



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

June 12, 2023

Lee County Natural Resources Division
Attn: Stephen Boutelle
1500 Monroe Street
Ft. Myers, FL 33901
SBoutelle@leegov.com

And

City of Bonita Springs
Attn: Matthew Feeney, Assistant City Manager
9101 Bonita Beach Road
Bonita Springs, FL 34135
Matt.Feeney@cityofbonitasprings.org

c/o

Coastal Engineering Consultants
Attn: Michael Poff, P.E., President
28241 Bonita Crossings Blvd.
Bonita Springs, FL 34135
mpoff@cecifl.com

Permit Modification No. 0311811-005-JN
Permit No. 0311811-004-JM, Lee County
Bonita Beach and Lovers Key Beach Nourishment

Dear Mr. Boutelle, Mr. Feeney and Mr. Poff:

Your request to modify Permit No. 0311811-004-JM was received on February 7th, 2023 and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is for a one-time only placement of beach compatible material on Bonita Beach between R-230 and R-239 to address the impacts of Hurricane Ian on South Bonita Beach.

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 2 of 12

Background Information

Bonita Beach lies along the northern terminus of Little Hickory Island, which is bordered to the north by Big Hickory Pass and the south by Wiggins Pass. Lovers Key is a largely undeveloped barrier island that is owned by both the State and the County and includes the Lovers' Key State Recreation Area. Historically, high rates of erosion have been recorded in the central region of the island, which have impacted the habitat for nesting sea turtles. The Department has designated the project area on Lovers Key as critically eroded.

South Bonita Beach, located on the southern end of Bonita Beach is a natural shoreline that has not been previously restored. The shoreline in this area was heavily impacted by Hurricane Ian in 2023. While this area historically benefited from sediment transport from nearby projects, the hurricane's damage was too severe for natural restoration. To address this, approximately 70,000 cubic yards of material will be placed above the Mean High Water Line (MHWL) between DEP Reference Monuments R-230 to R-239 as a one-time measure. This one-time placement event will be conducted concurrently with the next Bonita Beach Nourishment project.

Permitting History

On June 24, 2013 the Department issued a Joint Coastal Permit No **03118110-001-JC** to the County to nourish 0.8 miles of Bonita Beach and 1.1 miles of Lovers Key Beach using beach compatible material from 2 offshore borrow areas that are part of the Big Carlos Pass ebb shoal complex. These borrow areas were only authorized for one nourishment event.

On June 24, 2013 the Department also granted a Variance No **0311811-002-BV** from the requirements of Rule 62-4.244(5)(c), F.A.C., to establish a temporary mixing zone greater than 150 meters. The variance established an expanded mixing zone of up to 650 meters down-current and 150 meters offshore for the nourishment site at Bonita Beach, and another expanded mixing zone of up to 2,500 meters down-current and 300 meters offshore for the nourishment site at Lover's Key.

For additional background, please see the ***CONSOLIDATED NOTICE OF INTENT TO ISSUE JOINT COASTAL PERMIT, VARIANCE AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS*** for Permit No. 0311811-001-JC and Variance No. 0311811-002-BV at the following website:

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=20.205480.1\]&\[profile=Permitting_Authorization\]](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=20.205480.1]&[profile=Permitting_Authorization])

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=20.12875.1\]&\[profile=Permitting_Authorization\]](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=20.12875.1]&[profile=Permitting_Authorization])

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 3 of 12

On April 13, 2020 the Department issued a Joint Coastal Permit Modification No. **03118110-003-JN** to authorize a one-time only placement of beach compatible material obtained from the New Pass Navigational Channel Complex.

On December 14, 2022 the Department issued a Joint Coastal Permit Modification No. **0311811-004-JM**, which superseded Permit No. 0311811-001-JC but not Variance No. 0311811-002-BV to authorize the addition of a new nearshore borrow area, an offshore sand source, and the use of upland sand sources for hot-spot maintenance and post-storm recovery. The Permit also authorized the periodic placement of beach compatible sand obtained from the maintenance dredging of the New Pass Navigational Channel Complex, within the permitted Lovers Key beach fill template.

