

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.

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1. Article Addressed to:

Steve Higgins
 Broward County Env. Protection
 Growth Mng. Dept
 1 North University Dr. Suite 301
 Plantation, FL 33324

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BUREAU OF BEACHES
& COASTAL SYSTEMS

JUL 16 2009

RECEIVED

DEPT. OF ENVIRONMENTAL PROTECTION
BUREAU OF BEACHES AND COASTAL SYSTEMS
3900 COMMONWEALTH BOULEVARD
MAIL STATION #300
TALLAHASSEE, FLORIDA 32399-3000

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.

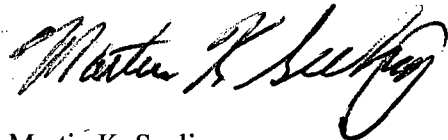
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

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)
Alex Reed, 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))

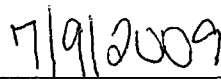
Ellen McCarron, DEP, CAMA
Robbin Trindell, FWC-ISMS
Robert Brantly, BBCS-CE
Paden Woodruff, BBCS-BECP
Richard Noyes, BBCS-BECP
Martin Seeling, BBCS-JCP
Robert Halbert, BBCS-CCCL
JCP Compliance Officer, BBCS-JCP
Jocelyn Karazsia, NOAA/NMFS
Ron Miedema, EPA, West Palm Bch
Dan Clark, Cry of the Water
Town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

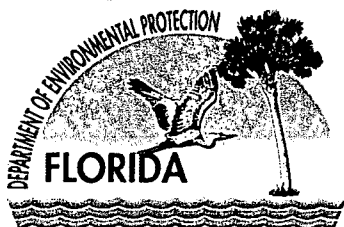


Deputy Clerk



Date

Original 7-8-09



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

July 7, 2009

Dan Clark, Director
Cry of the Water
PO Box 8143
Coral Springs, FL 33075

RE: Broward Beach Nourishment Segment II and III, notice

Dear Mr. Clark

This letter is in response to your letter dated May 6, 2009, regarding Broward Beach Nourishment Segment II, 0163435-014-JN. Hopefully, this letter will clarify issues raised in your letter.

Cry of the Water was given courtesy notification of the minor modification application referenced above to grant a 5-year time extension to the permit. Your organization objected to the limited review time that the notice provided. The Department apologizes for the delay in notification. However, the Department would have notified your organization earlier if not for an internal routing delay that reduced the review time available for ALL parties, including Department staff.

Cry of the Water also objected to a waiver to the deadline for a 36-month physical monitoring report. Please let us clarify. The Broward Segment III project commenced in 2005. The 36 month reports physical monitoring reports are not due until later this year and no time extension has yet been requested or granted for this report. However, if your letter is referring to the time extension granted by the Department for the 18 month Biological Monitoring report, it has been the Department's policy that it is within our discretion to grant a time extension or waiver for reports required by permit conditions because this is a compliance and enforcement action. Such a time extension/waiver does not constitute a permit modification, so no application notice or formal agency action is documented.

Permit No. 0163435-001-JC and 005-JC
Project Name Broward Beach Nourishment Segments II and III
Page 2 of 2

Lastly, the Department recognizes that Cry of the Water has recently requested to be copied on notices related to this project, and such a request is valid for 2 years. Please know that state agencies subject to the Public Records Laws of Florida are not required to comply with "standing" public records requests. Note that public records requests only pertains to documents the Department possesses at the time of the request and will not cover future submittals. However, the Department will make every effort to continue copying Cry of the Water on official notices related to the Broward Segment II and Segment III projects.

Thank you for your comments. Please direct any further questions you may have to me by letter at the above address (add Mail Station 300), by email (merrie.neely@dep.state.fl.us) or by telephone at (850) 413-7785.

Sincerely,



Merrie Beth Neely, Ph.D.
Environmental Specialist III
Bureau of Beaches and Coastal Systems



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

May 18, 2009

Dan Clark, Director
Cry of the Water
P.O. Box 8143
Coral Springs, FL 33075

RE: Your E-mail records request

Dear Mr. Clark:

Thank you for your inquiry about Florida Department of Environmental Protection activities for the Broward Segment II project. The Department will gladly supply any Scopes of Work in regards to Broward Segment II. However, no scopes have been received in the past 6 months for this project. As per future scopes of work, we have no means to track these submittals to insure that you receive copies. You may contact me at any time to inquire about recent submittals and request copies.

If you have any other questions or requests, please contact me at the numbers listed below.

Sincerely,

Richard A. Noyes
Environmental Specialist III

Phone (850)922-7865
E-mail Richard.noyes@dep.state.fl.us

Xc: Broward County

Cry of the water - board II

Water of time extension - OOC

notice on monitoring report
letter II

- acknowledged late, not a modification
but not pursued the extension

Bob or Vlad? approved late
not notified because not a mod.

Stds on Biol Monitoring

72 pages

OAC further

of datasets
periods + report due dates
methods
% to com
amounts
specify criteria

if can't find fault
permit rule if AOC is
to change plan OK to admin about
a mod is req'd to change
permit condition.

Cry of the Water

P.O. Box 8143
Coral Springs, FL 33075
Reefteam2@yahoo.com
(954) 753-9737

May 17, 2009

Merrie Beth Neely
Bureau of Beaches & Coastal Systems
3900 Commonwealth Blvd, M.S. 300
Tallahassee, Florida 32399-3000

Broward Beach Nourishment Segment II (SOW)
0163435-014-JN
Beach Erosion Control Program

Dear Ms. Neely,

Cry of the Water is officially requesting copies of future submittals of any Scope of Work (SOW) to the Project Manager in the Bureau's Beach Erosion Control Program for Broward Beach Nourishment Segment II and any RAI's (Request for Additional Information) that may accompany them..

Cry of the Water would also like to request past SOW's submitted to this program within the last six months and any RAI's that may accompany them.

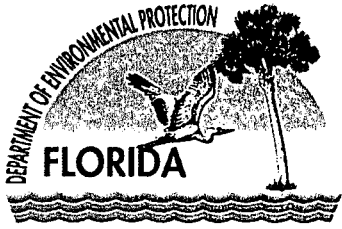
Once again we state that because Broward County Segment II contains the richest nearshore resources left in the State, including fields of staghorn coral, high diversity reefs and huge monument corals 400 to 500 years old, Cry of the Water must receive timely notice of any projects or changes to projects that may affect these resources. We cannot exercise our rights to protect these resources without timely notice.

