



Florida Department of Environmental Protection

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CERTIFIED - RETURN RECEIPT REQUESTED

May 18, 2012

Captiva Erosion Prevention District
c/o Stephen Keehn, P.E.
Coastal Planning and Engineering
2481 NW Boca Raton Boulevard
Boca Raton, FL 33431

Permit Modification No. 0200269-007-JN
Permit No. 0200269-001-JC, Lee County
Captiva & Sanibel Island Nourishment Minor Modification

Dear Mr. Keehn:

Your request to modify Permit No. 0200269-001-JC was received on November 14, 2011, and has been reviewed by Department staff. The proposed permit modification is to expand Borrow Area VI (now referenced as Borrow Area VI-E for the entire borrow area, including the expansion), to eliminate the pipeline corridors in selected areas and to allow for year round dredging.

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* for Joint Coastal Permit (JCP) No. 0200269-001-JC, dated September 13, 2004, available at the Bureau website:

[http://bcs.dep.state.fl.us/env-prmt/lee/issued/0200269_Captiva_and_Sanibel_Island_Nourishment_Project/001-JC/0200269-001-JC%20and%20002%20EV%20\(Intent%20to%20Issue%2009-13-04\)/Intent%20to%20Issue%20\(09-13-04\).pdf](http://bcs.dep.state.fl.us/env-prmt/lee/issued/0200269_Captiva_and_Sanibel_Island_Nourishment_Project/001-JC/0200269-001-JC%20and%20002%20EV%20(Intent%20to%20Issue%2009-13-04)/Intent%20to%20Issue%20(09-13-04).pdf)

PROJECT HISTORY

On November 9, 2004, the Department issued Permit No. **0200269-001-JC** to the Captiva Erosion Prevention District (CEPD) to construct 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

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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.

On November 8, 2005, the Department issued Variance No. **0200269-002-EV** to the CEPD, providing relief from the provisions of Rule 62-4.244(5)(c), Florida Administrative Code (F.A.C.), for an expanded mixing zone of 200 meters offshore and 1,500 meters downdrift from the beach discharge point. The variance does not apply to discharges within 1,500 meters of Redfish Pass and Blind Pass (if a connection between the Gulf of Mexico and the waters of Pine Island Sound Aquatic Preserve exists).

On March 24, 2005, the Department issued Permit Modification No. **0200269-003-EM** to the CEPD to allow for beach nourishment construction during turtle nesting season. 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 (FWS) had also delayed submittal of an updated Biological Opinion for this project due to the interruptions of the hurricane season. The updated Biological Opinion was issued on March 4, 2005, allowing for incidental take of sea turtles, and the permit was modified to reflect the updated Biological Opinion.

Modification No. **0200269-004-EM** was issued on May 17, 2005, to replace permit drawings of the groin, which contained an error.

Modification No. **0200269-005-EM** was issued on July 1, 2005, to replace a permit drawing of borrow area IIIB, which contained an error.

Modification No. **0200269-006-EM** was issued on October 19, 2005, to allow for dune reconstruction, to extend the fill level to the previously existing uplands and to fix an unintended error regarding the timing of marine turtle surveys.

The application for the current modification (File No. **0200269-007-JN**) was received on November 14, 2011. In addition to the request to expand Borrow Area VI, eliminate the pipeline corridors in selected areas and allow for year round dredging, the application also requested an extension of the permit expiration date. However, Rule 62B-49.011, F.A.C., limits the duration of Joint Coastal Permits to 10 years, and Permit No. 0200269-001-JC already had a duration of 10 years. Therefore, the Applicant withdrew the time extension request.

JUSTIFICATION FOR MODIFICATION REQUEST

The Applicant contends that this modification will support a more simplified and cost effective dredging by allowing greater flexibility for pipeline positioning and dredge operation. Historic vibracores, sled survey tracks and stratigraphy showed that there is sufficient sediment thickness

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existing out to the 28-foot depth contour to preclude the periodic exposure of the underlying limestone. Therefore, no hardbottom habitat is expected to occur in that area. The expansion of Borrow Area VI is desired to ensure there is sufficient sand within dredgable, economical depths for the project areas until the end of the current permit. Borrow Area VI was dredged in 2006 and 2008, which left two dredge troughs limiting the amount of dredgable sand. The use of Borrow Area VI in 2006 was unplanned, and lead to early dredging of the resource. The expanded borrow area limits will compensate for those earlier dredgings. The expanded borrow area will result in a more cost effective project due to the fact that the dredgers will be able to remove the sand more easily from the borrow area. With current financial conditions, allowing year-round dredging can provide considerable cost-savings and flexibility to all parties involved in the nourishment project, including the implementation of joint projects, which are not practical within the non-nesting season window.

