



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

April 30, 2013

Martin County
2401 S.E. Monterey Road
Stuart, FL 34996

c/o

Taylor Engineering, Inc.
c/o Michael Trudnak, P.E.
10151 Deerwood Park Blvd.
Building 300, Suite 300
Jacksonville, FL 32256

Permit Modification No. 0295380-003-JN
Permit No. 0295380-001-JC, Martin County
Martin County Beach Nourishment

Dear Mr. Trudnak:

Your request to modify Permit No. 0295380-001-JC was received on April 2, 2013, and has been reviewed by Department staff. The proposed permit modification is to extend the construction window for the early portion of the turtle nesting season through May 20, in 2013 only.

Background

On August 11, 2011, the Department issued Permit No. **0295380-001-JC** to Martin County to nourish approximately 4 miles of beach from R-1 to R-25 along the shoreline of Martin County. The proposed project is authorized to occur multiple times on an as-needed basis, with the first event requiring approximately 887,700 cubic yards of fill dredged from the St. Lucie Shoal Borrow Area. At the same time, the Department issued Variance No. **0295380-002-BV** for the Martin County Beach Nourishment project, to establish an expanded turbidity mixing zone.

For additional background, please see the *Consolidated Notice of Intent to Issue a Joint Coastal Permit, Variance and Authorization to Use Sovereign Submerged Lands* for Permit No. 0295380-001-JC at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/martin/issued/0295380 %20Martin County Beach Nourishment/](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/martin/issued/0295380%20Martin%20County%20Beach%20Nourishment/)

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 2 of 9

Justification

Based on the contractor's current placement rate of approximately 13,000 to 17,000 cubic yards of material per day, 20 additional days are necessary to complete the project and to demobilize.

Staff Assessment

FWC has no objections to extending the construction window for the early portion of the turtle nesting season through May 20 (for 2013 only).

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

Marine Turtles

12. Beach nourishment shall be started after October 31 and be completed before May 1. For the 2013 event only, construction-related activities on the beach shall be completed by May 20.
13. For dredge material placement projects that occur during the period from March 1 through April 30 (through May 20 in 2013 only), daily early morning surveys (before 9 a.m.) shall be conducted for sea turtle nests and eggs shall be relocated per the following requirements. For sand placement projects that occur during the period from November 1 through November 30, daily early morning sea turtle nesting surveys (before 9am) shall be conducted 65 days prior to project initiation and continue through September 30, and eggs shall be relocated per the following requirements:
 - a. It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. 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 the Florida Fish and Wildlife Conservation Commission (FWC), pursuant to Rule 68E-1, F.A.C. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (for all time zones). The contractor shall not extend the beach fill more than 500 feet along the shoreline between dusk and dawn the following day until a daily nesting survey has been completed and the beach cleared for fill advancement.
 - b. Only those nests that may be affected by sand placement activities will be relocated.
 - c. Nest relocation shall not occur upon completion of sand placement. Nests

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 3 of 9

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 severe erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.

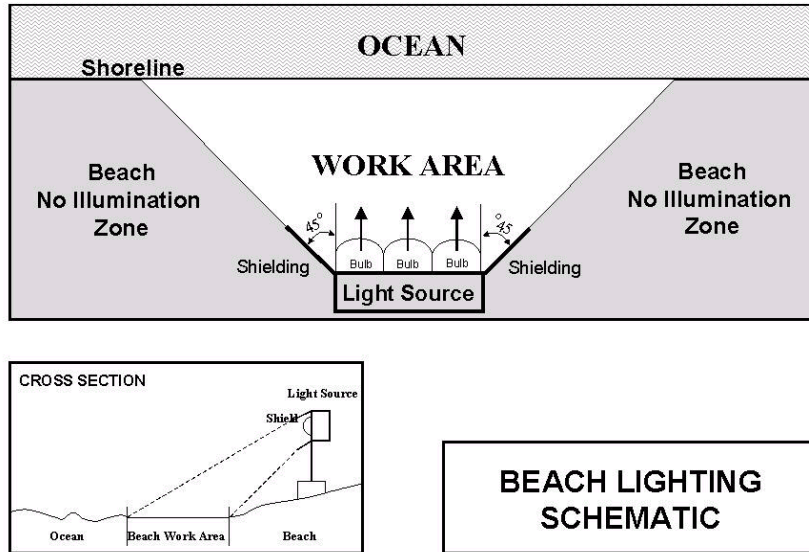
- d. Nests deposited within areas where construction activities have ceased or will not occur for 65 days or nests laid in the nourished berm prior to tilling shall be marked and left in situ unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker 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.
 - e. For dredged material placement during the period from March 1 through April 30 (through May 20 in 2013 only), daytime surveys shall be conducted for leatherback sea turtle nests beginning March 1. Nighttime surveys for leatherback sea turtles shall begin when the first leatherback crawl is recorded within the project or adjacent beach area through April 30 or until completion of the project (whichever is earliest). Nightly nesting surveys shall be conducted from 9 p.m. until 6 a.m. The project area shall be surveyed at 1-hour intervals (since leatherbacks require at least 1.5 hours to complete nesting, this will ensure all nesting leatherbacks are encountered) and eggs shall be relocated per the preceding requirements.
15. Visual surveys for escarpments along the project area shall be made immediately after completion of the dredged material placement and during 30 days prior to March 1 for 3 subsequent years if sand in 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 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by March 1. Any escarpment removal shall be reported by location. If the project is completed during the early part of the sea turtle nesting and hatching season (March 1 through April 30) (through May 20 in 2013 only), escarpments may be required to be leveled immediately,

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 4 of 9

while protecting nests that have been relocated or left in place. Surveys for escarpments shall be conducted weekly during the three nesting seasons following completion of the project. FWC shall be contacted immediately, with copy to the Department, 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, a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests will be provided by FWC. An annual summary of escarpment surveys and actions taken shall be submitted as part of the annual report. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach).

16. Staging areas for construction equipment shall be located off the beach from March 1 through April 30 (through May 20 in 2013 only) and November 1 through November 30, if off-beach staging areas are available. 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.
17. Direct lighting of the beach and nearshore waters shall be limited to the immediate construction area from March 1 through April 30 (through May 20 in 2013 only) and November 1 through November 30, 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 (see figure below).

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 5 of 9



18. During the period from March 1 through April 30 (through May 20 in 2013 only) and November 1 through November 30, 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.

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the August 11, 2021, expiration date or other Specific Conditions of the permit. This letter must be attached to the original permit.

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 6 of 9

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

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 7 of 9

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.

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 8 of 9

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 Tom Jacobs by email at Thomas.jacobs@dep.state.fl.us or by telephone at (850) 413-7785.

Sincerely,



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

MKS/tj

cc: Kathy FitzPatrick, Martin County
Jason Andreotta, DEP SE District
Jenny Cheng, DWRM
Martin Seeling, DWRM
Vladimir Kosmynin, DWRM
Bobby Halbert, DWRM
Roxane Dow, DWRM
Rob Buda, DWRM
JCP Compliance Officer

FDEP-SP@usace.army.mil
Lois Edwards, Coastal Tech
marineturtle@myfwc.com
Kristin Nelson-Sella, FWC
Jocelyn Karazsia, NMFS
Audra Livergood, NMFS
Jeffrey Howe, USFWS
Ron Miedema, USEPA
Albie Scoggins, City of Stuart

Notice of Permit Modification
Permit Modification No. 0295380-003-JN
Martin County Beach Nourishment
Page 9 of 9

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.

Lauren Wild

4/30/2013

Deputy Clerk

Date