Staff Assessment and Justification

The Department and representatives from the Florida Fish and Wildlife Commission (FWC) have reviewed the request to restore a previously unrestored shoreline that was heavily impacted by Hurricane Ian on the southern end of Bonita Beach. As proposed, this work will be conducted outside of marine turtle nesting season (May 1 through October 31), and it is not expected to result in adverse impacts on these protected species. The Department and FWC have determined that the one-time placement of sand in this area is not expected to result in adverse impacts to the coastal systems or biological resources.

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

The project consists of nourishing 0.8 miles of Bonita beach and 1.1 miles of Lovers Key Beach using beach compatible material from 2 nearshore borrow areas and an offshore sand source. Upland sand sources will also be used for hot-spot maintenance and post-storm recovery. The nearshore borrow areas are part of the Big Carlos Pass ebb shoal complex. The project also includes periodic placement of beach compatible sand obtained from the maintenance dredging of the New Pass Navigational Channel Complex, within the permitted Lovers Key beach fill template. The project includes a one-time placement of approximately 70,000 cubic yards of sand above mean high water on South Bonita Beach.

The project location shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

The nourishment site on Lovers Key extends from 500 feet north of DEP Reference Monument R-215 to 500 feet south of R-220. The nourishment site on Bonita Beach extends from 50 feet south of R-226 to R-230, on Little Hickory Island. The one time only sand placement site on South Bonita Beach, will extend between R-230 to R-239. The nearshore borrow areas are located in the ebb tidal shoal of Big Carlos Pass, between Estero Island and Big Hickory Island. The two ebb shoal borrow areas and sand placement areas extending seaward

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 4 of 12

from the Erosion Control Line are on state owned sovereign submerged lands in the Gulf of Mexico, Class III Waters. The project is located in Lee County, Sections 10, 11, 14, 24 and 25, Township 47 South, Range 24 East. The offshore borrow area is located 30 nautical miles offshore of Lovers Key on the Outer Continental Shelf (OCS).

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

5. **Pre-Construction Submittals. For each construction event under this permit**, no work shall commence until the Permittee has satisfactorily submitted all information noted in this condition. At least 45 days prior to commencement of construction, the Permittee shall submit the following items for review by the Department. Unless otherwise notified by the Department within 15 days of receipt of all information specified below, the Permittee shall assume the submittals are satisfactory:
 - a. An electronic copy of detailed ***final construction plans and specifications*** for all authorized activities. The plans and specifications must be consistent with the project description, conditions and approved drawings of this permit. These documents shall be certified by a professional engineer (P.E.), who is registered in the State of Florida. The Permittee shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes that would require a permit modification. The plans and specifications shall include a description of the dredging and construction methods to be utilized and drawings and surveys that show all biological resources and work spaces (e.g., anchoring areas, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project.
 - b. **Turbidity Monitoring:** In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. 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.
 - ~~a.i.~~ **Qualifications:** The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions;

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 5 of 12

- ~~b~~.ii. A *Scope of Work* for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions;
- ~~e~~.iii. *Draft turbidity sampling map*. An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 12.)
- ~~d~~.iv. Prior to each subsequent event, the results of the intermediate turbidity monitoring shall be evaluated and provided to the Department. If the results indicate that the project can be built using a smaller mixing zone, this adjustment shall be made through an administrative modification to the permit prior to commencement of construction.
- c. **Biological Monitoring Qualifications**. Biological monitoring qualifications of firms and their staff shall be submitted to the JCP Compliance Officer for review. If additional monitoring team(s) are subcontracted, or new staff are added to the monitoring team, proposed changes and qualifications shall be submitted to the JCP Compliance Officer for review at least 30 days prior to a monitoring event. The Permittee's selected biological monitoring firm is fully responsible for training of new staff members and subcontractors, as well as the QA/QC verification of their work;
- d. **Fish & Wildlife Monitoring Qualifications**: To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors are capable of meeting the requirements in Specific Conditions 15 through 29. This documentation shall include the following:
 - i. *Marine Turtle Protection*: A list of the names and FWC permit numbers for the Marine Turtle Permit Holders.
 - ii. *Shorebird Protection*: A list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience, proposed locations of shorebird survey routes, and the locations of travel routes.
- e. Documentation from the U.S. Fish and Wildlife Service (USFWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a Biological Opinion(s) (BO) issued for construction on this project site. If the BO contains

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 6 of 12

conditions that are not already contained herein, a permit modification may be required to include those additional conditions.