STAFF ASSESSMENT OF MODIFICATION REQUEST

Borrow Area VI was permitted under the original permit for this project (Permit No. 0200269-001-JC). This modification expands the borrow area limits. No new geotechnical data was required in support of this modification, as the expanded area was included in the original sand search and Department review. The expanded borrow area is labeled on the drawings as Borrow Area VI-E.

Borrow Area VI-E contains 3 subareas (A, B, and C) that are prioritized for dredging. Each subarea contains maximum dredge depths ranging from -40.5 feet NGVD to -43.5 feet NGVD. Borrow Area VI-E contains medium to fine-grained quartz sand, with an average mean grain size of 0.40 mm. The average silt content is 0.80%, and the sorting value is 1.12 phi (poorly sorted). The total volume of sand available above the maximum dredge depths in Borrow Area VI-E is 4,729,000 cubic yards.

A Sediment QA/QC plan was submitted for this project pursuant to Rule 62B-41.008(1)(k), F.A.C. The final draft of the Sediment QA/QC plan that was received on February 14, 2012, is recommended for approval.

The fill material in the proposed borrow area is compatible with the native beach material. Based upon the information and analysis provided by the Applicant, the beach fill material in the proposed borrow area is expected to maintain the general character and functionality of the material on the native beach in accordance with Rule 62B-41.007(2)(j), F.A.C.

Limited hardbottom patches exist in the area surrounding the borrow area. The original expanded borrow area modification proposal included an area that encroached on some adjacent hardbottom patches. After consultation with the Department, the Applicant revised their borrow area to include a 750-foot buffer around those hardbottom patches.

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Staff has reviewed the data provided regarding the request to run pipeline anywhere within and shoreward of the permitted rectangle and have agreed that no impact to hardbottom is expected to occur as long as potential areas of hardbottom are given the allotted 750-foot buffer and a 400-foot buffer is maintained around the pipelines (delineated by the agent on Sheet 4).

The Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the potential impacts to threatened and endangered species from the proposed modification, which includes an allowance for year round construction. Due to the large populations of marine turtles and shore birds nesting in the project area, the Specific Conditions of the permit will have to be changed to address protection against nest disturbance, disorientation from light pollution caused by night construction, protection of hatchlings on or around the construction site, turtle nest sighting surveys, and sand compaction.

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

PROJECT DESCRIPTION:

The applicant is authorized to construct 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. In addition to beach fill, impacted dunes and vegetation located within the project area will be restored. During the initial nourishment project, approximately 1.8 million cubic yards of sand will be dredged from two offshore borrow areas, Borrow Area IIIA and Borrow Area IV, using hopper dredges. Borrow Areas IIIB and VI-E will be utilized during the maintenance dredging event authorized under the 10-year permit interval. Borrow Area VI-E includes Borrow Area VI, plus an expansion, from 7,945,000 square feet to 15,768,000 square feet, allowing for an additional 2.28 million cubic yards of available sand. The elevation of the design beach berm inclines from +7.0 feet (NGVD) at the dune line to +5.0 feet (NGVD) at the crest of the seaward edge of beach face, and a seaward slope of 1:12 (V:H) to the existing profile. The project includes reconstruction and a 150-foot seaward extension of the existing groin at Redfish Pass. The project may also involve the temporary placement of sand within two stockpile/re-handling areas located ~~along the pipeline corridors~~ offshore of R-105 and R-88. The entire nearshore area of the project, landward of the "Cleared Area Offshore Boundary" (as shown on Sheet 4), is authorized as an open pipeline corridor, available for use with multiple pipeline positions.

