



Florida Department of Environmental Protection

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3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Herschel T. Vinyard Jr.
Secretary

April 2, 2013

St. Lucie County
2300 Virginia Avenue
Fort Pierce, Florida 34982

c/o

Michael Trudnak, P.E.
Taylor Engineering, Inc.
10151 Deerwood Park Blvd, Bldg 300, Suite 300
Jacksonville, FL 32256

Permit Modification No. 0269646-009-JN
Permit No. 0269646-001-JC, St. Lucie County
Ft. Pierce Nourishment Project

Dear Mr. Trudnak:

Your request to modify Permit No. 0269646-001-JC was received on February 21, 2013, and has been reviewed by Department staff. The proposed permit modification is to expand the authorized borrow area.

Project History

The Ft. Pierce Shore Protection project was first constructed in 1971 by the U.S. Army Corps of Engineers. Approximately 718,000 cubic yards of beach quality sand from a nearshore borrow area was placed between DEP Reference Monuments R-34 and R-41 in this initial restoration event. The beach was nourished in 1980 and then again in 1999, 2003, 2004, and 2005. The following is a brief summary of the various permits issued for this project.

The federal beach erosion control project was first nourished in 1980 with the placement of approximately 346,000 cubic yards of sand. Fourteen years later, in 1994, three sand-filled geotextile fabric tubes were placed as groins within 1,000 feet of the south jetty (DEP Permit No. **56-221185-9**) to help combat erosion. In 1997, a spur was added to the south jetty under DEP Permit No. **56-285573-9** to minimize the loss of sand into the inlet.

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On May 11, 1998, the Department issued Permit No. **0126215-001-JC** to the St. Lucie County Erosion District for the Ft. Pierce Shore Protection Project. The Permittee placed approximately 830,000 cubic yards of sand between R-34 and R-41 to construct a beach berm with an elevation of 9 feet NGVD, a berm width of between 125 and 215 feet, and a construction slope of 1 vertical on 10 horizontal. The Department also granted Variance No. **VE 56-722** for an expanded mixing zone of 150 meters offshore and 1,323 meters downcurrent from the point of sand discharge. This nourishment work was completed in 1999.

On March 19, 2003, the Department issued Major Modification No. **0126215-002-JC** and Variance **0126215-003-EV**, which superseded Permit No. 0126215-001-JC and Variance No. VE 56-722. This modification authorized: (1) an extension of the previous permit expiration date by five years (to 2008) in order to allow a one-time beach nourishment from the inlet south through R-41; (2) a change in the beach construction template in order to allow the placement of additional advance fill on the upper beach; (3) inclusion of a 20-foot wide band of sea oats along the landward edge of the berm; (4) the repositioning of the borrow area to the location of Capron Shoal, which was located immediately adjacent to the 1999 borrow area; and (5) the repositioning of the mitigation reef and an increase in its size from 3.0 acres to 5.0 acres to account for delays in construction and additional impacts that were not accounted for in the Department-approved design template. This project was completed in two phases, with 336,000 cubic yards placed between the jetty and R-37 in 2003 and 406,000 cubic yards placed between R-37 and R-41 in 2004. The mitigation reef was completed in early 2004.

On January 18, 2005, the Department issued Permit Modification No. **0126215-004-EM**, which authorized an additional (and final) nourishment event under Permit Number 0126215-002-JC to compensate for erosion induced by 2004 Hurricanes Frances and Jeanne. In this modification, the Department imposed a 500,000 cubic yard cap on the amount of sand placed to help minimize the chances of hardbottom impacts. This volume estimate was based on a template that exceeded the design originally approved by the Department, but coincided with the 2003-2004 nourishment events. Around this time, Department staff became aware that the 1999 event had also exceeded the approved design template. The discrepancy in templates was discovered to be due to the misrepresentation of the Erosion Control Line (ECL) in drawings submitted to the Department. This discovery helped explain the additional hardbottom impacts in excess of the “conservative” estimates addressed in the 1999 mitigation plan, which resulted in additional mitigation requirements.

It was quickly discovered that 500,000 cubic yards of material authorized under 0126215-004-JC was insufficient to provide the benefits needed. Therefore, the Department issued Modification No. **0126215-005-EM** on May 5, 2005, to eliminate the volumetric limit on sand placement. Finally, Modification No. **0126215-006-EM** incorporated standard FWC shorebird conditions into the Specific Conditions of the permit.

