



Florida Department of Environmental Protection

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

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 8, 2009

Steve Higgins
Broward County Environmental Protection and Growth Management Dept.
1 North University Dr. Suite 301,
Plantation, FL 33324

Permit Modification No. 0163435-014-JN
Permit No. 0163435-005-JC, Broward County
Broward County Shore Protection Project (Segment II) - Time Extension

Dear Mr. Higgins:

Your request to modify this Joint Coastal Permit has been received and reviewed by Department staff. The proposed modification is to extend the original permit expiration date by five (5) years, from June 4, 2009 to June 4, 2014. No additional modifications to the originally-authorized project are proposed at this time. However, the evaluation of Segment III nourishment performance may result in the need for a major modification to the subject permit prior to issuance of a Notice to Proceed for the Segment II project.

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0163435 -005-JC, dated June 3, 2003, available at the Bureau website:

http://bcs.dep.state.fl.us/env-prmt/broward/issued/0163435_Segment_II_Pipeline_Corridors/005_JC/Final%20Order/Intent/Intent_Changed_6.02.03.pdf

BACKGROUND/HISTORY

After years of extensive negotiations, the Department authorized the Broward County Shore Protection Project (Segment III) with the issuance of Joint Coastal Permit No. **0163435-001-JC** on May 12, 2003. Issuance of the permit had been delayed by a petition for an administrative hearing, so while that was being resolved, the County sought to get a head start on the required mitigation work by seeking a noticed general permit (NGP), under the environmental resource permit program, to construct artificial reefs. The original request for an NGP to allow artificial (mitigation) reef placement (File No.

0163435-002-EG) was submitted on December 31, 2001. This application was later withdrawn in lieu of a revised reef placement proposal. The second NGP application (Permit No. **0163435-003-EG**) was issued on March 8, 2002. On June 24, 2002, a *de minimus* exemption from the need for a state permit was granted for the removal of roughly 2000 tires from Borrow Area I (Authorization No. **0163435-004-EE**). Another *de minimus* exemption authorized the permittee to remove a total of 22 derelict structures in Segments II and III (Authorization No. **0163435-006-EE**). An unrelated *de minimus* exemption using the same project number was issued by the DEP Southeast District office regarding boat mooring buoys (Authorization No. **0163435-008-EE**). On June 19, 2003, an NGP was issued that revised the approved placement area for the artificial (mitigation) reefs (Permit No. **0163435-007-EG**), and on August 27, 2003, the Department issued a Partial Notice to Proceed for mitigation reef construction.

Permit No. **0163435-005-JC** was granted on June 4, 2004, to allow placement of nearly one million cubic yards of sand along portions of the **Segment II** beach pending the outcome of Segment III construction and monitoring results, especially in relation to impacts to hardbottom communities. Borrow Area I was added to the Segment III project on June 22, 2004 (Permit Modification No. **0163435-009-JC**), and was conditional upon a contingency plan for any impacts to Deerfield Beach.

On June 17, 2005, following commencement of dredging, Permit Modification No. **0163435-010-EM** authorized an increase in the allowable dredge depth for a portion of Borrow Area III. This made more beach-quality sand available for dredging and allowed for more efficient excavation by the dredge. Similar benefits were provided by Permit Modification No. **0163435-013-EM**, issued on January 13, 2006, to authorize transitional slopes between “steps” in the depth limits for multiple dredging zones within the borrow areas.

The Department issued Permit Modification No. **0163435-011-EM** on November 29, 2005, in order to correct the omission of pipeline corridors from Permit No. 0163435-001-JC for Segment III of the Broward County Shore Protection Project. On February 1, 2006, the Department issued Permit Modification No. **0163435-012-EM** to alter the location of the approved area for Pumpout Box 5 and the associated pipeline corridor in order to correct the omission of pipeline corridors from Permit No. 0163435-005-JC for Segment II of the project

Justification for Modification

The letter of application from Broward County for the proposed time extension states the request is “to keep the current permit active” while the project is re-examined “in the context of the current economic, environmental, and physical conditions.” It is further stated that Broward County officials “anticipate that updated analyses will result in a

proposed Segment II project that differs to some extent from the project depicted in Permit Authorization No. 0163435-005-JC”.