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

4. No work shall be conducted under this permit until the permittee has received a written Notice to Proceed from the Department. A separate Notice to Proceed shall be required for subsequent maintenance and/or emergency nourishment events conducted under this permit. At least 30 days prior to the requested date of issuance of the Notice to Proceed the permittee shall submit the following for review and approval by the Department:

~~b. — A Final Sediment Quality Control/Quality Assurance Plan, as required by Rule 62B-41.008(1)(k)4.b., F. A.C. Once approved by the Department, compliance with the Plan shall be a specific condition of this permit and must be incorporated in the Relevant Terms and Conditions of the construction contracts. The Plan shall include project-specific sediment quality specifications for grain size distribution, color, and carbonate composition to ensure that the sediment from the borrow sites will meet the standards in Rule 62B-41.007(2)(G)F, . A.C., for the exclusion of non-compatible fill material. The Plan shall provide quality control procedures for excavating sediment from within the authorized horizontal and vertical limits of the permitted borrow sites; for monitoring and reporting the quality of sediment after it is placed on the beach; and for altering construction operations if the sediment does not comply with the project specific sediment quality specifications or stopping the dredging operation if the specifications cannot be attained. Further, the Plan shall provide procedures for testing the quality of the sediment after it is placed and methods for remediation of any areas of fill material that do not comply with the sediment quality specifications. Sediment quality will be assessed as outlined in the Sediment QA/AC plan (attached). Any occurrences of unacceptable material will be handled according to the protocols set forth in the Sediment QA/QC plan. The sediment testing result will be submitted to FDEP within 90 days following the completion of beach construction.~~

~~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 may be started at anytime during the year.~~

~~e. — Construction-related activities for groin improvements and beach nourishment may occur on the nesting beach (seaward of existing coastal~~

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~~armorings structures or the dune crest) during sea turtle nesting season in accordance with the following conditions, except as required for shorebird protection.~~

~~i) — A daily marine turtle nest survey of the nesting beach in the vicinity of the project (including areas of beach access) will be required if any portion of the beach nourishment project occurs during the period from April 1 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 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.~~

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~~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 1 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 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 transects line, and the final 6 averaged compaction values.~~

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~~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 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.~~

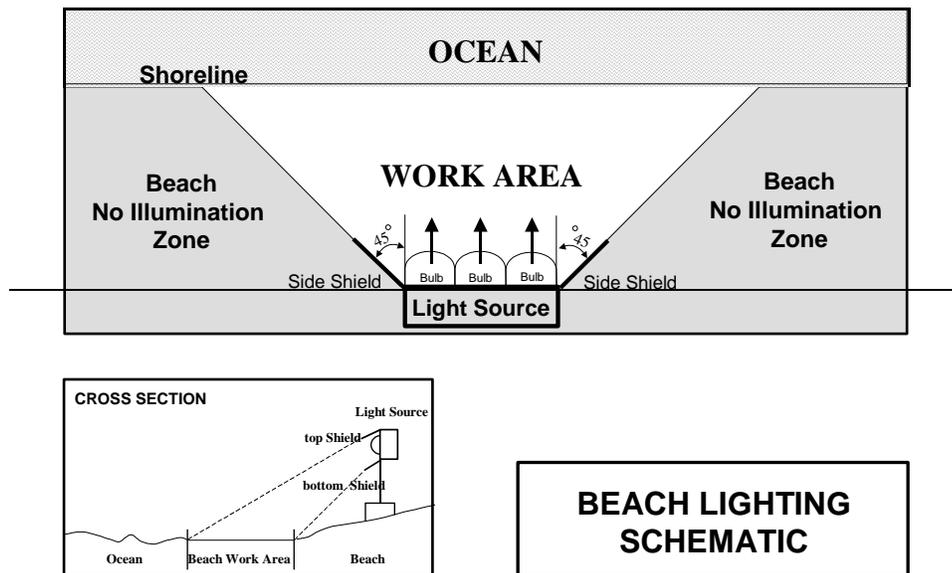
~~iii) — If weekly surveys during the marine turtle nesting season document subsequent reformation of escarpments that exceed 18 inches in height for a distance of 100 feet, the FWC shall be contacted immediately to determine the appropriate action to be taken. Escarpments that exceed 18 inches in height 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.~~

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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).



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

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~~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 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).

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.

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

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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 should be limited in important shorebird habitat, including 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. 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 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.