Sincerely,

Dan Clark
Director, Cry of the Water

cc: Richard Noyes

Copy mailed on 5/13



Florida Department of Environmental Protection

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

Charlie Crist
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Jeff Kottkamp
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Michael W. Sole
Secretary

May 12, 2009

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

NOTICE OF COMPLETENESS

DEP File No. 0163435-014-JN

Permit No. 0163435-005-JC, Broward County

Project: Broward County Segment II – time extension request

Dear Mr Higgins:

This is to acknowledge receipt of your request on April 9, 2009, regarding an application for a modification to a joint coastal permit and authorization to use state-owned submerged lands to extend the permit expiration date by five (5) years to June 4, 2014.

Based upon the submitted information, this application has been deemed complete. Although coral health in Segment II was mentioned in the RAI, it was not meant to be a completeness requirement for the time extension. Please be advised that we have received a number of comments on this time extension that reiterate resource-related concerns that will need to be addressed before a Notice to Proceed can be issued for work under this permit. These concerns will be summarized under separate cover. Pursuant to Chapter 120.60, F.S, final action on your application will be taken within 90 days of receipt of your last item of information, July 10, 2009, unless you choose to waive this timeclock or the time is tolled by an administrative hearing.

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

Sincerely,

Merrie Beth Neely, Ph.D.
Environmental Specialist III
Bureau of Beaches and Coastal Systems

Notice of Application Completeness
File No. 163435-014-JN, Broward County
Project Name: Broward County Segment II
Page 2 of 2

cc:

Jeff Raley, DEP, Rec & Parks	Ellen McCarron, DEP, CAMA
Jennifer Smith, DEP, SE District Office	Robbin Trindell, FWC-ISMS
Michael Barnett, BBCS-Chief	Robert Brantly, BBCS-CE
El Kromhout, BBCS-CE (+hardcopy)	Paden Woodruff, BBCS-BECP
Alex Whitworth, BBCS-BECP	Richard Noyes, BBCS-BECP
Roxane Dow, BBCS-BECP	Martin Seeling, BBCS-JCP
Vladimir Kosmyrin, BBCS-JCP	Robert Halbert, BBCS-CCCL
Wesley Cich, BBCS-CCCL	JCP Compliance
George Getsinger, NOAA/NMFS	Jocelyn Karazsia, NOAA/NMFS
Jeffrey Howe, USFWS, Vero Beach	Ron Miedema, EPA, West Palm Bch
Linda Shelley, Fowler White Boggs Banker	Dan Clark, Cry of the Water
Steve Attis, Vone Research	Town of Hillsboro Beach
City of Deerfield Beach	Carolyn Dekle - SFRPC
Albert Carbon, Dir. Public Works, City of Fort Lauderdale	
BBCS File	Kelly Russell, DEP- OGC
Tori White – USACE- SAJ-(USACE File No. SAJ-1999-5545 (IP-SLN))	

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Cash Receiving Application (CRA)
 Cashlisting by Deposit #: 291524 thru 291524
 Printed: 5/15/2009 9:12:30 AM - Page 8

Cashlisting: 75948 Cashlist Area: 3735A Description: DWRM-BEACHES & COASTAL SYSTEMS
 Deposit No: 291524 Date Deposited: 05/14/2009 Contact: LARRY TEICH MS-300

Object	Transmittal	Dep DDN	Receipt Number	Pre-Numbered Receipt	Name	Check Number	Payment Amount	Reference Account	Payment Number	Remittance Number	Fund	Grant
001016	54593		667685		SPENCE	2483	\$750.00		947507	832038	PFTF	
	54593		667690		MELODIA PARTNERS, LLC	094	\$5,800.00		947514	832044	PFTF	
	54593		667689		THE PIER HOUSE RESTAURANT	11775	\$300.00		947513	832043	PFTF	
	54593		667681		RENFROE	4070	\$1,000.00		947502	832033	PFTF	
	54593		667691		WINDWARD EQUITY INVESTMENTS, L	1505	\$1,500.00		947515	832045	PFTF	
	54593		667687		KEYWEST BEACH CLUB CONDO ASSOC	1324	\$300.00		947510	832040	PFTF	
	54593		667688		CITY OF HOLLYWOOD	2019581	\$750.00		947512	832042	PFTF	
Object Code 001016 Subtotal:							\$10,400.00					
002281	54593		667680		BROWARD COUNTY, BOARD OF COUNT	001191120	\$150.00		947500	832031	PFTF	
	54593		667674		CITY OF MARCO ISLAND	69464	\$33,040.00		947492	832024	PFTF	
Object Code 002281 Subtotal:							\$33,190.00					
002296	54593		667672		EMR INC.	216330	\$555.00		947489	832022	PFTF	
Object Code 002296 Subtotal:							\$555.00					
Cashlisting 75948 Total:							\$44,145.00					

0163435-014-JN

Pernie Bell

Neely, Merrie

From: Seeling, Martin
Sent: Thursday, May 07, 2009 5:08 PM
To: Russell, Kelly L.; Neely, Merrie; MacLeod, Steven; Barnett, Michael
Cc: Gregory, West
Subject: RE: Draft Letter Broward Segment II 5 year Time extension File No. 0163435-014-JN

Will do. Thanks for looking into it for us.

MS

From: Russell, Kelly L.
Sent: Thursday, May 07, 2009 5:05 PM
To: Neely, Merrie; Seeling, Martin; MacLeod, Steven; Barnett, Michael
Cc: Gregory, West
Subject: RE: Draft Letter Broward Segment II 5 year Time extension File No. 0163435-014-JN

I'm sorry to do this to you, but because the permit was issued and the Petitioners were aware of the permit being issued, we need to go ahead and process the time extension request. They will definitely need to demonstrate that they meet all criteria for a time extension under our rule. Let us know if you have any questions.

Kelly

CONFIDENTIAL ATTORNEY WORK-PRODUCT EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO §119.071(1)(d)1., Fla. Stat.

From: Neely, Merrie
Sent: Wednesday, May 06, 2009 12:02 PM
To: Seeling, Martin; MacLeod, Steven; Barnett, Michael; Gregory, West; Russell, Kelly L.
Subject: Draft Letter Broward Segment II 5 year Time extension File No. 0163435-014-JN

Hello Everyone:

Attached is the draft letter regarding the time being tolled on Broward Segment II. I have this nagging feeling that there is one little thing in here that needed fixing still, but I was interrupted by a phone call and lost track of my thoughts. If you spot something wrong please bring it to my attention! Otherwise, please review/edit/comment. The due date for sending this is Friday the 8th.

Thank you!

