



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

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HERSCHEL T. VINYARD JR.
SECRETARY

August 21, 2014

U.S. Army Corps of Engineers
c/o Eric Summa
701 San Marco Blvd.
Jacksonville, Florida 32207

Permit Modification No. 0221569-015-JN
Permit No. 0221569-008-JM, Pinellas County
Treasure Island/Long Key Nourishment, Minor Modification

Dear Mr. Summa:

Your request to modify Permit No. 0221569-008-JM, was received on July 18, 2014, and has been reviewed by Department of Environmental Protection (Department) staff. The proposed modification is to amend the Specific Condition in the permit addressing water quality monitoring by removing the requirement to sample at night. In addition, the proposed permit modification is to change the maximum allowable turbidity level for work in Outstanding Florida Waters (OFW) from the permitted zero (0) Nephelometric Turbidity Units (NTUs) above background to 2.50 NTUs above background.

PERMIT HISTORY

On May 17, 2004, the Department issued Permit No. **0221569-001-JC** to Pinellas County and authorized approximately 294,000 to 374,000 cubic yards (cy) of fill placement from maintenance dredging of the federal navigation channel at Pass-a-Grille onto three sections of beach, from North Treasure Island (Department Reference monuments R-127 to 200 feet south of R-128), central Treasure Island (200 feet south of R-137 to R-139.5) and Long Key (R-144 to R-148). The permit also allowed the addition of armor stone to the south jetty at Blind Pass near R-144, and construction and maintenance of five temporary Geotextile T-head groins in the Upham Beach area, between R-144.5 and R-146. That permit superseded Permit No. **0198739-001-JC**.

On May 17, 2004, the Department granted a variance (No **0221569-002-EV**) from Rule 62-4.244(5)(c), F.A.C. The variance established a temporary mixing zone, measuring 300 meters offshore and 1,500 meters downcurrent from the beach point of discharge and 1,500 meters downcurrent from the dredge.

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On August 5, 2004, the Department issued Modification No. **0221569-003-JC**, which revised Permit No. 0221569-001-JC to allow placement of an additional 43,000 cy of beach compatible material along the central Treasure Island segment, by extending the northern fill limit to R-136 and the southern fill limit to 750 feet south of R-140. The berm elevation and construction slopes for both the Treasure Island segments and Long Key segment were revised to achieve a more “turtle-friendly” constructed beach. The modified onshore and offshore slopes were 1:30 and 1:20 vertical:horizontal (V:H), respectively; and the modified construction berm elevation was +5.0 feet National Geodetic Vertical Datum (NGVD).

On August 16, 2004, the Department issued Modification No. **0221569-004-JC**, which revised Permit No. 0221569-001-JC to allow for T-head groin construction on Long Key during the sea turtle nesting season (May 1 to October 31) pursuant to the Terms and Conditions of the U.S. Fish and Wildlife Service (FWS) Biological Opinion. The original Specific Conditions of the permit did not allow for nest relocation during groin construction.

On October 22, 2004, the Department issued Modification No **0221569-005-JC**, which revised Permit No. 0221569-001-JC to change the slope of the design berm template along the Sunset Beach area (R-137 to R-142) from a 1:30 (V:H) slope to a 1:20 (V:H) slope so that the berm width at the original six-foot berm elevation would be increased from 50 to 100 feet. The modification was requested as the previously authorized fill volume along the Sunset Beach area (R-137 to R-142) was insufficient to meet the design life. The additional 51,000 cy of material corrected the design and maintained the four year nourishment interval.

On August 8, 2006, the Department issued Modification No. **0221569-006-EM**, which revised Permit No. 0221569-001-JC to add the Egmont Channel Borrow Area, which was previously utilized in the Sand Key Project (52-292320-9). The modification also extended the fill template at North Treasure Island from R-127 to R-126C, approximately 800 feet to the north.

On August 10, 2006, the Department issued Modification No. **0221569-007-EM**, which revised Permit No. 0221569-001-JC to correct an error found in Permit Modification No. 0221569-006-EM. The previous modification indicated that turbidity at the new borrow site would not be allowed to exceed ambient background levels. However, since the new borrow area was not within an OFW, the compliance level should have been set at the turbidity standard of 29 NTUs.

On March 29, 2010, the Department issued Permit No. **0221569-008-JM**, which was a major modification to Permit No. 0221569-001-JC, and which superseded the previous permit. The major modification included transferring the permit to the U.S. Army Corps of Engineers (Corps). It also authorized the 2010 nourishment event, which utilized material dredged from Blind Pass to fill the Long Key (Upham Beach) segment between R-144 and R-148.