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*

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~~Waterbirds Throughout North America” at URL: <http://www.mp2-pwre.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.~~

~~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.~~

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~~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”.~~

~~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.~~

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~~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.~~

~~13. — **Manatees.** In order to ensure that manatees are not adversely affected by the construction activities authorized by this permit, the permittee shall adhere to the following manatee protection conditions:~~

~~a. — The permittee/contractor shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).~~

~~b. — The permittee/contractor shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act of 1978.~~

~~e. — Siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured, and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.~~

~~d. — All vessels associated with the project operate at "no wake/idle speed" at all times while in the construction area and while in water where the draft of the vessel provides less than a four foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.~~

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e. — If a manatee(s) are seen within 100 yards of the active daily construction/dredging operation, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities shall not resume until the manatee(s) has departed the project area of its own volition.

f. — Any collision with and/or injury to a manatee shall be reported immediately to the “FWC Hotline” at 1-888-404-FWCC. **Collision and/or injury should also be reported to the U. S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for north Florida or Vero Beach (1-772-562-3909) for south Florida.**

g. — Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the permittee upon completion of the project. A sign measuring at least 3 ft. by 4 ft. which reads Caution Manatee Area will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 ½” by 11” which reads Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of operation. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. The U.S. Fish and Wildlife Service should also be contacted in Jacksonville (1-904-232-2580) for north Florida or in Vero Beach (1-772-562-3909) in south Florida.

16. — During times of beach nourishment, the dunes may be reconstructed as needed, without changing the seaward extent of the berm, along the entire project length. Prior to construction, the final Construction Plans and Specifications, (based upon post storm surveys of the beach, if applicable), shall include any dune reconstruction necessary and shall require review and approval by the Department prior to issuance of a Notice to Proceed with construction.

a. — Fill material shall be compatible with native sand both in grain size distribution and color. Sand sources shall comply with the criteria in Rule 62B-41.007(2)(j), F.A.C.

b. — Fill shall be placed as landward as practicable to establish or repair dune features. The permittee shall take into account the existing beach and dune profile to determine appropriate siting of fill in order to provide reasonable longevity of

~~the project.~~

Fish and Wildlife Protection Conditions for Dredging Activities:

10. No nighttime mechanical dredging, such as clamshell, shall occur.

11. In the event a hopper dredge is utilized, the following requirements shall be met in addition to the Terms and Conditions of the applicable NMFS Regional Biological Opinion for Hopper Dredging (South Atlantic or Gulf of Mexico):

a. Handling of sea turtles captured during hopper dredging projects 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 Marine Turtle Permit issued by the Florida Fish and Wildlife Conservation Commission (FWC), pursuant to Florida Administrative Code 68E-1.

b. Dredging Pumps: Standard operating procedure shall be that dredging pumps shall be disengaged by the operator, or the draghead bypass valve shall be open and in use when the dragheads are not firmly on the bottom, to minimize impingement or entrainment of sea turtles within the water column. This precaution is especially important during the cleanup phase of dredging operations.

c. Sea Turtle Deflecting Draghead: A state-of-the-art rigid deflector draghead must be used on all hopper dredges in all channels at all times of the year.

d. The Sea Turtle Stranding and Salvage Network (STSSN) Coordinator, shall be notified at (904) 573-3930 or via e-mail at Allen.Foley@myfwc.com of the start-up and completion of hopper dredging operations. In the event of capturing or recovering marine turtles or marine turtle parts, the STSSN should be contacted at 1-888-404-FWCC (3922).

e. Relocation trawling or non-capture trawling shall be implemented in accordance with the applicable NMFS Biological Opinion and Incidental Take authorization. Any activity involving the use of nets to harass and/or to capture and handle marine turtles in Florida waters requires a Marine Turtle Permit from FWC.

f. The permittee shall e-mail (MTP@MyFWC.com) weekly reports to the Imperiled Species Management section on Friday each week that trawling is conducted in Florida waters. These weekly reports shall include the species and number of turtles captured in Florida waters, general health, and release

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information. A summary (FWC provided Excel spreadsheet) of all trawling activity, including noncapture trawling, and all turtles captured in Florida waters, including all measurements, the latitude and longitude (in decimal degrees) of captures and tow start-stop points, and times for the start-stop points of the tows, including those tows on which no turtles are captured, shall be submitted to the ISM by January 15 of the following year.

