



# FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

RICK SCOTT  
GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

July 12, 2013

Steve Boutelle  
Lee County Division of Natural Resources  
P.O. Box 398  
Ft. Myers, FL 33902-0398

Permit Modification No. 0174403-007-JN  
Permit No. 0174403-001-JC, Lee County  
Gasparilla Island Beach Restoration  
Minor Modification to add Nourishment

Dear Mr. Boutelle:

Your request to modify Permit No. 0174403-001-JC was received on May 16, 2013, and has been reviewed by Department staff. The proposed permit modification is to revise the Gasparilla Island Beach Restoration project to allow a single beach nourishment event to occur in addition to the initial beach restoration event that was authorized by this permit.

## PERMIT HISTORY

Permit No. **0174403-001-JC** was issued on March 15, 2002 to construct a beach fill project at Gasparilla Island, between Reference monuments R-10 and R-26, using approximately 920,000 cubic yards of sand from one offshore borrow area. Construction of a 550-foot rubble mound segmented breakwater was also authorized to extend approximately 325 feet offshore from R-25, along with two 200-foot sheet pile T-head groins located at R-26 and approximately halfway between R-25 and R-26, on State Park Property. The activity included a 10-year sovereign submerged lands public easement for the erosion control structures and the proposed borrow area. As mitigation for 0.85 acres of hardbottom habitat that was buried by this project, 0.9 acres of hardbottom substrate (limestone boulders) were placed near R-11, directly offshore from the existing natural surf zone hardbottom, in -8.0 to -10.0 feet (NGVD) depth, with a 1.5-foot hardbottom relief.

On March 18, 2002, the Department issued a variance from the provisions of Rule 62-4.244(5)(c), F.A.C., for an expanded mixing zone extending 300 meters offshore and up to 2,400 meters down current from the point of discharge, not to extend into the Gasparilla Sound - Charlotte Harbor Aquatic Preserve (Variance No. **0174403-002-EV**).

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For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit, Variance, And Authorization To Use Sovereign Submerged Lands* for Permit No. 0174403-001-JC at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/lee/issued/0174403\\_Shore\\_Protection\\_Project\\_Gasparilla\\_Island\\_Segment\\_Project/001-JC/Intent%20\(10-23-01\)/Intent\\_to\\_Issue%20\(10-23-01\).pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/lee/issued/0174403_Shore_Protection_Project_Gasparilla_Island_Segment_Project/001-JC/Intent%20(10-23-01)/Intent_to_Issue%20(10-23-01).pdf)

On June 19, 2003, the Department issued Modification No. **0174403-002<sup>sic</sup>-JC** to allow deeper excavation of the borrow site in order to ensure that a sufficient amount of sand is available for placement in the approved beach construction template, and increase the operational efficiency of the hydraulic dredge. The primary borrow site for this project covers approximately 90 acres within the boundaries of the originally approved borrow site and contains approximately 2.2 million cubic yards of sand, rather than 1.1 million cubic yards of sand as approved in the original permit.

On August 11, 2003, the Department issued Modification No. **0174403-003-JC** to correct a discrepancy between the project description and the authorized excavation plan. The error in the dredge depths of the project description was corrected to reflect the authorized excavation plan depicted in the permit drawing.

On June 6, 2006, the Department issued Modification No. **0174403-004-EM** to add a dune feature, remove approximately 45 derelict structures, move the site for the mitigation reef, and delete a portion of the contingency plan, which referenced the south side of Gasparilla Island.

On January 19, 2007, the Permittee requested a modification (File No. **0174403-005-EM**) to allow an additional 43,000 cubic yards of beach fill to be placed on park property at the southern end of Gasparilla Island to control erosion threatening the historic lighthouse. That modification was withdrawn by the Applicant on March 29, 2007.

On December 19, 2012, the Department acknowledged a statutory time extension (Modification No. **0174403-006-JN**) to allow the duration of Permit No. 0174403-001-JC to be extended by two years. That extended the permit expiration date until March 15, 2014.

Currently, the Department is processing a separate De Minimis Exemption (File No. **0174403-008-BE**) to repair the rock revetment structure at the southern end of Gasparilla Island.

#### **STAFF ASSEMENT/JUSTIFICATION**

The Florida Fish & Wildlife Conservation Commission (FWC) has recommended some revisions to the marine turtle protection conditions of the permit. With those changes, FWC has approved the proposed modification.

