



# Florida Department of Environmental Protection

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

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

## CERTIFIED - RETURN RECEIPT REQUESTED

March 4, 2013

City of Delray Beach  
Attn: Paul Dorling  
100 N.W. First Avenue  
Delray Beach, FL 33444

c/o Richard Spadoni  
Coastal Planning and Engineering, Inc.  
2481 N.W. Boca Raton BLVD  
Boca Raton, FL 33431

Permit Modification No. 0303553-005-JN  
Permit No. 0303553-001-JC, Palm Beach County  
Delray Beach Nourishment Project

Dear Mr. Spadoni:

Your request to modify Permit No. 0303553-001-JC was received on February 11, 2013, and has been reviewed by Department staff. The proposed permit modification is to stockpile beach compatible sand from the approved offshore borrow area and truck the sand to an additional placement area, located between DEP monument R-176 and R-177, for dune enhancement.

### **Permit History**

The restoration of Delray Beach was authorized under Department Permit **DBS-72-24**, with the placement of 1,634,500 cubic yards of sand in 1973. Delray Beach was subsequently nourished in 1978 and 1984, under Permit Nos. **DBS 75-10** and **DBS 75-10M1**. These projects involved the placement of 701,300, and 1,311,000 cubic yards of sand, respectively. The third nourishment of Delray Beach took place between November and December 1992, placing 1,188,000 cubic yards of sand over a distance of 1.7 miles, between R-180 and R-188A (under Coastal Construction Permit **DBS 890242** and Wetland Resource Permit No. **501662809**). The fourth nourishment event occurred in March of 2002, and placed 1,230,000 cubic yards of sand over 1.9 miles of beach, between R-179 and R-188A, under Joint Coastal Permit No. **0178582-001-JC**. In 2005, the U.S. Army Corps of Engineers (Corps) placed approximately 250,000 cubic yards of material on the beach to repair damages from the active 2004 hurricane season, under Permit Modification No. **0178582-003-EM**.

**Notice of Permit Modification**  
**Permit Modification No. 0303553-005-JN**  
**Project Name: Delray Beach Nourishment**  
**Page 2 of 7**

On January 27, 2012, the Department issued Permit No. **0303553-001-JC** to continue beach nourishments along 1.9 miles of beach fronting the City of Delray Beach, Florida, using two offshore borrow areas that run parallel to the beach and varying in width from 1,000 feet to 425 feet. The design template calls for an average construction berm width of approximately 100 feet.

On January 27, 2012, the Department granted Variance No. **0303553-002-BV** to temporarily establish an expanded mixing zone that extends up to 1000 meters downcurrent from the point where water discharging from the dredge pipeline (at the beach placement site) reenters the Atlantic Ocean, but no more than 300 meters offshore.

On June 11, 2012, the Department issued Permit Modification No. **0303553-003-JN** to correct an inadvertent error to Specific Condition 11 requiring sea turtle monitoring.

For additional background on this permit, please see the *Consolidated Notice of Intent to Issue Joint Coastal Permit and Authorization to Use Sovereign Submerged Lands* for Permit No. 0220509-001-JC, dated December 15, 2004, available at the Bureau website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/palm\\_bch/issued/0303553\\_Delray\\_Beach\\_Nourishment/001\\_JC/](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/palm_bch/issued/0303553_Delray_Beach_Nourishment/001_JC/)

**Justification for Modification**

The recent shoreline erosion from the Hurricane Sandy storm event resulted in impacts to the beach and dune system in and adjacent to the project area. In order to repair the impacts to the adjacent dune at a reasonable cost, the Permittee requested to expand the fill placement area, for the current event only, and use sand from the approved offshore sand source. Sand from the offshore borrow area will be briefly stockpiled on top of the newly nourish berm, between R-180 and R-181, and then moved by truck to the dune placement area between R-176 and R-177.

The expansion area had been previously approved by the Department as part of one of the earlier Delray Beach projects, and has an erosion control line already established in this area. The Florida Fish & Wildlife Conservation Commission has determined that the proposed activities at the stockpile area and the dune placement area will be covered under the Statewide Programmatic Biological Opinion (SPBO) once it is amended. The Corps also has regulatory jurisdiction over the proposed activities, and will consult with the U.S. Fish and Wildlife Service (FWS) to provide an amendment the current SPBO.

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

### PROJECT DESCRIPTION:

The project is to nourish 1.9 miles of beach fronting the City of Delray Beach, Florida, using two offshore borrow areas that run parallel to the beach and varying in width from 1,000 feet to 425 feet. The design template calls for an average construction berm width of approximately 100 feet, at an elevation of +7.5 NAVD, and a slope of 1:10 (vertical : horizontal) on the seaward face of the berm. For the initial 2013 event only, the Permittee will stockpile approximately 7,000 cubic yards of sand from the offshore borrow area on top of the nourished berm, between R-180 and R-181, and then truck the sand between R-176 and R-177 to nourish the dune.

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

### SPECIFIC CONDITIONS

2. No work shall be conducted until and unless the Department issues a Final Order of Variance (File No. 0303553-002-BV) from Rule 62-4.244(5)(c), F.A.C. to establish an expanded mixing zone for this project. For the 2013 nourishment event, an amended Biological Opinion shall be issued prior to any stockpiling and placement of material for dune nourishment as authorized in Permit Modification No. 0303553-005-JN.
  
32. Any dune area disturbed during construction shall be restored, at a minimum, to its preconstruction elevations and shall be re-vegetated with native dune vegetation that is indigenous to the beach dune plant communities in the area. A mix of at least three native salt-tolerant species, predominantly soil stabilizing grasses such as sea oats, *Uniola paniculata*, or bitter panicum, *Panicum amarum* shall be planted within any disturbed dune areas.
  
33. All fill material that is stockpiled for, or used to nourish, the dune between R-176 and R-177 shall be placed landward of the mean high-water line.

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

Sheets 1 of 5, 2 of 5, 3 of 5, 4 of 5 and 5 of 5 (dated 2/8/2013) shall be added to the set of approved permit drawings.

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



**Notice of Permit Modification**  
**Permit Modification No. 0303553-005-JN**  
**Project Name: Delray Beach Nourishment**  
**Page 4 of 7**

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 **January 27, 2022**, 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 (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.

**Notice of Permit Modification**  
**Permit Modification No. 0303553-005-JN**  
**Project Name: Delray Beach Nourishment**  
**Page 5 of 7**

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.

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

**Notice of Permit Modification**  
**Permit Modification No. 0303553-005-JN**  
**Project Name: Delray Beach Nourishment**  
**Page 6 of 7**

- (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.

If you have any questions regarding this matter, please contact Robert Halbert at [Robert.Halbert@dep.state.fl.us](mailto:Robert.Halbert@dep.state.fl.us) or by telephone at (850) 921-7752.

Sincerely,



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

MKS/BH

**Notice of Permit Modification**  
**Permit Modification No. 0303553-005-JN**  
**Project Name: Delray Beach Nourishment**  
**Page 7 of 7**

Attachments: Sheets 1 of 5, 2 of 5, 3 of 5, 4 of 5 and 5 of 5 (dated 2/8/2013)

cc: Paul Dorling, City of Delray Beach  
Danielle Fondren, DEP  
Martin Seeling, DEP  
Rob Buda, DEP  
Roxane Dow, DEP  
Robbin Trindell, FWC

Tori White, USACE  
Jill King, DEP SE District  
Bobby Halbert, DEP  
El Kromhout, DEP  
Mark Taynton, DEP  
Permit File

**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*

Deputy Clerk

*3-4-13*

Date