Marine Turtle Protection Conditions for Beach Placement of Dredged Material:

12. For sand placement projects that occur during the period from May 31 through October 31, daily early morning (before 9 a.m.) surveys shall be conducted and eggs shall be relocated per the requirements below (3a to 3c) until completion of the project. Sea turtle nesting surveys shall be conducted as indicated below.

13. Nesting surveys shall be initiated 65 days prior to sand placement activities or by April 15 whichever is later. Nesting surveys shall continue through September 30. If nests are laid in areas where they may be affected by construction activities, eggs shall be relocated per the requirements listed in a through c below.

a. Nesting surveys and egg relocations shall only be conducted by persons with prior experience and training in these activities and who are duly authorized to conduct such activities through a valid permit issued by FWC, pursuant to F.A.C 68E-1. Please contact FWC's Marine Turtle Management Program in Tequesta at (561) 575-5408 for information on the permit holder in the project area. It is the responsibility of the permittee to ensure that nesting surveys are completed. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (in all time zones).

b. Only those nests in the area where sand placement will occur shall be relocated. Nests relocation shall not occur upon completion of sand placement. 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. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience sever erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities shall cease when sand placement activities no longer threaten nests.

c. Nests deposited within areas where construction activities have ceased or will not occur for 65 days or nests laid in the nourished berm prior to tilling shall be marked and left in place unless other factors threaten the success of the nest.

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The turtle permit holder shall install an on-beach marker at the nest site and/or a secondary marker at a point as far landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. No activity will occur within this area nor will any activities occur which could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.

14. Sand compaction shall be monitored in the area of sand placement immediately after completion of the project and prior to April 15th for 3 subsequent years.

15. Sand compaction shall be monitored in accordance with a protocol agreed to by the U.S. Fish and Wildlife Service (FWS), FWC, and the applicant or local sponsor. At a minimum, the protocol provided under 6a and 6b below shall be followed. If tilling is required, the area shall be tilled to a depth of 36 inches. All tilling activity shall be completed prior to those dates listed above. (NOTE: The requirement for compaction monitoring can be eliminated if the decision is made to rill regardless of post-construction compaction levels. Additionally, out-year compaction monitoring and remediation are not required if placed material no longer remains on the dry beach.)

16. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling. If the project is completed during the marine turtle nesting season, tilling will not be performed in areas where nests have been left in place or relocated. If compaction measurements are taken, a report on the results of the compaction monitoring shall be submitted electronically to FWC at marineturtle@myfwc.com prior to any tilling actions being taken.

a. 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).

b. At each station, the cone penetrometer shall be pushed to a depth 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 lie 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 will include all 18 values for each transect line, and the final 6 averaged compaction values.

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c. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled immediately prior to the following dates listed above.

d. 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 or FWS will be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required.

e. Tilling shall occur landward of the wrack line and avoid all vegetated areas 3 square feet or greater with a 3 square foot buffer around the vegetated areas.

17. Visual surveys for escarpments along the project area shall be made immediately after completion of the sand placement project and prior to March 1 for 3 subsequent years if sand from the project area still remains on the beach. Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by April 15. Any escarpment removal shall be reported by location. If the project is completed during the sea turtle nesting and hatching season, escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. FWC shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the FWS or FWC will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted electronically to marineturtle@myfwc.com along with the annual summary as describe below. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach).

18. Staging areas for construction equipment shall be located off the beach, if off-beach staging areas are available, during the sea turtle nesting season. Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. In addition, 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. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune. Temporary storage of pipes shall be off the beach to the maximum extent possible. If the pipes shall be on the beach, they shall be placed in a manner that will minimize the impact to nesting habitat and shall not compromise the integrity of the dune systems.

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19. During the sea turtle nesting season, the contractor shall not extend the beach fill more than 500 feet along the shoreline between dusk and the following day until the daily nesting survey has been completed and the beach cleared for fill advancement. An exception to this may occur if there is permitted sea turtle surveyor present on-site to ensure no nesting and hatching sea turtles are present within the extended work area. If the 500 feet is not feasible for the project, an agreed upon distance will be decided on during the preconstruction meeting. Once the beach has been cleared and the necessary nest relocations have been completed, the contractor will be allowed to proceed with the placement of fill during daylight hours until dusk at which time the 500-foot length limitation shall apply.