Merrie Beth Neely, Ph.D.
Florida Department of Environmental Protection
Water Resources Management
Joint Coastal Permitting
3900 Commonwealth Blvd. MS 300
Tallahassee, FL 32399-3000
Phone 850 413-7785
Fax 850 414-7725



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
MIAMI REGULATORY FIELD OFFICE
8900 SW 107TH AVENUE, #200
MIAMI, FL 33170

May 12, 2008

Regulatory Division
Special Project/Enforcement Branch
Enforcement Section
SAJ-2008-1313

City of Ft. Lauderdale
Attention: George Gretsas, City Manager
100 N. Andrews Avenue
Ft. Lauderdale, Florida 33301

URS Corporation
Attention: Chris Macey
7800 Congress Avenue, #200
Boca Raton, Florida 33487-1350

Warning Letter

Gentlemen:

Recent inspections and review of the Ft. Lauderdale Beach re-nourishment project has indicated that you have placed fill material within areas of federal jurisdiction. A review of information and drawings provided shows the work occurred above mean high water (MHW) but below annual high tide. Approximately 2,000 yd³ of fill was placed at the beach below the limits of annual high tide and below MHW in some areas. The project is located at Ft. Lauderdale Beach between NE 16TH Court thru NE 15TH Court, Ft. Lauderdale, Broward County, Florida.

Pursuant to conversations with your project supervisor (Mark Almy) and your consulting firm (URS Corporation), we were informed that you had received your Florida Department of Environmental Protection (FDEP) authorization, however that does not obviate you from obtaining federal authorization. Please be advised that projects which qualify as exemptions, or for general permits from the FDEP, often require federal permits. In a recent conversation with your consulting firm, we learned that you believe the Corps follows the same permitting guidelines as the FDEP or other local agencies; you are hereby advised that this is not the case.

It is the Corps responsibility to inform you that federal authorization has not been granted or verified, and that this project appears to be in violation of the provisions of the Clean Water Act, as amended where material was placed below annual high tide and of both the Clean Water Act and the Rivers and Harbors Act of 1899 where material was placed below MHW in this re-nourishment activity.

Violations of the Clean Water Act carry civil fines of no more than \$32,500 per day of violation, criminal fines of up to \$50,000 per day of violation, imprisonment and injunctive relief. Violations of the Rivers and Harbors Act carry criminal penalties up to \$100,000 in fines for individuals and up to \$200,000 in fines for corporations, up to 1 year imprisonment, or both. Injunctive relief, including restoration, is also available.

It is requested that you acknowledge receipt of this letter (in writing) within 15 days, explain your understanding of federal requirements as it relates to this and similar matters, and propose corrective actions you will take to assure that all appropriate federal authorizations are acquired for future projects. Future activities undertaken without federal authorization may result in formal enforcement action.

If you have any questions regarding this matter please contact Shelly Carter at the letter head address or by telephone at 305-526-7183, or by electronic mail at shelly.carter@usace.army.mil.

Sincerely,



Eric P. Summa
Chief Enforcement Section

Copies Furnished:

USFWS - Vero Beach

FDEP- Bureau of Beaches and Coastal Systems

Cry of the Water

P.O. Box 8143
Coral Springs, FL 33075
Reefteam2@yahoo.com
(954) 753-9737

May 6, 2009

Merrie Beth Neely
Bureau of Beaches & Coastal Systems
3900 Commonwealth Blvd, M.S. 300
Tallahassee, Florida 32399-3000

Broward Beach Nourishment Segment II
0163435-014-JN

Dear Ms. Neely,

Cry of the water initially notes that due to the FDEP's three-week delay in notifying Cry of the Water of the application for modification, Cry of the Water was given only two days to respond to the modification to extend the Broward County Segment II permit by five years. Even with the five-day extension of time, two of which were the weekend, Cry of the Water has not had sufficient time to retain and consult with legal counsel. This is very troublesome because FDEP could have avoided the problem by giving Cry of the Water notice over three weeks ago.

At the time leading up to our settlement agreement in February of 2004 Cry of the Water was receiving notice of modifications and changes both minor and major to the Broward County Beach renourishment project. After the start of Segment III FDEP gave notices only sporadically.

Cry of the Water was not even informed of the request and granting of the extension of time modification for the 36-Month Post-Construction Monitoring Report on Segment III. We were denied our right to comment. This is important because the impacts in Segment III were greater than predicted. Many more acres of reef were buried and hundreds of acres were impacted by secondary impacts from silt, sediment and turbidity. The 36-Month Post Construction monitoring is necessary to determine the amount of additional mitigation that will have to be built in an attempt to offset these impacts. The applicant claimed that by building up-front mitigation it would decrease impacts to the environment. However now that additional mitigation is required, any delay in building the mitigation will increase the impacts to the environment. For this reason we would have challenged the extension of time for the 36-month monitoring. Since Cry of the Water was not informed of this modification, our right to challenge this modification was taken away. A true accounting of the needed mitigation for this project must be established to replace the loss of habitat.

The 18-Month Post-Construction Monitoring report showed that the impacts went beyond the established transects and showed the 2006 reef burial was over 50 acres. The anticipated reef burial was only 8 acres. The 18-Month report states "The results of the sediment analysis show elevated sediment levels related to project activities extend beyond the first 30 meters of hardbottom: therefore, future biological monitoring plans designed to track nourishment impacts should extend beyond the first 30 meters of hardbottom."

Since the 36-Month Post Construction Monitoring has not been completed we ask that the transects be extended seaward and that additional transects be added to document impacts across the first reef. Cry of the Water commented to the EIS during the permitting process, stating monitoring transects were inadequate to fully record the reef burial and impacts and requested additional transects further out onto the first reef. We were told that this would be unnecessary, however the 18-month study showed that was not the case and longer transects are needed.

Notification of extension of time to perform the 12-Month, 18-Month and 36-Month Post-Construction Nearshore Environmental Monitoring Report were not provided to Cry of the Water.

In addition, Cry of the Water, has not been notified of permits that affected Segment II and Segment III. Last spring a truck hall re-nourishment project was conducted under two Field permits just onshore of the largest field of staghorn coral in the state of Florida. Even though staghorn and elkhorn coral were listed as threatened under the Endangered Species Act (ESA) no ESA consult was performed for this project. The permit was issued and work had commenced by the time Cry of the Water became aware of an article about it in the local newspaper. Field permits allow a maximum of only 500 cubic yards of material but the Ft. Lauderdale Field Permit was issued for 2000 cubic yards of material.

After Cry of the Water brought this project to the attention of the Army Corps of Engineers, a Warning Letter from Eric Summa, Enforcement Section Chief, was sent. That letter clearly states that the Fort Lauderdale Beach project was a re-nourishment project within areas of federal jurisdiction. FDEP also went against the Army Corps of Engineers' definition of spring tide, by allowing sand to be placed on the wet beach under a field permit. See attached letter from Army Corps enforcement chief. In issuing a field permit, FDEP bypassed the important oversight ACOE and NMFS were responsible to give for the protection of our valuable resources.

