



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

June 19, 2003

Lee County Division of Natural Resources
c/o Kenneth Humiston, P.E.
Humiston & Moore Engineers
5679 Strand Court
Naples, FL 34110

PERMIT MODIFICATION

Modification No. 0174403-002-JC, Lee County

Permit No. 0174403-001-JC

Gasparilla Island Beach Restoration, Borrow Area Modification

Dear Mr. Humiston:

Your request to modify permit no. 0174403-001-JC has been received and reviewed by Department staff. The proposed modification is to allow excavation of the borrow site to the depth of dredging originally requested in the permit application. The justification for this request is to increase the volume of sand in the designated borrow site to ensure that a sufficient amount is available for placement in the approved construction template along the beach. The deeper dredge cuts will also increase the operational efficiency of the hydraulic dredge that excavates and transfers sand from the borrow area, thereby reducing the costs associated with project construction.

On March 15, 2002, the Department issued Permit No. 0174403-001-JC for construction of the Gasparilla Island Beach Restoration Project. The permitted borrow site for the project covers approximately 90 acres and contains approximately 1.1 million cubic yards of sand. The project will use approximate 920,000 cubic yards of this material. The borrow site is located in the ebb tidal shoal of Boca Grand Pass, which is situated between Gasparilla Island to the north and Cayo Costa Island to the south.

In accordance with Rule 62B-41.008(1)(k)4., F.A.C, the applicant/permittee submitted the results of a geotechnical investigation to characterize the material to be excavated and placed on the beach. The work was conducted using established practices of coastal engineering. The report revealed that a significant fraction of the material from the lower portion of the core tubes was lost during sediment core extraction. An unknown amount of compaction of the sediment within the cores may also have occurred. After concerns were expressed by Department staff, the

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applicant submitted a revised borrow site design that raised the depth of dredging. This revision reduced the volume of material to be obtained from the borrow site, but did not change the statistical characterization of grain size distribution and shell content.

To address the concerns of the Department staff, the applicant/permittee conducted another field investigation of the borrow site in December 2001, and provided additional engineering analysis of the collected data. The results of the geotechnical field investigation and laboratory analysis were provided in *Gasparilla Island Beach Nourishment Project Vibracore Sampling Survey, Final Report*, dated March 4, 2002, prepared by Alpine Ocean Seismic Survey, Inc. The engineering analysis of the geotechnical investigation was presented in *Supplemental Sand Source Report*, dated June 2002, prepared by Humiston and Moore Engineers. On March 24, 2003, Lee County formally requested a modification to the permit to allow excavation of the borrow site to the depth of dredging originally requested in the permit application.

Based upon the additional information and analysis provided by the permittee, the beach fill material to be excavated from the proposed borrow area is expected to maintain the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system in accordance with Rule 62B-41.007(2)(j), F.A.C. The revision to increase the volume of material to be obtained from the borrow site does not change the overall statistical characterization of grain size distribution and shell content of the beach fill material because of the similarity of the sediments in both the upper and lower depths of the borrow site. The analysis was applied to the original proposed borrow area configuration and depth of dredging that is now requested through modification of the permit. The analysis demonstrated that the deeper excavation of beach compatible material from the shoal is not expected to have a significant adverse impact that will increase erosion or render the coastal system unstable or vulnerable to the effects of storms or interfere with its ability to recover from storms.

Considering the additional information and justification provided by the permittee, the request for modification to increase the depth of dredging within the previously approved boundary of the borrow site is recommended for approval.

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

PROJECT DESCRIPTION:

The primary borrow site for this project covers approximately 90 acres within the boundaries of the originally approved borrow site and contains approximately ~~1.1~~ 2.2 million cubic yards of sand. The project will use approximate 920,000 cubic yards of this material. The approved depth of dredging within each sub-area of the borrow site is shown in the attached permit drawing. The depth of dredging for sub-area cuts 1 through 5 is -24.0 feet (NGVD) and for cut 6 is -20.0 feet (NGVD).

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After thorough review, staff has 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. Furthermore, Department staff find that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. 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 **March 15, 2012** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings must be attached to the original permit.

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

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, 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

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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 rules 28-106.111(2) and 62-110.106(3)(a)(1), 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:

- The name and address of each agency affected and each agency's file or identification number, if known;
- 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;

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- (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; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

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

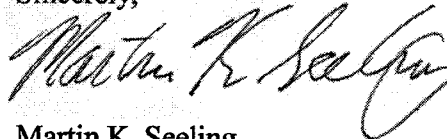
This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office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

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.

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If you have any questions regarding this matter, please contact Ms. Cheryl Miller at the letterhead address or by telephone at (850) 487-4471, ext. 142.

Sincerely,




Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Wetland Resources

cc: Lucy Blair, DEP, South District
Robbin Trindell, FWCC, BPSM
Michael Nowicki, USACOE, Jacksonville
Joseph Bachelor, USACOE, Jacksonville
Harry Bergmann, USACOE
Robert Neal, P.E., Lee County
Steve Boutelle, Lee County
Michael Sole, Bureau Chief, BBWR
Bob Brantly, P.E., BBWR
Cheryl Miller, BBWR
Phil Flood, BBWR
Russell Snyder, BBWR
Ralph Clark, BBWR
Lynda Charles, BBWR
BBWR File No. 0174403-001-JC

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.

 6/19/03
Deputy Clerk Date