20. Marine Turtle or Nest Encounters. Upon locating a dead or injured sea turtle adult, hatchling or egg that may have been harmed or destroyed as a direct or indirect result of the project, the Corps, applicant, and/or local sponsor shall be responsible for notifying FWC Wildlife Alert at 1-888-404-FWCC (3922). Care shall be taken in handling injured sea turtles or eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials in the best possible state for later analysis. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.

21. Beach Maintenance. All derelict concrete, metal, and coastal armoring material and other debris shall be removed from the beach prior to any material placement to the maximum extent practicable. If debris removal activities will take place during shorebird or sea turtle nesting seasons, the work shall be conducted during daylight hours only and shall not commence until completion of daily seabird, shorebird or sea turtle surveys each day. All excavations and temporary alterations of the beach topography shall be filled or leveled to the natural beach profile prior to 9 p.m. each day.

22. Pre-Construction Meeting. A meeting between representatives of the contractor, the FWS, the FWC, the permitted sea turtle surveyor and other species surveyors as appropriate, shall be held prior to commencement of work on projects. At least 10-business days advance notice must be provided prior to conducting this meeting. The meeting will provide an opportunity for explanation and/or clarification of the protection measures as well as additional guidelines when construction occurs during nesting season, such as staging equipment and reporting within the work area as well as follow up meetings during construction.

23. Project Lighting. Direct lighting of the beach and nearshore waters shall be limited to the immediate construction area during the sea turtle nesting season and shall comply with safety requirements. Lighting on offshore or onshore equipment shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid

excessive illumination of the water's surface and nesting beach while meeting all Coast Guard, EM 385-1-1, and OSHA requirements. Light intensity of lighting equipment shall be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields shall be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area (Figure below).

Reporting Marine Turtle Protection Conditions for Beach Placement of Dredged Material:

24. Reports on all marine turtle nesting activity shall be provided for the initial marine turtle nesting season and for up to three additional nesting seasons as follows:

a. For the initial nesting season and the following year, the number and type of emergences (nests or false crawls) shall be reported per species in accordance with the below table. An additional year of nesting surveys may be required if nesting success on the nourished beach is less than 40%.

b. For the initial nesting season, reproductive success shall be reported per species in accordance with the below table. Reproductive success shall be reported for a statistically valid number of loggerhead nests and all green and leatherback nests if possible. Otherwise a statistically significant number of green nests shall be reported.

c. In the event that the reproductive success documented by species meets or exceeds required criteria (e.g., 60% or greater for hatch success and 80% or greater for emergence success) for all species, monitoring for reproductive success shall be recommended, but not required for the second year post-construction.

d. Monitoring of nesting activity in the seasons following construction shall include daily surveys and any additional measures authorized by the FWC. Summaries shall include all crawl activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place (if any) by species, project name and applicable project permit numbers, dates of construction and names of all personnel involved in nest surveys and relocation activities.

25. Data shall be reported for the nourished areas in accordance with the Table below and shall include number of nests lost to erosion or washed out. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets) to the FWC Imperiled Species Management section at MTP@myfwc.com. All summaries shall be

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submitted by January 15 of the following year. The FWC Excel spreadsheet is available upon request from MTP@myfwc.com.

Table 1. Marine Turtle Monitoring for Beach Placement of Maintenance Dredge Material