The Department issued Variance No. **0221569-009-BV** to the Corps in conjunction with Permit No. 0221569-008-JM. This was a variance from Rule 62-4.244(5)(c), F.A.C., to temporarily

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establish a mixing zone larger than 150 meters for the Blind Pass borrow area. The expanded mixing zone extended 1000 meters downcurrent from the dredge site. As stated in the Variance, it was set to *expire when the permit expired, unless the permit would be modified to grant a time extension*. The new permit did not change the expiration date of the previous permit or variance, which was set to expire on May 17, 2014.

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. 0221569-008-JM and Variance No. 0221569-009-BV, dated January 8, 2010, available at the Division website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/pinellas/issued/0221569_Treasure_Island_Long_Key_Nourishment_Project/008-JM/Intent%20to%20Issue/

On December 20, 2012, the Department issued Modification No. **0221569-010-JN**, which revised Permit No. 0221569-008-JM to add the Egmont Shoal East Borrow Area as a sand source for the Treasure Island/Long Key Nourishment Project.

On August 16, 2013, the Department issued Modification No. **0221569-011-JN**, which revised Permit No. 0221569-008-JM to expand the beach placement areas of the original template for the Treasure Island and Long Key Nourishment Project, update the Florida Fish and Wildlife Conservation Commission (FWC) permit conditions and add the Pass-a-Grille segment at the south end of Long Key as a placement site for the 2013-2014 nourishment event.

On August 26, 2013, the Department issued Statutory Time Extension No. **0221569-012-JN** to extend the expiration date of the Treasure Island/Long Key Nourishment Project (Permit No. 0221569-008-JM) from May 17, 2014, to July 1, 2014. Under Section 22 of Chapter 2013-41 Laws of Florida (Senate Bill 1502), the Florida Legislature extended the expiration dates for all projects that were eligible for federal Flood Control and Coastal Emergencies (FCCE) funding in order to allow the Corps to complete all of those emergency projects by July 1, 2014.

On September 25, 2013, the Department issued Modification No. **0221569-013-JN** to extend the duration of the Treasure Island/Long Key Nourishment Project by six (6) years, to March 29, 2020. Although Rule 62B-49.011(5), F.A.C., limited the original permit to 10 years in duration, the project was reevaluated on March 29, 2010, when the Department issued the major modification (Permit No. 0221569-008-JM), allowing the Department to extend the expiration date up to 10 years from the issuance date of the new permit.

On June 17, 2014, the Department issued Modification No. **0221569-014-JN**, which revised Permit No. 0221569-008-JM to amend the Specific Condition in the permit addressing lighting, by removing the requirement to conduct a survey “both immediately prior to and after construction.” To accomplish the necessary lighting survey requirements, two (2) surveys were

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required to be completed the following year, with one from May 1 to May 15 and the second one from July 15 to August 1.

PROJECT JUSTIFICATION:

The construction for the most recent nourishment event began **July 6, 2014**. The request for a minor modification was made due to safety concerns with nighttime turbidity monitoring by the contractor. Furthermore, the Permittee requested relief from Rule 62-4.242(2)(b), F.A.C., for work being conducted in the OFW. The contractor may experience unnecessary and costly delays to meet the zero (0) NTU's above background in OFW, and may fall out of compliance even when no work is being done, due to natural variability in turbidity levels.

STAFF ASSESSMENT:

Department staff has reviewed the modification request, and expects no significant adverse impacts from the project. Review of the dredge unloading cycle times showed that dredging activity was more-or-less consistent throughout the day and into the evening hours. These data provide reasonable assurance that the day-time turbidity monitoring is representative of project turbidity levels around the clock, and therefore, provides justification to remove nighttime turbidity monitoring requirements.

Rule 62-4.242(2)(b), F.A.C., was recently revised to take into account the natural variability in turbidity levels, which would otherwise make it impossible to meet the old antidegradation requirement of zero (0) NTUs above background in the OFW. The Rule change became effective on August 1, 2013, after the original permit was issued. Without accounting for this variability, the Permittee could fall out of compliance without even doing construction work because of the natural variability in turbidity levels. The Department recognizes that this could cause unnecessary delays and impose additional costs. The Permittee has provided reasonable assurance that measures will be taken to minimize the magnitude and duration of turbidity to the maximum extent practicable and shall adhere to all requirements of the permit. As such, Rule 62-4.242(2)(b)2.b., F.A.C., will relieve the Permittee from the 0 NTUs above background limit, while still avoiding any real degradation. The Permittee measured turbidity levels over a single tidal cycle at one location within the project area, but prior to the influence of the project at that site, and reported the natural variability to be **2.47 NTUs**. After rounding to the nearest tenth, the Department will authorize the Permittee to deviate from measured background turbidity levels by up to **2.50 NTUs** at the edge of the established mixing zone within the OFW at the beach placement site only.