Staff Assessment

Per the Stipulated Settlement Agreement Case No. 03-2491 (2/26/2004) and Division of Administrative Hearings Joint Motion to Relinquish Jurisdiction (3/11/2004), the Notice to Proceed for this project requires the evaluation of the Segment III project performance, which has not yet been completed and thus has prevented construction of the Segment II project. The Segment III evaluation may result in revisions to the Segment II project that would require a major permit modification. A time extension is consistent with the goal of performing this evaluation and possible permit modification.

Staff has determined that the requested modification meets the criteria in Rule 62B-49.011(6) & (7), F.A.C., for a time extension of a Joint Coastal Permit. Due to the restriction on project commencement until the monitoring of the Segment III project can provide reasonable assurance that unanticipated adverse impacts will not occur, construction of the Segment II Project cannot be completed within the originally allotted time. The previously authorized activity is consistent with the State’s statutes and rules that are currently in effect, and no significant change in shoreline conditions has occurred since the original permit was issued. The applicant has demonstrated that the activity can be completed within the time extension requested based on a schedule for completion included with the request. Furthermore, the proposed time extension is not expected to 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.

Staff finds that the proposed time extension is not expected to adversely affect water quality, or be contrary to the public interest. Since the proposed time extension is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as requested. By copy of this letter, we are notifying all necessary parties of the modification.

The Permittee is reminded of specific condition 9 (reprinted below), which prevents issuance of the Notice to Proceed until a number of detailed items are submitted and approved:

9. No work shall be conducted under this permit until the permittee has received a written Notice to Proceed from the Department. At least 60 days prior to the requested date of issuance of the notice to proceed, the permittee shall submit the following for review and approval by the Department:
 - a. A detailed *Mitigation Plan* that addresses the timing of artificial hardbottom construction in relation to the beach fill construction, acreage of

proposed artificial hardbottom (as required in Specific Condition No. 11), proposed construction methods, the size and type of hard bottom substrate, depth of sand (above underlying rock), and other pertinent updates to the draft mitigation plan;

- b. A ***Sediment Quality Control / Quality Assurance Plan***, as required by Rule 62B-41.008(1)(k)4.b., F.A.C.;
- c. A detailed ***Physical Monitoring Plan***, as described in Specific Condition No. 14 (Physical Monitoring section), indicating the project’s predicted design life;
- d. A detailed ***Biological Monitoring Plan***, as described in Specific Condition No. 15 (Biological Monitoring section);
- e. Two hard copies and an electronic copy of detailed ***final construction plans and specifications*** for all authorized activities, including a vessel operations plan. These documents shall be signed and sealed by the design engineer, who must be registered in the State of Florida, and shall bear the certifications specified in Rule 62B-41.007(4), F.A.C. The plans and specifications shall include a description of the beach construction methods to be utilized and drawings and surveys which show all biological resources and work spaces (e.g. anchoring area, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project. The Department may request additional information that may be necessary to understand and evaluate the proposal;
- f. ***Turbidity monitoring qualifications***. Construction at the project site shall be monitored closely to assure that turbidity levels do not exceed the compliance standards established in this permit. Accordingly, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when fill material is discharged on the beach. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit. The names and qualifications of those individuals performing these functions along with 24-hour contact information shall be submitted for approval;
- g. ***Biological monitoring qualifications***. The names and qualifications of those individuals performing the biological monitoring shall be submitted for Department approval. All biological monitoring required by this permit shall be conducted by individuals having a good working knowledge of marine fish, marine turtles, algae, coral, and sponge taxonomy.

- h. A **Contingency Plan** to remediate any adverse impacts to the shoreline resulting from the dredging of Borrow Site #1. The approved Contingency Plan can be revised at any later time by written request of the permittee and with the written approval of the Department. As guidance for obtaining Departmental approval, the Plan should acknowledge that there is a potential for shoreline erosion occurring within adjacent areas of Segment I of the Broward County Beach Erosion Control Project as a result of dredging in Borrow Site #1. The Plan should confirm that these areas will be specifically monitored, analyzed, and reported on as part of an approved Monitoring Plan. The Contingency Plan should provide that any erosional problems that develop within contiguous shoreline areas of Segment I will be specifically addressed and appropriate remedial solutions developed and implemented. Remedial solutions to be considered should include the placement of beach fill material, as applicable. Once approved by the Department, the permittee shall obtain all necessary permits and authorizations to conduct the remedial action(s).