<u>Metric</u>	<u>Duration</u>	<u>Variable</u>	<u>Criterion</u>
<u>Nesting Success</u>	<u>Year of construction, one year to two or three years post-construction if placed sand remains on the beach and variable does not meet criterion based on the previous year monitoring</u>	<u>Number of nests and non-nesting emergences by day by species</u>	<u>40% or greater</u>
<u>Hatching Success</u>	<u>Year of construction and one year to two or three years post-construction if placed sand remains on the beach and variable does not meet criterion based on the previous year monitoring</u>	<u>Number of hatchlings by species to completely escape egg</u>	<u>Average of 60% to 80% or greater (data must include washed out nests)</u>
<u>Emergence Success</u>	<u>Year of construction and one year to two or three years post-construction if placed sand remains on the beach and variable does not meet criterion based on the previous year monitoring</u>	<u>Number of hatchlings by species to emerge from nest onto beach naturally</u>	<u>Average of 80% or greater (data must include washed out nests)</u>
<u>Disorientation</u>	<u>Year of construction and one to three years post-construction if placed sand remains on the beach</u>	<u>Number of nests and individuals that misorient or disorient</u>	
<u>Lighting Surveys</u>	<u>Year of construction, monthly during nesting season</u>	<u>Number of lights visible from elevated berm</u>	<u>100% reduction in light sources directly visible from nourished berm within one to two month period</u>
<u>Compaction</u>	<u>Not required if the beach is tilled prior to nesting season each year placed sand remains on the beach</u>	<u>Shear resistance</u>	<u>Less than 500 psi</u>
<u>Escarpment Surveys</u>	<u>Weekly during nesting season for up to three years each year placed sand remains on the beach (can be done as part of Marine Turtle Permit Holder nesting surveys)</u>	<u>Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than two weeks</u>	<u>Successful remediation of all persistent scarps within three weeks of documentation</u>

Shorebird Protection Conditions:

26. Seabird and Shorebird Surveys. Surveys shall be conducted to identify and document the presence of nesting seabirds and shorebirds (shorebird). Nesting shorebird surveys should be conducted by trained, dedicated individuals (Shorebird Observer) with proven shorebird identification skills and avian survey experience. Credentials of the Shorebird Observer will be submitted to the FWC Regional Species Biologist for review and approval. Shorebird Observers will use the following survey protocols:

a. Shorebird Observers must review and become familiar with the general information and data collection protocol outlined on the FWC's Florida Shorebird Database website (www.FLShorebirdDatabase.org). An outline of data to be collected, including downloadable field data sheets, is available on the website.

b. The nesting season is April 1 – September 1 for seabirds, but flightless young may be present through September. In addition, snowy plover may nest as early as February (found along the west coast of Florida) and the American oystercatcher may initiate nesting as early as March 15. Nesting season surveys must begin on the first day of nesting season (February 15 in potential snowy plover habitat, March 15 in areas where American oystercatchers have historically nested, or April 1 elsewhere) or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later. Surveys must be conducted through August or until all nesting activity has concluded, whichever is later.

c. 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.

d. During the pre-construction and construction phases of the project, 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.

e. Surveys shall be conducted by walking the length of the project area and visually inspecting, using binoculars or spotting scope, for the presence of shorebirds exhibiting breeding behavior.

f. If an ATV or other vehicle is needed to cover large project areas, operators will adhere to the FWC's Best Management Practices for Operating Vehicles on

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the Beach (<http://myfwc.com/conservation/you-serve/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed <6 mph and be run at or below the high-tide line. The Shorebird Observer will stop at no greater than 200 meter intervals to visually inspect for nesting activity.

g. Once breeding is confirmed by the presence of a scrape, eggs, or young, the Shorebird Observer will notify the FWC Regional Species Biologist (contact information attached) within 24 hours. All breeding activity will be reported to the Florida Shorebird Database website within one week of data collection.

27. Seabird and Shorebird Buffer Zones and Travel Corridors. Within the project area, the permittee must establish a 300-foot-wide disturbance-free buffer zone around any location where shorebirds have been engaged in nesting behavior, including territory defense. All human disturbances shall be prohibited in the buffer zone.

a. The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other human activities.

b. Site-specific buffers may be implemented upon approval by the FWC Regional Species Biologist as needed.

c. Reasonable and traditional pedestrian access should not be blocked where nesting birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when nesting was initiated within 300 feet of an established beach access pathway. The permittee shall work with the FWC Regional Species Biologist to determine if pedestrian access can be accommodated without compromising nesting success.

d. Designated buffer zones must be posted with posts, twine, and clearly marked signs (“No Entry”) around the perimeter which include the name and a phone number of the entity responsible for posting. Posts should not exceed 3’ in height. Symbolic fencing (twine, string, or rope) should be placed between all posts at least 2.5’ above the ground and rendered clearly visible to pedestrians. If pedestrian pathways are approved by the FWC Regional Species Biologist within the 300-foot buffer zone, these should be clearly marked. The posted area shall be maintained in good repair until nesting is completed or terminated. Although solitary nesters may leave the posted area with their chicks, the posted area continues to provide a potential refuge for the family until nesting is complete. Nesting is not considered to be completed until all chicks have fledged.

e. No construction activities, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.

