet 10 of 33 will be replaced with a new Sheet 10 of 33 (dated September 2012);
- Sheet 10A of 33 (dated September 2012) will be added; and
- Sheet 30 of 33 will be replaced with Sheets 30A of 33 and 30B of 33 (dated September 2012).

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or change the determination that the project is clearly in 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 modification.

This letter of approval does not alter the July 6, 2021, 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 (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

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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 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

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- 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.

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.

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 Liz Yongue at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7798.

Sincerely,



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

MKS/edy

Enclosures: Approved Project Drawings (4 pages)

cc: Jim McAdams, USACE
James Lagrone, USACE
Paul Karch, USACE
Aubree Hershorin, USACE
Bruce Laurion, Tampa Port Authority
Larry Shipp, Tampa Port Authority
Gene Chalecki, BBCS
Catherine Florko, BBCS
Roxane Dow, BBCS
Alex Reed, BBCS

Vladimir Kosmynin, BBCS
Robert Brantly, BBCS
Subarna Malakar, BBCS
El Kromhout, BBCS
Lainie Edwards, BBCS
Mary Yeargan, DEP, Southwest District
Mark Sramek, NMFS
Andy Squires, Pinellas County
JCP Compliance Officer
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

10/26/2012
Date