Mapping and monitoring of the marine resources was not included in this renourishment project under a Field Permit. During the last day of the project, sand placement continued even though sea conditions were rough. Cry of the Water observed the sand being washed off the beach as it was being placed, settling out and burying the nearshore hardbottom. Photos and video are available for documentation. Since no biological monitoring of the marine resources was required for this project, no mitigation for the burial or impacts from silt, sediment and turbidity has taken place. This is of particular concern because staghorn corals are some of the most sensitive to silt, sediment and turbidity. These reefs are also feeling the cumulative impacts from poor water quality and diseases.

We are currently working with Dr. Esther Peters and Cheryl Woodley of NOAA on a study of diseases affecting *Acropora* species in the area (staghorn and elkhorn) on the same Ft. Lauderdale reef. We obtained a permit to collect mucus samples of diseased and healthy corals in the area. Dr. Peters will be giving a presentation on her findings at the upcoming Southeast Florida Coral Reef Initiative (SEFCRI) TAC meeting on Thursday. We would like to reserve the right to send additional information from Dr. Peters report once it has been delivered. We have also documented bleaching events in the area to NOAA just a few months before the sand having been dumped on the beach for this project

These factors are import because corals that are recently bleached or diseased are more susceptible to the chronic impacts from silt, sediment and turbidity. These cumulative impacts must be considered when looking at any future projects in the area.

We feel that by denying us notice of this re-nourishment project FDEP went against the intent of our agreement if not the exact language, which gave us the right to proceed to a final hearing before the renourishment of Segment II.

Once again, and pursuant to the standing settlement agreement, Cry of the Water requests that the Florida DEP timely notify of any events and provide to Cry of the Water any and all documentation related to the re-nourishment project, including but not limited to the following:

- Application or request for any changes or modifications, both minor and major to Segment III and II, including changes that the department feels do not require an official modification.
- New applications or request for any mitigation or artificial reef that may be used as mitigation in the future in Segment III and Segment II Broward County, including GP's.
- Issuances of any permits or notice to proceed for any mitigation or artificial reefs that may be used as mitigation under new or old permit in Segment II and III.
- New or pending applications for any Field, GP, JCP or any other request that would put sand on the wet or dry beach in Segment III and Segment II Broward County including dune projects with or without vegetation.

- Any request for changes in the scheduled monitoring of the Post Construction of Segment III including Mitigation, Nearshore Environmental Monitoring and Monitoring around the Borrow Pits.
- We are requesting copies of any reports that are generated for Segment II or III beach project as soon as they are sent to the agencies.
- Timely notification of any issues regarding Broward County Beach project or mitigation going before Governor or Board of Trustees.

Because Broward County Segment II contains the richest nearshore resources left in the State, including fields of staghorn coral, high diversity reefs and huge monument corals 400 to 500 years old, Cry of the Water must receive timely notice of any projects or changes to projects that may affect these resources. We cannot exercise our rights to protect these resources without timely notice.

Sincerely,

Dan Clark
Director, Cry of the Water

Florida Department of Environmental Protection

Memorandum

To: Dr. Merrie Beth Neely
From: Joanna Walczak, FDEP CRCP
Date: May 6, 2009

RE: FDEP CRCP Comments on the applicant request for a minor modification (5-year time extension) for permit file #0163435-014-JN, Broward County

Dear Merrie Beth,

The purpose of this memo is to provide comments regarding the applicant request for a minor modification (5-year time extension) for permit file #0163435-014-JN, Broward County.

The FDEP Coral Reef Conservation Program supports continued physical and environmental monitoring for the purpose of avoiding impacts to marine resources associated with developing and evaluating potential project designs to meet erosion control objectives along Segment II, Broward County. However, we do not feel that reasonable assurance has been provided that no significant changes in shoreline conditions, specifically biological habitat, have occurred since 2004.

In 2006, two stony coral species that exist in the southeast Florida region, Staghorn coral (*Acropora cervicornis*) and Elkhorn coral (*A. palmata*), were listed by NOAA-NMFS as "threatened" under the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973. There are extensive coral reef resources offshore of the beach placement areas [located in Pompano Beach (R-36 to R-43) and in Lauderdale-by-the-Sea and northern Fort Lauderdale (R-51 to R-72)], including one of the largest surviving patches of *A. cervicornis* in Florida.

NOAA-NMFS (2009) reports indicate, "Acroporids are particularly sensitive to sediment, as they are among the least effective of the reefbuilding corals at trapping and removing sediment from their surface."

Therefore, we strongly recommend that, should this permit extension be granted, the conditions in the existing permit be revoked and that the Notice to Proceed for construction be suspended pending approval of a satisfactory project design (including a current volumetric comparison) that avoids marine resource impacts.

Thank you for the opportunity to review this request. Please let me know if you have any questions.

Sincerely,



Joanna C. Walczak
Assistant Manager, Coral Reef Conservation Program
Florida Department of Environmental Protection

CC: (via email)
Ellen McCarron, FDEP CAMA
Chantal Collier, FDEP CRCP
Troy Craig, FDEP CRCP
Penny Isom, FDEP CAMA
Rebecca Prado, FDEP CAMA

References cited:

NOAA NMFS. 2009. *General fact sheet on Atlantic Acropora corals*. [Online]. Available: <http://sero.nmfs.noaa.gov/pr/docs/040312%20Acropora%20fact%20sheet.pdf> [Accessed May 6, 2009].

DD Admin trap

Per settlement agent + relinquishment of jurisdiction

your permit has been tolled since June 4 2004, ^{Final order} Subject
to site conditions it is unnecessary to get a
time extension, for to Syns starting upon final approval
and resolution of settlement.

Your permit application fee is enclosed.

2/26/04

Stipulated settlement agreement (03-249)

DOHR joint motion to relinquish jurisdiction 3/11/04

Permit challenged
Syns clock never started
Broad Sign II



ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
 Natural Resources Planning & Management Division
 Mailing Address: 1 North University Drive, Suite 301, Plantation, Florida 33324
 954-519-1270 • FAX 954-519-1412

RECEIVED

MAY 04 2009

BUREAU OF BEACHES
 AND COASTAL SYSTEMS

April 29, 2009

Merrie Beth Neely, Ph.D.
 Bureau of Beaches and Coastal Systems, FDEP
 3900 Commonwealth Blvd., MS 300
 Tallahassee, FL 32399-3000

Subject: Broward County Segment II Beach Nourishment Project
 Application # 0163435-014-JN, Time Extension Request

Dear Dr. Neely:

This letter will provide the assurances discussed in our teleconference and noted in the relevant sections of Rule 62B-49, F.A.C., which were provided with your email of April 28, 2009. Our responses are inserted in red after the appropriate sections of the rule below.

“(6) In order to be eligible for a time extension the permittee must provide:

(a) Documentation that the authorized construction could not be completed within the allotted period. The draft permit expires in June, 2004. Since we and the Department acknowledge that the project proposed in the draft permit must be reevaluated in the context of current conditions, and inasmuch as the County is currently underway with a search for borrow sites, it is evident that the project cannot be completed by the draft permit expiration date.