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f. Heavy equipment and other vehicles should not be operated on the beach when flightless chicks are present outside the posted area. If movement of vehicles or equipment on the beach is necessary, they must be accompanied by the shorebird observer who will insure no flightless birds are in the path of the moving vehicle and no tracks capable of trapping flightless young result.

28. Seabird and Shorebird Notification. If shorebird nesting occurs within the project area, a bulletin board will be placed and maintained in the construction staging area with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that “NESTING BIRDS ARE PROTECTED BY LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS”.

29. Beach Contours. All tilling and scarp removal should be done outside the shorebird nesting season. It is the responsibility of the contractors to avoid tilling or scarp removal in areas where nesting birds are present.

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

b. 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.

30. Placement of Equipment and Sand. 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 those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a known shorebird nesting site during the shorebird nesting season.

31. Mitigation for Loss or Degradation of Habitat. Where beach nourishment or dredging operations result in significant degradation or effective loss of shorebird habitats, activities shall be undertaken to mitigate those impacts.

32. During times of beach nourishment, the dunes may be reconstructed as needed, without changing the seaward extent of the berm, along the entire project length. Prior to construction, the final Construction Plans and Specifications, (based upon post storm surveys of the beach, if applicable), shall include any dune reconstruction necessary and shall require review and approval by the Department prior to issuance of a Notice to Proceed with construction.

a. Fill material shall be compatible with native sand both in grain size distribution and color. Sand sources shall comply with the criteria in Rule 62B-

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41.007(2)(j), F.A.C.

b. Fill shall be placed as landward as practicable to establish or repair dune features. The permittee shall take into account the existing beach and dune profile to determine appropriate siting of fill in order to provide reasonable longevity of the project.

33. In the event that additional requirements are specified in any subsequent U.S. Fish and Wildlife Service Incidental Take Authorization and Biological Opinion, additional marine turtle protection conditions may be incorporated into this final order through a minor modification.

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 drawings, we are notifying all necessary parties of the modification.

The borrow area expansion also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, Florida Statutes (F.S.). The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253 and the policies of the Board of Trustees.

As staff to the Board of Trustees, the Department has reviewed the borrow area expansion described above, and has determined that this use of sovereign submerged lands for less than 5 years qualifies for a Letter of Consent. As long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein, consent is hereby granted, pursuant to Chapter 253.77, F.S.

This modification 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.

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This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, 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

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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;
- (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.

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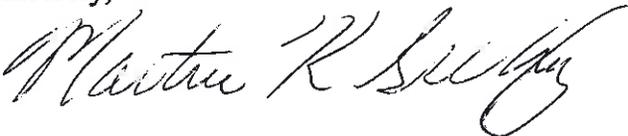
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

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 Liz Yongue at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7728.

Sincerely,



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

MKS/edy

Attachments: QA/QC Plan
Additional Permit Drawings (4 pages)

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cc: Kathleen Rooker, CEPD
Danielle Fondren, BBCS
Gene Chalecki, BBCS
Robert Brantly, BBCS
El Kromhout, BBCS
Vladimir Kosmynin, BBCS
Lucy Blair, DEP, District Office
Alex Reed, BBCS
Jenny Cowart, Field Inspector
Tunis McElwain, USACE
Mark Sramek, NMFS
MarineTurtle@myfwc.com
Nancy Douglas, FWC
BBCS Permit File

Lauren Floyd, CPE
Paden Woodruff, BBCS
Roxane Dow, BBCS
Vince George, BBCS
Jennifer Koch, BBCS
Marshall Flake, Parks Staff
Subarna Malakar, BBCS
Lainie Edwards, BBCS
JCP Compliance Officer
Steve Boutelle, Lee County
Robbin Trindell, FWC
Luke Davis, FWC
FWCConservationPlanningServices@myfwc.com

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.

 5/18/12
Deputy Clerk Date