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Current Permit

On February 23, 2007, the Department issued Joint Coastal Permit No. **0269646-001-JC** to St. Lucie County (Permittee). The federally-authorized project was to nourish the beach between R-34 and R-41 using approximately 500,000 cubic yards of material from Capron Shoal, which was the same borrow area that was used in the previous four (4) nourishment events (i.e., since 1999). Variance No. **0269646-002-EV** was issued in conjunction with this permit and authorized a temporary expanded mixing zone of up to 1,000 meters downcurrent and up to 150 meters offshore from the point where runoff from the discharge pipe re-enters the ocean.

For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit No. 0269646-001-JC, dated January 19, 2007, available at the Bureau's website: http://bcs.dep.state.fl.us/env-prmt/st_lucie/issued/0269646_Ft.%20Pierce_Nourishment/

On May 30, 2007, the Department issued Permit Modification No. **0269646-003-EM** to extend the construction window further into the marine turtle nesting season for the 2007 nourishment event. The original permit required construction to be completed by May 1, except for the initial event (in 2007), when construction of the northern portion of the project was authorized through May 30. However, construction of the project was not completed by that date due to rough sea conditions; therefore, Permit Modification No. 0269646-003-EM extended the construction window through June 9, for the 2007 nourishment event only.

On November 19, 2008, the Department issued Permit Modification No. **0269646-004-JN**, which reduced the mixing zone to 150 meters downcurrent at the beach placement site. Previous intermediate turbidity monitoring within the mixing zone demonstrated that the expanded mixing zone authorized by Variance No. 0269646-002-EV was not necessary. The modification also allowed another extension of construction into the early portion of the sea-turtle nesting period for the 2009 nourishment only.

On February 4, 2009, the Department issued Permit Modification No. **0269646-005-JN** to eliminate night time turbidity monitoring, after determining it was not likely to result in water quality violations. The Permittee requested this modification because of a safety concern associated with monitoring during rough conditions in the dark.

On April 9, 2009, the Department issued Permit Modification No. **0269646-006-JN** to revise Specific Condition 13, which originally requiring submittal of the Fort Pierce Inlet Sediment Bypassing Plan prior to the second nourishment event. This modification established a mandatory timetable for submittal of the bypassing plan.

On April 4, 2011, the Department issued Permit Modification No. **0269646-007-JN** to authorize, for one-time only in 2011, the use of upland borrow areas (Stewart Mining and Ranch Road Lake Mine) to nourish approximately 1,700 feet of shoreline immediately south of Fort Pierce Inlet.

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On March 1, 2012, the Department issued Permit Modification No. **0269646-008-BN** to modify the turtle and shorebird conditions, as well as to modify the construction window.

Current Modification Request

On February 21, 2013, the Permittee submitted an application for Modification No. 0269646-009-JN, which is the subject of this letter, to expand the authorized borrow area. The borrow area would be expanded into an adjacent borrow area that had been previously authorized under Permit No. 0126215-001-JC.

The proposed borrow area expansion is within the offshore sand feature known as Capron Shoal, and was previously used for beach nourishment under Permit No. 0126215-001-JC. As noted in the staff assessment for that permit, the material found in this area is composed of calcareous sand, primarily shell, with a trace of quartz. For the originally permitted borrow area, the mean grain size was 0.51 mm with a standard deviation of 0.54. The native beach sand between R-34 and R-41 has a mean grain size range of 0.35 mm to 0.48 mm, with a composite mean grain size of 0.41 mm. The geotechnical data used to assess the proposed borrow area expansion indicates similar sediments; hence, the material is expected to be beach-compatible sediment.

There are no environmental resources such as seagrass or hardbottom in the vicinity of the borrow area. Therefore, the modification is not expected to cause any addition impacts to hardbottom resources.

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

Approved drawings C6, C7, and C8 shall be superseded by Figures 1, 2, and 3.

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.

This letter of approval does not alter the February 22, 2017 expiration date of the permit. This letter and the attached drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The

procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised 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 Robert Halbert by email at Robert.Halbert@dep.state.fl.us or by telephone at (850) 921-7752.

Sincerely,



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

MKS/bh

Attachments: Approved Drawings (Figures 1, 2, and 3)

cc: Jason Andreotta DEP, SE District
Vladimir Kosmynin, DWRM
Bobby Halbert, DWRM
Marty Seeling, DWRM
David Courson, DWRM
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