(b) Reasonable assurance that the activity can be completed within the time extension requested (based on a schedule for completion included with the request). The County is requesting a five-year extension to the permit expiration date, which would result in a new expiration date of June 4, 2014. Within that five-year period, the County expects to determine the source of beach fill material; perform the physical and environmental surveys necessary to design a project to meet erosion control objectives while avoiding and minimizing impacts to marine resources; develop a supplemental General Reevaluation Report and a supplemental Environmental Impact Statement; apply for and obtain permits; produce plans specifications and bid the project for construction; and construct the project. A reasonable timeline for the accomplishment of these tasks is as follows:

Task	Begin Date	Complete Date
Determine source of material and characterize	Underway	August 1, 2009
Conduct biological and physical baseline surveys	August 1, 2009	August 1, 2010
Develop Supplemental GGR and EIS	August 1, 2009	August 1, 2011
Apply for and obtain permits from DEP and USACE	November 1, 2009	June 1, 2012
Produce Plans and Specifications and bid construction	February 1, 2012	September 1, 2012
Initiate construction and complete	November 15, 2012	March 15, 2013

Broward County Board of County Commissioners

As you will note, this schedule predicts completion of the project well within the five-year permit life. This timeline assumes that mitigation requirements for impacts to resources will be accomplished under separate permits.

(c) Reasonable assurance that no significant change in shoreline conditions, including biological habitat, has occurred since the original permit was issued (**June 2004**). Shoreline position along Segment II has not changed significantly from June, 2004 to the present, except in small isolated areas. Figure 1 below illustrates Mean High Water contour positions in 2007 and 2008 relative to the position of the shoreline in March, 2005. There are no data for 2004, and the 2009 physical monitoring data is currently being processed, but there is no evidence that significant overall changes to beach volume or shoreline position have occurred between 2008 and 2009.

Various entities conduct ongoing monitoring of various aspects of the nearshore and offshore biological habitats and resources along Segment II for purposes both related and unrelated to the Broward County Shore Protection Project. A non-comprehensive survey of a sample of these entities (consisting of government, university, and private sector experts) resulted in primarily anecdotal reports that notwithstanding the tropical weather seasons of 2004 and 2005, the overall health of the nearshore and offshore reefs and hardbottoms along Segment II is not appreciably different from that observed in 2004. We are not aware of any literature focused on this location and timeframe which contradicts these reports.

What is different is the regulatory climate regarding potential impacts to those habitats and resources, underscored by the federal listing of the Acropora species. In response to the increased regulatory scrutiny being applied to projects which may impact these resources, the County plans to implement in connection with the Segment II project comprehensive pre-, during-, and post-project studies and monitoring consistent with all requirements and guidance set forth by the agencies. Initial biological monitoring protocols and plans related to the project are currently in the formative stages of development.

I hope the foregoing provides the Department with the necessary assurances cited in the above-referenced rule. Please feel free to contact me if you have questions or need additional information.

Respectfully,



Stephen Higgins
Beach Erosion Administrator

c: Eric Myers, Assistant Director, Environmental Protection and Growth Management Dept.
Dr. Jennifer Jurado, Director, Natural Resources Planning and Management Division
Linda Shelley, Fowler White Boggs
Christopher Creed, Olsen Associates
Norman Beumel, Coastal Planning & Engineering, Inc.

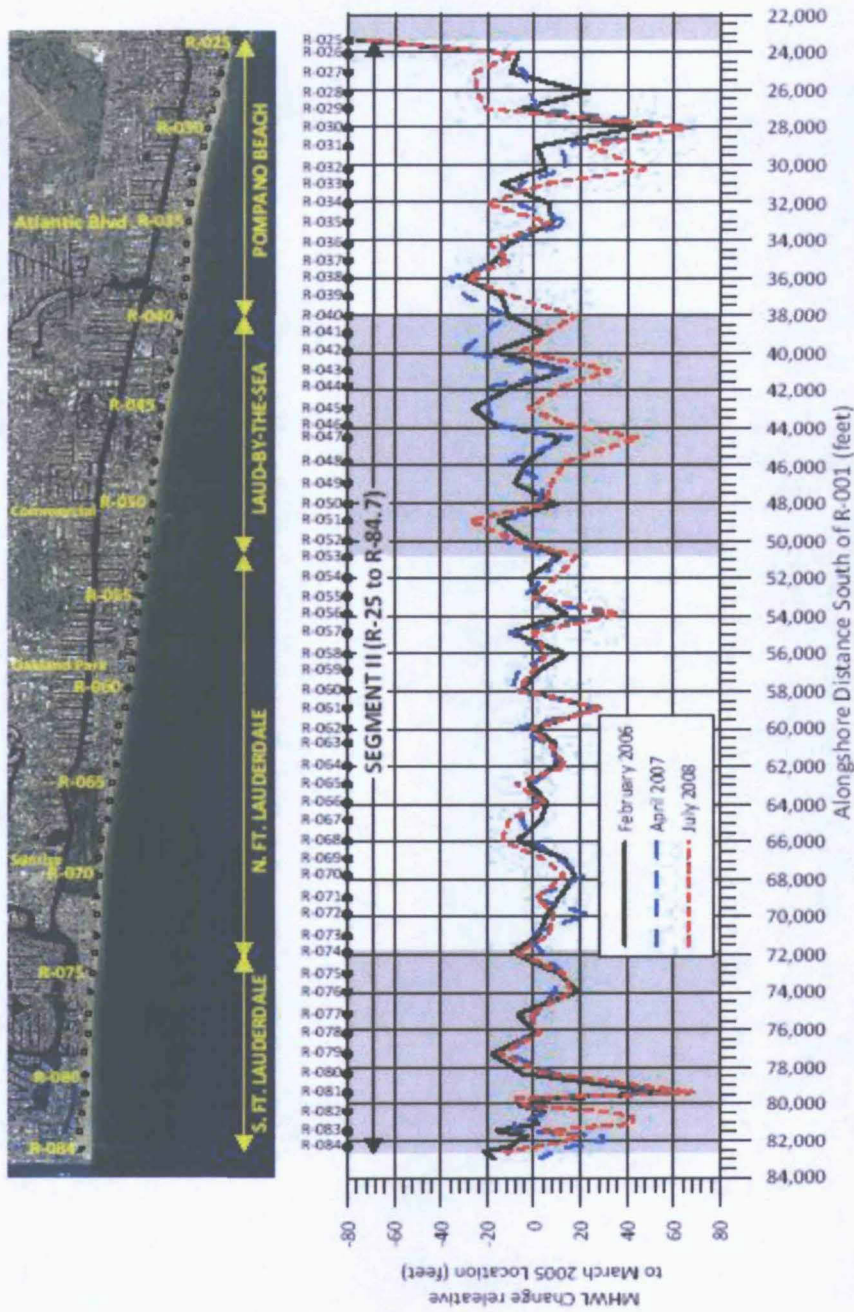


Figure 4.9: Segment II MHW shoreline locations relative to the March 2005 (pre-construction Segment III).