- f. Documentation confirming that the approved upland source is currently producing the quantity and quality of the authorized sand product required for the upcoming event, as required by Specific Condition 9.
6. ***Pre-Construction Conference.*** After all items required by a through f above have been submitted to the Department, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with the Permittee's contractors, the engineer of record, those responsible for turbidity monitoring, those responsible for protected species monitoring, staff representatives of the Fish and Wildlife Conservation Commission (FWC) and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

DEP, JCP Compliance Officer
e-mail: JCPCompliance@dep.state.fl.us

DEP South District Office
e-mail: SouthDistrict@floridadep.gov

FWC Imperiled Species Management Section
e-mail: MarineTurtle@MyFWC.com

FWC Regional Biologist
See **Contact list** for phone numbers (<http://myfwc.com/conservation/you- conserve/wildlife/shorebirds/contacts>)

Estero Bay Aquatic Preserve
e-mail: ORCP_ManagedAreas@FloridaDEP.gov
See **Contact list** for phone numbers (<https://floridadep.gov/rcp/rcp/content/contacts>)

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants of the **agreed-upon** date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 7 of 12

each dredging event, the Permittee shall ensure that notification is sent to the FWC indicating the actual start date and the expected completion date to MarineTurtle@MyFWC.com. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

19. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle and shorebird nesting/breeding seasons [February 15 through October 31].

a. Beach Maintenance.

- i. The Permittee shall require their contractor and protected species monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping flightless shorebird chicks or marine turtle hatchlings. If so, the deviations outside of the active fill placement area – (see Specific Condition 21) shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.
- ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach to the maximum extent practicable prior to any placement of fill material. If debris removal activities will take place during protected species nesting seasons, the work shall be conducted during daylight hours only, and shall not commence until completion of daily monitoring surveys.

b. Equipment Storage and Placement.

- i. Staging areas and temporary storage for construction equipment and pipes shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle and shorebird protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction. All construction pipes that are in use on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune.

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 8 of 12

- ii. If it is necessary to extend construction pipes past a known shorebird nesting site, then those pipes shall be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a shorebird nesting site during the shorebird nesting season. If such placement is not feasible for the project, the FWC's Regional Biologist shall be contacted for alternative measures. See contacts available at <https://myfwc.com/conservation/you-serve/wildlife/shorebirds/contacts/>.
- c. **Beach Driving.** All vehicles operated on the beach shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you-serve/wildlife/beach-driving/>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species. *Note: when flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present pursuant to Specific Condition 29.*
- d. **Sand placement to address Hurricane Ian impacts between R-230 to R-239.** For all construction related activities during the one-time construction event of the Bonita Beach and Lovers Key project area that occurs during marine turtle nesting season (May 1 to October 31), the following additional conditions shall apply:
 - i. **To minimize potential impacts to marine turtles all construction-related activities associated with the one-time sand placement of 70,000 cubic yards of sand above MHW between R-230 to R-239 on south Bonita Beach will commence after October 31st and be completed prior to May 1st.**

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

Bonita Beach and Lovers Key Nourishment Drawings Sheets 1 – 22 (signed and sealed March 4, 2023) shall replace the Approved Bonita Beach and Lovers Key Nourishment Permit Drawings (18 Pages, signed and sealed December 16, 2021).

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting marine turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 9 of 12

environmental impact or water quality degradation the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings and the attached plans, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **June 24, 2028** expiration date. The only Specific Conditions of the permit that are altered by this modification are those stated above. This letter and the attached drawings and plan must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

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. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing 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;

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 10 of 12

- (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.

The petition 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, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., 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. The failure to file a petition 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., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. 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.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, 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

Notice of Permit Modification
Permit Modification No. 0311811-005-JN
Bonita Beach and Lovers Key Beach Nourishment
Page 11 of 12

Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, 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 must be filed within 30 days from the date this action is filed with the Clerk of the Department.

If you have any questions regarding this matter, please contact Rachel Grundl by email at Rachel.Grundl@FloridaDEP.gov or by telephone at (850) 245-7594.

EXECUTION AND CLERKING:

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Gregory Garis
Program Administrator
Beaches, Inlets and Ports Program
Office of Resilience and Coastal Protection

Attachments: Bonita Beach and Loves Key Nourishment Drawings Sheets 1 – 22 (signed and sealed March 4, 2023)