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The Specific Conditions shall be modified as follows (~~strikethroughs~~ are deletions, underlines are additions):

MONITORING REQUIRED:

1. Water Quality

Dredge sites:

Parameter: Turbidity - Nephelometric Turbidity Units (NTUs)

Frequency: ~~Every four hours~~At least three (3) times daily, at least four (4) hours apart during dredging for use of the Pass-a-Grille Pass and Channel or Blind Pass within the Aquatic Preserve. While dredging the Egmont Channel Borrow area or the Egmont Shoal East Borrow Area, samples shall be collected twice daily, at least four hours apart, beginning at least two hours after dredging begins and continuing during dredging activities.

Pass-a-Grille Pass and Channel Background station: At least 500 meters in the opposite direction of the prevailing flow, clearly outside of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.

Egmont Channel or Egmont Shoal East Borrow Area Background stations: At least 200 meters in the opposite direction of the prevailing flow, clearly outside of any visible turbidity plume. Samples shall be collected at mid-depth.

Blind Pass Channel Background Station: At least 300 meters in the opposite direction of the prevailing flow, clearly outside of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.

Pass-a -Grille Pass and Channel Compliance Station: No more than 1,500 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.

Egmont Channel or Egmont Shoal East Borrow Area Compliance Stations: Not more than 150 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected at mid-depth.

Blind Pass Channel Compliance Station: No more than 1,000 meters downcurrent from the dredge, in the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.

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Beach Disposal Area:

Parameter: Turbidity - Nephelometric Turbidity Units (NTUs)

Frequency: ~~Every six hours~~ At least three (3) times daily, at least four (4) hours apart during pumping operations.

Background: At least 1,000 meters updrift from the discharge point, clearly outside of any visible turbidity plume. Samples shall be collected from the surface and middepth, at the same distance offshore as the compliance station.

Compliance: No more than 300 meters offshore and no more than 1,500 meters downdrift from the discharge point within the densest portion of any visible turbidity plume. Samples shall be collected from the surface and mid-depth.

Weekly summaries of all monitoring data shall be submitted to the Compliance Officer of the Division of Water Resource Management and to the Southwest District Office within one week of analysis with documents containing the following information: (1) "Treasure Island/Long Key Nourishment Project, Permit Number 0221569-008-BM"; (2) dates and times of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; and (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample that is taken: a) time of day samples taken; b) depth of water body; c) depth of sample; d) antecedent weather conditions; e) tidal stage and direction of flow; and f) wind direction and velocity.

The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance sites are greater than **02.50 NTUs** above the associated background turbidity levels, at the nourishment site, and 0 NTUs above background levels at Pass-a-Grille Pass and Channel, or Blind Pass, or greater than 29 NTUs above the associated background turbidity levels at the Egmont Channel Borrow Area or the Egmont Shoal East Borrow Area, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any

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such occurrence shall also be immediately reported to the Compliance Officer in Tallahassee at (850) 414-7716 or JCPCCompliance@dep.state.fl.us.

Monitoring reports shall be submitted to the Compliance Officer of the Division of Water Resource Management in Tallahassee. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the DEP, please clearly include, at the top of each page or as a cover page to the submittal: **"This information being provided in partial fulfillment of the monitoring requirements in Permit No. 0221569-008-BM, Treasure Island/Long Key Nourishment Project."**

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or change the determination that the project is clearly in 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 modifications.

This letter of approval does not alter the **March 29, 2020**, expiration date, other Specific Conditions, or monitoring requirements 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

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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.

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;

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- (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.

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

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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 Chiu Cheng by email at chiu.cheng@dep.state.fl.us or by telephone at (850) 245-7585.

Sincerely,



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

MKS/chc

cc: Martin Seeling, DWRM
Robert Brantly, DWRM
Vladimir Kosmynin, DWRM
Jenny Peterson, DWRM
Jen Coor, DWRM
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Lauren Greenfield, DEP SW District
CE Review
Kevin O’Kane, USACE
Kevin Claridge, CAMA
Ann Lazar, CAMA
Randy Runnels, CAMA

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.



Deputy Clerk

August 21, 2014

Date