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The addition of a nourishment event under the Gasparilla Island Restoration Permit has been reviewed by Department staff. Monitoring data indicate that the project has generally performed as expected, so there are no substantial design changes required at this time. Sidescan sonar surveys performed by Lee County showed no change in hardbottom resources in the nearshore of Gasparilla Island, or the artificial reef constructed as mitigation for the original restoration of Gasparilla Island. Since the previous impacts to hardbottom have been offset with mitigation, and no additional impacts are expected from a single nourishment event, the proposed modification was recommended for approval.

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

16. Immediately after completion of the each fill placement event and prior to April 15 for 3 subsequent years 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~~ beach placement area 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 a and b 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 May 1. 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 and a copy sent to the Department prior to any tilling actions being taken. If compaction surveys are conducted, an annual summary of compaction surveys and the actions taken shall be submitted to the FWC and a copy sent to the Department. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.

Table 1 shall be revised as follows (~~strikethroughs~~ are deletions, underlines are additions):

**Table 1**  
**Marine Turtle Monitoring for Beach ~~Restoration~~ Projects**

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The following monitoring is required for beach fill placement restoration projects. ~~Reports summarizing the nesting should be submitted to the Tequesta office with a copy to the Tallahassee office and to the Department by January 15 of the subsequent year. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets) to the FWC Imperiled Species Management section at [MTP@myfwc.com](mailto:MTP@myfwc.com). All summaries shall be submitted by January 15 of the following year. The FWC Excel spreadsheet is available upon request from [MTP@myfwc.com](mailto:MTP@myfwc.com).~~ Data for nesting activity on filled and nonfilled areas should be reported separately, and should include numbers of nests lost to erosion or washed out.

Characteristic	Parameter	Measurement	Variable
Nesting Success	False crawls - number	Visual assessment of all false crawls	Number and location of false crawls in fill areas, groin 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 the groins, sea walls or scarps measured using a meter tape (optional). 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
Reproductive Success	Emergence & hatching success	Standard survey protocol	Numbers of the following: unhatched eggs, depredated nests and eggs, live pipped eggs, dead pipped eggs, live hatchlings in nest, dead hatchlings in nest, hatchlings emerged, disoriented hatchlings, depredated hatchlings

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<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 beach and variable does not meet criterion based on previous year</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 to three years post construction if placed sand remains on beach and variable does not meet criterion based on previous year</u>	<u>Number of hatchlings by species to completely escape egg</u>	<u>Average of 60% or greater (data must include washed out nests)</u>
<u>Emergence Success</u>	<u>Year of construction and one to three years post construction if placed sand remains on beach and variable does not meet success criterion based on previous year</u>	<u>Number of hatchlings by species to emerge from nest onto beach</u>	<u>Average must not be significantly different than the average hatching success</u>
<u>Disorientation</u>	<u>Year of construction and one to three years post construction if placed sand remains on beach</u>	<u>Number of nests and individuals that misorient or disorient</u>	
<u>Lighting Surveys</u>	<u>Two surveys the year following construction, one survey between May 1 and May 15 and second survey between July 15 and August 1</u>	<u>Number, location and photographs of lights visible from nourished berm, corrective actions and notifications made</u>	<u>100% reduction in lights 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 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</u>	<u>Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks</u>	<u>Successful remediation of all persistent scarps as needed</u>

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, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **March 15, 2014**, expiration date or other Specific

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Conditions of the permit. This letter must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

**NOTICE OF RIGHTS**

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

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code (F.A.C.), a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

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In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (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),



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F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

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

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice.

If you have any questions regarding this matter, please contact Liz Yongue by email at [Elizabeth.Yongue@dep.state.fl.us](mailto:Elizabeth.Yongue@dep.state.fl.us) or by telephone at (850) 414-7798.

Sincerely,



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

MKS/edy

cc: Eric Summa, USACE  
Paul Karch, USACE  
Laurel Reichold, USACE  
Tunis McElwain, USACE  
Lucy Blair, DEP South District  
Vladimir Kosmynin, DEP, DWRM  
Bob Brantly, DEP, DWRM  
Subarna Malakar, DEP, DWRM

Jennifer Coor, DEP, DWRM  
Alex Reed, DEP, DWRM  
Vincent George, DEP, DWRM  
Roxane Dow, DEP, DWRM  
Robbin Trindell, FWC, ISMS  
Luke Davis, FWC, ISMS  
JCP Compliance  
JCP Permit File



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**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



7/12/13

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Deputy Clerk

Date