- i. A **Segment III Post-Construction Monitoring Report** to determine whether the Specific Conditions contained in the Segment II permit provide reasonable assurances that state Water Quality Standards will not be violated and that there will be no unacceptable adverse impacts as a result of sedimentation or turbidity. Data for the Report shall be collected by the applicant on a monthly basis during the eighteen (18) month period immediately following construction of Segment III. Methodology and data collection points shall be selected by the applicant along shore-perpendicular transects that have been designated for annual monitoring and approved by the Department as a Notice to Proceed item for Segment III project. Data collection points shall be located on the nearshore limestone ridge and be based upon the presence of individual areas of high coral density and/or larger sized scleractinian coral colonies. Sedimentation values shall also be collected and reported at data collection points along each selected transect. Appropriate control areas outside of the project shall be selected for the comparison. The Report shall include biological parameters to indicate the health of the coral resources. The Department shall prepare its recommendation on this Notice to Proceed Item within 45 days of receipt of the Report as to whether reasonable assurances have been provided. This recommendation will be submitted to the Board of Trustees, who will decide if the Segment II project may proceed as proposed, may proceed with revisions, shall be postponed pending the results of further monitoring, or may not proceed. The Board of Trustees' determination is **not** subject to a petition for an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes. In the event the Board of Trustees

determines that reasonable assurances are provided under the terms and conditions of the Segment II permit as specified above, the Department shall issue a Notice to Proceed for the beach construction. In the event the Board of Trustees determines that additional or modified conditions are necessary in order for reasonable assurances to exist, the Department shall so modify the permit prior to issuing a Notice to Proceed. The additional or modified conditions may include a delay in commencing the Segment II project, or project revisions that eliminate, minimize or mitigate the unexpected adverse impacts

This letter of approval extends the expiration date of the permit construction phase from June 4, 2009 to **June 4, 2014**. The modification does not alter the Specific Conditions, General Conditions, or monitoring requirements of the permit. This letter must be attached to the original permit.

This permit is hereby extended 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.

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, 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;
- (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.

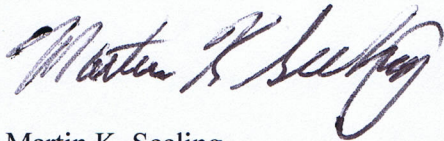
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

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. The applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

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. 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.

Please direct any questions regarding these documents to Dr. Merrie Beth Neely by letter at the above address (add Mail Station 300), at e-mail address merrie.neely@dep.state.fl.us or by telephone at (850) 413-7785.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/mbn

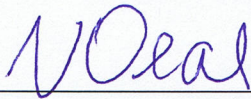
cc (via e-mail unless noted):

Jeff Raley, DEP, Rec & Parks
Jennifer Smith, DEP, SE District Office
Michael Barnett, BBCS-Chief
El Kromhout, BBCS-CE (+hardcopy)
AlexReed, BBCS-BECP
Roxane Dow, BBCS-BECP
Vladimir Kosmynin, BBCS-JCP
Wesley Cich, BBCS-CCCL
George Getsinger, NOAA/NMFS
Jeffrey Howe, USFWS, Vero Beach
Linda Shelley, Fowler White Boggs Banker
Steve Attis, Vone Research
City of Deerfield Beach, City Mgr
Tori White, USACE, Palm Beach Gardens
(USACE File No. SAJ-1999-5545 (IP-SLN))

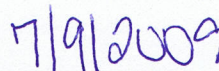
Ellen McCarron, DEP, CAMA
Robbin Trindell, FWC-ISMS
Robert Brantly, BBCS-CE
Paden Woodruff, BBCS-BECP
Richard Noyes, BBCS-BECP
Martin Seeling, BBCS-JCP
Robert Halbert, BBCS-CCCL
JCP Compliance Officer, BBCS-JCP
Jocelyn Karazsia, NOAA/NMFS
Ron Miedema, EPA, West Palm Bch
Dan Clark, Cry of the Water
Town of Hillsboro Beach, Town, Mgr
Carolyn Dekle, SFRPC
BBCS 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.



Deputy Clerk



Date