



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
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January 24, 2014

Geoff Klug
U.S. Army Corps of Engineers P.O. Box 4970
Jacksonville, FL 32232

Permit Modification No. 0251706-004-JN
Permit No. 0251706-001-JC, St. Johns County
St. Augustine Inlet and AIWW Maintenance Dredging and Beach Placement

Dear Mr. Klug:

After discovering errors in the Specific Conditions of Permit No. 0251706-001-JC the Department initiated an administrative modification to correct the errors. This administrative modification will correct inaccurate numbering of cross-references between specific conditions of the permit and will update the contact information in certain wildlife protection conditions.

Historical Background

On December 8, 2010, the Department issued Joint Coastal Permit No. **0251706-001-JC**, to the U.S. Army Corps of Engineers (Corps) to conduct maintenance dredging of the St. Augustine Inlet Entrance Channel, and to conduct new dredging of encroaching shoals adjacent to the navigation channel. Beach compatible sand was authorized to be placed on the beach south of St. Augustine Inlet, from R-132 and R-152. Sandy material that did not meet the criteria for beach placement was authorized for disposal in a nearshore site (between R-142 and R-148); in depths ranging from -12 feet mean lower low water (MLLW) to -20 feet MLLW. The beach disposal template for the permit was over-sized related to the anticipated volume of dredged material, allowing for placement of dredged material in areas within the fill template with the greatest need for nourishment.

For additional background, please see the Consolidated Notice Of Intent To Issue Joint Coastal Permit, and Authorization To Use Sovereign Submerged Lands for Permit No. 0251706-001-JC at the following website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/st_john/issued/0251706_St.%20Augustine_%20Inlet/

On September 2, 2005, the Corps requested Modification No. **0251706-002-DF**, to extend the expiration date of Permit No. 552444459. That modification request was withdrawn.

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On July 3, 2013, the Department issued Modification No. **0251706-003-JN** to the Corps, authorizing the extension of the original beach fill template by approximately 5,000 feet to the north. The template was expanded from monument R-132 to R-127, located within Anastasia State Park. This modification was effective during the 2013 dredging event only.

Administrative Modification No. 0251706-004-JN, which is the subject of this letter, is to correct inaccurate references in the Specific Conditions of Permit No. 0251706-001-JC.

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

3. At least 7 days prior to the pre-construction conference referenced below or at least 21 days prior to the commencement of construction, the Permittee shall submit to the Department for review the following items:
 - a. ***Turbidity monitoring qualifications.*** Construction at the project site shall be monitored closely by an individual with professional experience in monitoring turbidity for beach nourishment or beach disposal projects. This is required to assure that turbidity levels do not exceed the compliance standards established in this permit. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when fill material is discharged on the beach. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit. The names and qualifications of those individuals performing these functions along with 24-hour contact information shall be submitted to the Department to confirm their credentials.
 - b. A written summary of the construction schedule, the specific type of dredge equipment to be used, the anticipated volume of material to be dredged and the disposal sites that may be utilized.
 - c. A plan view of all staging areas, overlaid on a recent aerial photograph if available.
 - d. A copy of the Contractor's Environmental Protection Plan, or equivalent, that provides project-specific details of the Best Management Practices (BMPs) that will be implemented to prevent erosion, turbidity and the release of hazardous substances at the dredge/scow, disposal sites and staging areas. For construction during marine turtle nesting season, a description of how vessel lighting will be minimized during nighttime operations, in adherence to Specific Condition No. ~~4211~~ below.

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5. The Permittee shall not store or stockpile tools, equipment, materials, etc., within surface waters of the state without prior written approval from the Department. Storage, stockpiling or access of equipment on, in, over or through seagrass (or other aquatic vegetation) beds, wetlands or vegetated dunes is prohibited unless such locations are identified as part of the approved work areas or pipeline corridors on the attached permit drawings. Anchoring of vessels within beds of aquatic vegetation is also prohibited. Impacts to aquatic vegetation outside the limits of the authorized channels are not authorized by this permit. Storage of equipment seaward of the primary dune line during the marine turtle or shorebird nesting seasons shall adhere to Specific Condition Nos. ~~43~~12 and 27 below.