Figure 1. Segment II Shoreline Position Changes, 2005 - 2008



ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
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MAY 04 2009

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 AND COASTAL SYSTEMS**

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Broward County Board of County Commissioners

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Respectfully,



Stephen Higgins
Beach Erosion Administrator

c: Eric Myers, Assistant Director, Environmental Protection and Growth Management Dept.
Dr. Jennifer Jurado, Director, Natural Resources Planning and Management Division
Linda Shelley, Fowler White Boggs
Christopher Creed, Olsen Associates
Norman Beumel, Coastal Planning & Engineering, Inc.

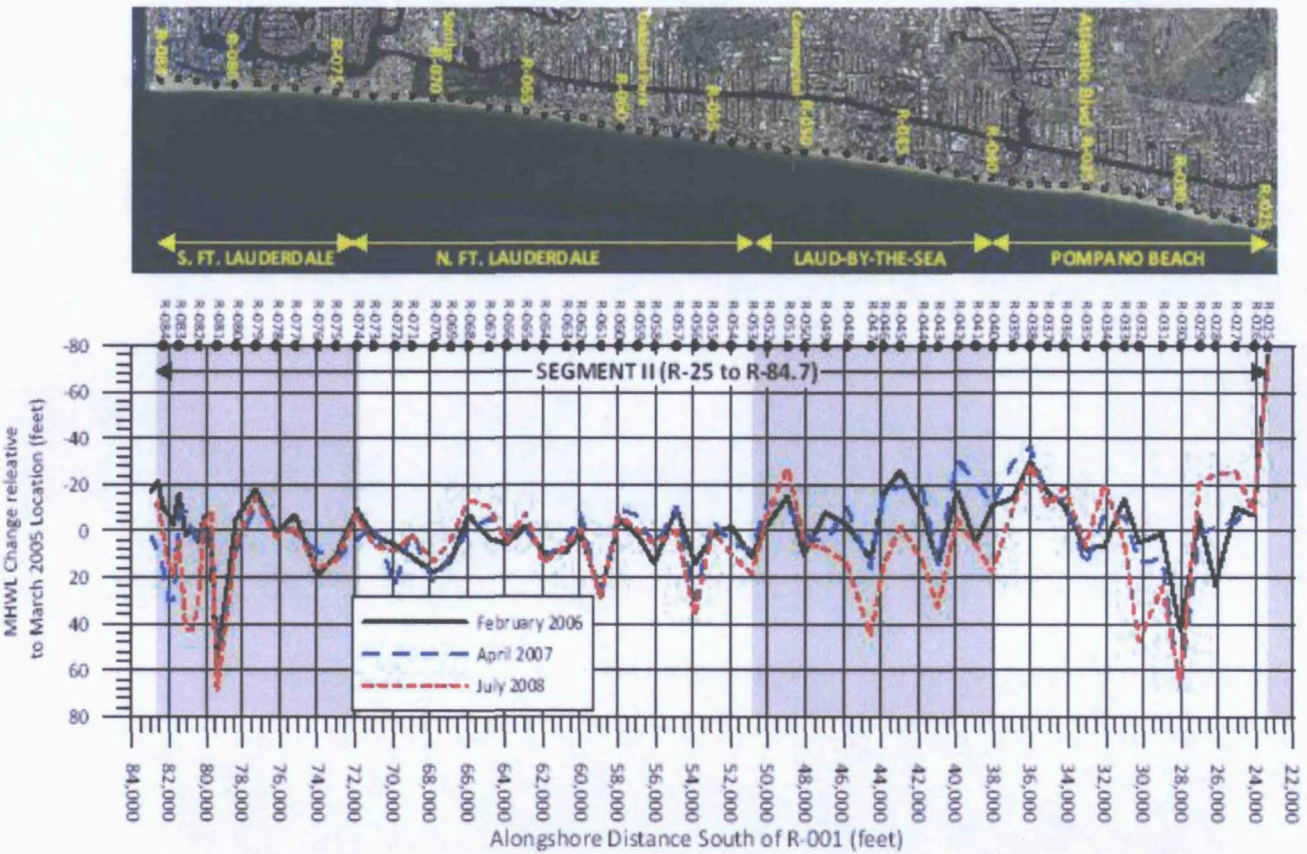


Figure 4.9: Segment II MHW shoreline locations relative to the March 2005 (pre-construction Segment III).

Figure 1. Segment II Shoreline Position Changes, 2005 - 2008

Broward County Segment II

Internal

Brantley, Macleod, Neely, Nays, Whitworth, Seeling, Mad...

meed.

8/28/09

Why keep permit open?

- new template based upon ^{performance impact} Segment III mid 2010
- New borrow sites after sand search
- update of ~~the~~ biological communities

- Storms - can't do it due to BOT approval needed

- new permit for segment II redesign

Marty suggests RAI November

- provide reasonable assurance that they can build it
Schedule + \$

- acreage now listed

What advantages to us?

Maintains links between projects

Spells out approval process

*add additional conditions from BOT ^{Notice}
meeting including new borrow Area

settlement agreement? to OBC

filed w/ Stenwiggs - no caps this afternoon

1-30

Broward County Segment II 4/28/09

Teleconf. w/ (B City) (ADCP)
Stu Higgins, Noys, Seeling, Whit-

fee - on it, hope to have by 8th

why keep permit open? Advantage to Broward

- new project will be very similar to old

- nothing legal ^{advantage} to keep it open

= constituents think they are still working on it

- funding: County funding
readiness to proceed for state
funding

(6-a) easy

b) constitution 2012 so 5 year OK

c) shoreline + biological habitat since June 2001

- will send rule to Higgins w/ due date
of 6th for RFE or completion on 8th

0163435 – Broward County Beach Nourishment Brief Summary

-001-JC Nourishment Segment III

-002-EG – withdrawn, artificial reef mitigation construction

-003-EG – artificial reefs mitigation

-004-EE – Tire removal from BAI

-005-JC – Nourishment Segment II

-006-EE- de minimus for tire removal

-007-EM- revised artificial reef mitigation site

-008 –EE- de minimus from SE district for boat moorings (unrelated)

-009-use of BAI for Segment III

-010-EM – increase BAIII dredge depth for Segment III

-011-EM – document pipeline corridors for Segment III

-012-EM – document pipeline corridors for Segment II

-013-EM – increase cut slopes in the Borrow areas

-014-JN – 5 yr Time extension Segment II

BACKGROUND/HISTORY

After years of extensive negotiations, the Department authorized the Broward County Shore Protection Project (Segment III) with the issuance of 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) to construct artificial reefs. The original request for a 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 (File No. **0163435-003-EG**) was issued on March 8, 2002. On June 24, 2002, a de minimus exemption was granted for the removal of roughly 2000 tires from Borrow Area I (Permit No. **0163435-004-EE**). Another de minimus exemption authorized the permittee to remove a total of 22 derelict structures in Segments II and III (Permit 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 (Permit 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 **Segment II** 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.