24. All vegetation planting shall be designed and conducted to minimize impacts to sea turtles and beach mice. Dune vegetation planting may occur during the sea turtle nesting season under the following conditions.
 - a. Daily early morning sea turtle nesting surveys and egg relocation shall be conducted in accordance with Specific Condition ~~44~~10, above.
 - b. If a nest is disturbed or uncovered during planting activity, the contractor, Applicant or the Applicant's contractors shall cease all work and immediately contact the project turtle permit holder. If a nest(s) cannot be safely avoided during planting, all activity within 10 feet of a nest shall be delayed until hatching and emerging success monitoring of the nest is completed
 - c. All dune planting activities shall be conducted by hand and only during daylight hours;
 - d. All dune vegetation shall consist of coastal dune species native to the local area; (*i.e.*, native to coastal dunes in the respective county and grown from plant stock from that region of Florida). Vegetation shall be planted with an appropriate amount of fertilizer and antidesiccant material for the plant size;
 - e. No use of heavy equipment shall occur on the dunes or seaward for planting purposes. A lightweight (all-terrain type) vehicle, with tire pressures of 10 psi or less may be used for this purpose; and
 - f. Irrigation equipment, if needed, may be authorized under a modification of this permit.

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26. **Shorebird Surveys.** Shorebird surveys should be conducted by trained, dedicated individuals (Shorebird Monitor) with proven shorebird identification skills and avian survey experience. Credentials of the Shorebird Monitor will be submitted to the FWC Regional Biologist for review. Shorebird Monitors will use the following survey protocols:
- a. *Nesting Season Surveys.* Shorebird Monitors should review and become familiar with the general information and data collection protocols outlined on the FWC's ~~Beach Nesting Bird Website~~ (~~<http://myfwc.com/shorebirds/>~~) ~~Florida Shorebird Database Website~~ (~~<https://public.myfwc.com/crossdoi/shorebirds/index.html>~~). An outline of what data should be collected, including downloadable field data sheets, is available on the website.
 - i. The shorebird nesting season is generally 1 April – 1 September, but some nesting may occur through September.
 - ii. Nesting season surveys shall begin on April 1 or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later, and be conducted daily throughout the construction period or through August, whichever is earlier. If project activities continue after August 31 and active nests or fledglings remain on the beach, then weekly surveys of the project site shall continue until all hatchlings have fledged.
 - iii. Nesting season surveys shall be conducted in all potential beach-nesting bird habitat within the project boundaries that may be impacted by construction or pre-construction activities during the nesting season. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded.
 - iv. Surveys for detecting new nesting activity will be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt nesting behavior or cause harm to the birds or their eggs or young.
 - v. Surveys should be conducted by traversing the length of the project area and visually inspecting, using binoculars or spotting scope, for the presence of shorebirds exhibiting breeding behavior.

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- vi. If an ATV or other vehicle is needed to cover large project areas, the vehicle must be operated at a speed less than 6 mph, shall be run at or below the high-tide line, and the Shorebird Monitor will stop at no greater than 200 meter intervals to visually inspect for nesting activity.
- vii. Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor will ~~notify the Regional Nongame Biologist of the FWC at (352) 732-1225 within 24 hours.~~ report findings to the Florida Shorebird Database Website (<http://public.myfwc.com/crossdoi/shorebirds/index.html>) within 24 hours.
- viii. All breeding activity will be reported to the Beach-Nesting Bird website within one week of data collection. Weekly updates shall be reported on the Beach-Nesting Bird website until fledgling or loss of identified nests or hatchlings. A monitoring report of all shorebird nesting that takes place within the shell hash layer shall be submitted to the FWC Imperiled Species Management Section in Tallahassee by January 15 of the following year.
- ix. ~~Observations of non-breeding shorebirds should be reported to the Shorebird Seabird Occurrence Database, as described below.~~

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 December 8, 2020, expiration date or other Specific Conditions 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 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 Gregory Garis by email at gregory.garis@dep.state.fl.us or by telephone at (850) 245-8280.

Sincerely,



Martin K. Seeling, Administrator
Beaches, Inlets & Ports Program


MKS/gg

cc: Danielle Irwin, DWRM
Martin Seeling, DWRM
Roxane Dow, DWRM
Robert Brantley, DWRM
Ralph Clark, DWRM
Alex Reed, DWRM
Guy Weeks, DWRM
David Courson, DWRM
David Kriger, DWRM
Trey Hatch, DWRM
Drs. Shirley and Love, GTMNERR
Kelly Roberts, FWC

Geoff Klug, Corps
Irene Sadowski, Corps
Andrew Ames, St. Johns County
Robbin Trindell, FWC
Mary Duncan, FWC
Alex Kropp, FWC
Melissa Long, DEP, Northeast District
JCP Compliance
Jeff Howe, USFWS
BIPP File
George Getsinger, NMFS, Jacksonville
Eric Hughes, USEPA, Jacksonville

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

1/24/14

Date