On August 17, 2005, the Department received a request from the permittee to alter the location of the approved area for Pumpout Box 5 and the associated pipeline corridor. Normally such a change would require a permit modification even though it reduced resource impacts. However, through an oversight, the location of the pumpout box and pipeline corridor were not documented on signed/sealed drawings as part of the approved set of permit drawings for either Permit Nos. 0163435-001-JC (Segment III) or 0163435-005-JC (Segment II). To correct the omission of pipeline corridors from Permit No. 0163435-001-JC, the Department issued Permit Modification No. **0163435-011-EM** on November 29, 2005 to add drawings of the revised pipeline corridors into the package of approved permit drawings for Segment III of the Broward County Shore Protection Project.

On February 1, 2006, the Department issued Permit Modification No. **0163435-012-EM** correcting the omission of the corridor drawings for the Segment II. The County was advised that any subsequent changes to the location of the pipeline corridors would need to be approved through additional modification to Permit No. 0163435-005-JC.

Other Correspondence on Segment II

1/27/09 – letter from Somerville, Dir. BCDPEP to Mayor Capellini of Deerfield Beach expressing disappointment at rejection of agreement for use of BAI

3/24/03 – letter from Eric Myers, Contract administrator BCDPEP to CPE/Olsen suggesting bid of Segment III only but including the following segment II work (new beach surveys (including an updated ECL and ECL establishment; updating the plans/specs for II construction; pre-, during – and post-construction monitoring of II nearshore hardbottom and reefs per permit reqm'ts; oversight of construction; and post-project surveying and erosion analysis. He also mentions the need to extend the expiration date of the Agreement (ed.note: surmised to be their contract agreement).

4/15/03 – letter from Somerville to Capellini re: Borrow area I agreement with Hillsboro Beach (similar to one rejected by Deerfield Beach City Commission) and addresses monitoring commitments and sand inventory for BAI

5/6/03 – Report by R.G. Dean on project

5/22/08 – letter from MRB(DEPBBCS) to Higgins (BCEPD/BRD) re: Segment III hardbottom impacts, withholding NTP for Segment II pending Segment III 36 month report evaluation and suggests redesign to minimize impacts, request work together rather than ask BOT for NTP.

6/25/08 – response to MRB from Higgins re: 5/22/08 correspondence. Concedes 18 month report is not what was expected by permit design, suggests to wait for 36 month nearshore hardbottom survey to assess impacts and agrees to “reexamine” project “in the context of the current current engineering, economic, geotechnical, and environmental conditions.” Preparing

supplements to 2004 General Reevaluation Report and EIS for Segment II and III and reinitiation of consultation with federal and state resource agencies. This may result in a redesigned project.

4/1/09 letter from Higgins re: extension of Segment II permit expiration by 5 years to keep it active while they redesign the project and submit a new application for review and approval.

The following conditions were placed on the permit as the result of a settlement agreement with Cry of the Water/Broward County relinquishing jurisdiction to DEP

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 erosion-related 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 I 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 I. 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 I 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 largesized 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

Reports 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

determine that reasonable assurance is 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 assurance 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.

Physical monitoring

Prior to issuance of the first Notice to Proceed, the permittee shall submit a detailed Monitoring Plan subject to review and approval by the Department as described in Specific

Condition No.9. The Monitoring Plan shall indicate the project's predicted design life.

A monitoring plan that combines or uses monitoring from other projects or annual countywide monitoring would be considered. Data collection for this permit may overlap other

project monitoring, and consolidation of data collections should be considered. However, monitoring submittals must clearly identify all permits and conditions, and contracts with DEP,

that the submittals are intended to satisfy. This will allow for more efficient accounting by all

parties and permit compliance accounting by the department.

The approved Monitoring Plan can be revised at any later time by written request of the permittee and with the written approval of the Department. For all subsequent beach nourishment projects following the initial nourishment to be performed under this permit, the

Monitoring Plan shall specify a renewal of the same monitoring and monitoring cycle for the

beaches and affected borrow site(s).

Sent Via Email

Memorandum

**Florida Department of
Environmental Protection**

DATE: April 27, 2009

TO: Carolyn A. Dekle, Executive Director Email: sfadmin@sfrpc.com
South Florida Regional Planning Council, Local Government
3440 Hollywood Boulevard, Suite 140
Hollywood, FL 33021

CC: City of Deerfield Beach
Town of Hillsboro Beach

FROM: Merrie Beth Neely, Env. Specialist III Phone (805) 413-7785
Bureau of Beaches & Coastal Systems Fax (805) 414-7725
3900 Commonwealth Blvd., M.S. 300 Email: merrie.neely@dep.state.fl.us
Tallahassee, Florida 32399-3000

SUBJECT: Transmittal of Minor Modification (5 year time extension)
File No. 0163435-014-JN, Broward County
Applicant: Broward County
Project: Broward County Beach Nourishment (Segment II) – time extension

The Department announces receipt of a minor modification application for a Joint Coastal Permit (File No. 0163435-014-JN), pursuant to Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and for authorization to use sovereign submerged lands, pursuant to Chapter 253, F.S. The applicant is Broward County, and they request a five (5) year extension of the existing permit 0163435-005-JC due to expire June 4, 2009. Please note this was originally a 5 year permit. The beach placement areas were located in Pompano Beach from S.E. 6th Street to 1620 S. Ocean Blvd. (R-36 to R-43) and in Lauderdale-by-the-Sea and northern Fort Lauderdale from 300 feet south of Commercial Blvd (R-51) to Auramar Street (R-72). Borrow Areas I, II and III are situated north of Hillsboro Inlet. The project is located within Broward County, in the Atlantic Ocean, Class III Waters.

PROJECT DESCRIPTION:

The permitted project involves: 1) nourishment of the beach at Pompano Beach from R-36 to R-43; 2) nourishment of the beach at Lauderdale-by-the-Sea and restoration of the beach at northern Fort Lauderdale from 300 feet south of R-51 to R-72; 3) construction of 3.0 acres of artificial reef as mitigation for impacts to 2.5 acres of nearshore hardbottom; 4) transplantation of scleractinian corals from the impacted areas within Segment II to the mitigation reef located between R-45 and R-46 in Lauderdale-by-the-Sea. The total volume of fill is approximately 935,000 cubic yards of material, which will be placed along 4.9 miles of the Broward County Segment II coastline. Beach compatible material will be obtained from three discrete borrow areas (I, II, and III).

An electronic version of the application and supporting documents can be found at http://bcs.dep.state.fl.us/env-prmt/broward/pending/0163435_Broward_County_Beach_Nourishment_Project/

Please return written comments to me at the e-mail or postal address above. Your input, received by **May 1, 2009**, will be used in our evaluation of the proposed activity. Thank you.

Linda Shelley, Fowler White Boggs Banker
Dan Clark, Cry of the Water
Steve Attis, Vone Research

Memorandum

DATE: April 27, 2009

TO: Tori White, Section Chief
USACE

FROM: Merrie Beth Neely, Env. Specialist III Phone (805) 413-7785
Bureau of Beaches & Coastal Systems Fax (805) 414-7725
3900 Commonwealth Blvd., M.S. 300 Email: merrie.neely@dep.state.fl.us
Tallahassee, Florida 32399-3000

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(USACE File No. SAJ-1999-5545 (IP-SLN))

George Getsinger, NOAA/NMFS

Jocelyn Karazsia, NOAA/NMFS

Jeffrey Howe, USFWS, Vero Beach

Ron Miedema, EPA, West Palm Beach

Sent Via Email
Memorandum

Florida Department of
Environmental Protection

DATE: April 27, 2009

TO: Carolyn A. Dekle, Executive Director Email: sfadmin@sfrpc.com
South Florida Regional Planning Council, Local Government
3440 Hollywood Boulevard, Suite 140
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CC: City of Deerfield Beach
Town of Hillsboro Beach

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CC: City of Deerfield Beach
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Tallahassee, Florida 32399-3000

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Linda Shelley, Fowler White Boggs Banker
Dan Clark, Cry of the Water
Steve Attis, Vone Research

Sent Via Email

Florida Department of
Environmental Protection

Memorandum

DATE: April 24, 2009

TO: DEP Staff (listed below)

FROM: Merrie Beth Neely, Env. Specialist III Phone (805) 413-7785
Bureau of Beaches & Coastal Systems Fax (805) 414-7725
3900 Commonwealth Blvd., M.S. 300 Email: merrie.neely@dep.state.fl.us
Tallahassee, Florida 32399-3000

SUBJECT: Transmittal of Minor Modification (5 year time extension)
File No. 0163435-014-JN, Broward County
Applicant: Broward County
Project: Broward County Beach Nourishment (Segment II) – time extension

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Distribution Memo – Permit Application

DEP File No. 0163435-014-JN-JC

DATE 4/24/2009

Please return written comments to me at the e-mail or postal address above. Your input, received by **May 1, 2009**, will be used in our evaluation of the proposed activity. Thank you.

The Bureau of Beaches and Coastal Systems is currently processing the application as required by Chapters 161, 373, 253 and 258, F.S. This is your opportunity to provide comments on and/or to concur with or object to the proposed project under the federal consistency provisions of the Coastal Zone Management Act. Findings of inconsistency must describe how the project conflicts with statutory authorities in the Florida Coastal Management Plan and provide alternative measures, if any, which would make the project consistent. If you do not have adequate information to provide comments at this time and wish to preserve your ability to comment as the application is processed, you must submit a written request for additional time to comment by the date listed above.

CC:

Jennifer Smith, DEP, SE District Office
Michael Barnett, BBCS-Chief
Robert Brantly, BBCS-CE
El Kromhout, BBCS-CE (+hardcopy)
Paden Woodruff, BBCS-BECP
Alex Whitworth, BBCS-BECP
Richard Noyes, BBCS-BECP
Roxane Dow, BBCS-BECP
Martin Seeling, BBCS-JCP
Vladimir Kosmynin, BBCS-JCP
Robert Halbert, BBCS-CCCL
Wesley Cich, BBCS-CCCL
JCP Compliance
BBCS File



ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
Natural Resources Planning & Management Division
Mailing Address: 1 North University Drive, Suite 301, Plantation, Florida 33324
954-519-1230 • FAX 954-519-1412

April 3, 2009

Michael R. Barnett, P.E., Chief
Bureau of Beaches and Coastal Systems, FDEP
3900 Commonwealth Blvd., Mail Station 300
Tallahassee, FL 32399-3000

DEP file # 0163435-014-JN

Subject: Permit/Authorization No. 0163435-005-JC
Broward County Beach Nourishment Project (Segment II)

Dear Mr. Barnett:

This letter is a request to extend for five years the expiration date for the above-referenced Permit/Authorization.

As you will recall, the current expiration date for the Segment II Intent to Issue and draft permit is June 4, 2009. As noted in our June 25, 2008 letter to you, we are in the process of reexamining the project described in the draft permit in the context of current economic, environmental, and physical conditions, and would prefer to keep the existing draft permit active while we do so. At this time we are conducting a sand search and are developing a scope of services with our consultants for preparation of supplements to the 2004 General Reevaluation Report and Environmental Impact Statement, and for resuming the state and federal permitting process for the project. We anticipate that contracting for this work will be complete by mid-summer of this year.

Because we 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, we respectfully request that the expiration date of the draft permit be extended until June 4, 2013. As always, we appreciate the support and assistance that is always forthcoming from you and your staff. We look forward to coordinating closely with you as we mutually strive to develop the best possible beach management solutions for Broward County.

RECEIVED

APR 09 2009

BUREAU OF BEACHES
& COASTAL SYSTEMS

Broward County Board of County Commissioners

Please let me know if you have questions or need additional information.

Sincerely,



Stephen Higgins
Beach Erosion Administrator

attachment:

- c: Eric Myers, Assistant Director, Environmental Protection and Growth Management Department
- Jennifer Jurado, Director, Natural Resources Planning and Management Division
- Pamela Landi, Director, Office of Public and Governmental Relations
- Chris Creed, Olsen Associates, Inc.
- Norman Beumel, Coastal Planning & Engineering, Inc.

RECEIVED

APR 09 2009

BUREAU OF BEACHES
& COASTAL SYSTEMS



ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
Natural Resources Planning & Management Division
Mailing Address: 1 North University Drive, Suite 301, Plantation, Florida 33324
954-519-1230 • FAX 954-519-1412

April 3, 2009

Michael R. Barnett, P.E., Chief
Bureau of Beaches and Coastal Systems, FDEP
3900 Commonwealth Blvd., Mail Station 300
Tallahassee, FL 32399-3000

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& COASTAL SYSTEMS

Broward County Board of County Commissioners

Josephus Eggelotian, Jr. • Sue Gunzburger • Kristin D. Jacobs • Ken Keech • Ilene Lieberman • Stacy Ritter • John E. Rodstrom, Jr. • Diana Wasserman-Rubin • Lois Wexler
www.broward.org

Please let me know if you have questions or need additional information.

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Stephen Higgins
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