



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

In the Matter of an
Application for a Joint Coastal Permit and
Authorization to Use Sovereign Submerged Lands by:

APPLICANT:

City of Key West
c/o Bogdan Vitas, Jr.
3140 Flagler Avenue
Key West, Florida 33040

PROJECT INFORMATION:

Project Name: Smathers Beach Nourishment
File No. 0129031-005-JC

AGENT:

Atkins North America, Inc.
c/o Mark Henry
2001 Northwest 107 Avenue
Miami, Florida 33172

Monroe County

CONSOLIDATED NOTICE OF INTENT TO ISSUE JOINT COASTAL PERMIT AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS

The Department of Environmental Protection (Department) gives consolidated notice of its intent to take the following agency actions:

- (a) issue a 15-year joint coastal permit (draft copy attached) under Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.) for the activity described below; and
- (b) grant a letter of consent to use sovereign submerged lands for the proposed beach fill placement area, under Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., Title 18, F.A.C., and the policies of the Board of Trustees, as described below.

Issuance of the joint coastal permit (JCP) would constitute a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act. Issuance of the JCP would also constitute certification of compliance with

state water quality standards pursuant to Section 401 of the Clean Water Act, 33 United States Code (U.S.C.) 1341.

I. PROPOSED ACTIVITY

A. Project Description

The proposed project consists of maintaining approximately 3,000 feet of Smathers Beach to a previously authorized design by periodic nourishment with beach compatible sand from an upland source.

B. Project Location

The nourishment site is located between 2,500 feet West and 500 feet East of DEP Virtual Monument V-412, in Monroe County, Section 5, Township 68 South, Range 25 East, Straits of Florida, Class III Waters, Florida Keys National Marine Sanctuary and Key West National Wildlife Refuge, Outstanding Florida Waters.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Chapter 161 and Part IV of Chapter 373, F.S., and Chapters 62B-41, 62B-49 and 62-330, F.A.C. The activity is regulated under the JCP program, as indicated in Sections 161.055 and 373.427, F.S. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The activity also requires a proprietary authorization, as it is located on sovereign submerged lands, which are owned by the Board of Trustees of the Internal Improvement Trust Fund. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.0040, 18-21.0051, 18-20.002 and 62-343.075, F.A.C., the policies of the Board of Trustees, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the responsibility to review and take final action on this request for proprietary authorization.

III. BACKGROUND/BASIS FOR ISSUANCE

A. Historical Background

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Smathers Beach is an artificial beach created in 1960, constructed by excavating rock from several hundred feet offshore and placing the rock along the shoreline to create a base, and then placing sand from a local borrow site over the rock. Prior to the 1996 application from the U.S. Army Corps of Engineers (later changed to the City of Key West) to nourish the beach, the beach had not been maintained and was severely eroded.

On June 6, 1997, a De Minimis Exemption (File No. 44-302896-5) was issued by the Department to authorize up-front construction of the mitigation that would be required for additional seagrass impacts from the Smathers Beach Nourishment project under Permit No. 0129031-001-JC. This was for the Blimp Pad restoration project at White Street Pier to remove 6.5 acres of fill that had been placed years earlier to create the blimp pad. Elevations and substrate conditions were restored to suitable levels for colonization of seagrasses and mangroves.

On July 6, 1998, the Department issued a Joint Coastal Permit (No. **0129031-001-JC**, formerly 44-296396-9) and Consent to Use Sovereign Submerged Lands to the City of Key West for periodic nourishment along 3,000 feet of Smathers Beach. The fill template would cover 2.6 acres of sparse seagrass, so 5.2 acres of seagrass mitigation was required (providing a mitigation ratio of 2:1). Monitoring showed that 0.3 acres of seagrass had already colonized the White Street Pier mitigation site, dropping the remaining mitigation requirement to 4.9 acres of seagrass. In order to promote 4.9 acres of seagrass colonization, the Permittee transplanted 2.6 acres of seagrass from the Smathers Beach impact site into the restored blimp pad site.

On May 26, 1999, the Department modified Permit No. 0129031-001-JC to revise the approved mitigation plan. The Permittee used fill material that had a coarser sediment grain size, which reduced the extent of the equilibrated template and thereby minimized seagrass impacts. That reduced the anticipated seagrass impacts from 2.6 acres to 0.7 acres. At a mitigation ratio of 2:1, the mitigation requirement was reduced to 1.4 acres of seagrass.

On January 22, 2001, the Department issued Modification No. **0129031-002-JC** for the Smathers Beach Shore Protection Project to construct an additional groin between two of the three existing groins at Smathers Beach.

On March 6, 2002, the Department issued Modification No. **0129031-003-JC** for the Smathers Beach Project to fill between the existing T-head groins using previously approved sand source material.

On June 15, 2011, the Department received an application (File No. **0129031-004-JN**) to extend the expiration date of Permit No. 0129031-001-JC until August 5, 2011. However, the file was withdrawn on January 20, 2012.

B. Agency Review

Habitat Impacts

Hardbottom

Site investigations of the project area were conducted in June 1992 by the U.S. Fish and Wildlife Service (FWS), and again in June 1997 by the Department and the National Marine Fisheries Service (NMFS). These investigations documented reef and seagrass habitat directly offshore of the project area. The reef habitat is approximately 300 feet offshore of the project area. The “reef flat” is a hardbottom area that consists of numerous species of algae, invertebrates and fish. Sponges, small stony coral and various cnidarians were identified on the hardbottom. The reef flat is not expected to be adversely affected by the project.

Seagrasses

Seagrass surveys were conducted in 1992, 1996 and 1997 as part of the application review process for the previous beach nourishment project (Joint Coastal Permit No. 0129031-001-JC). The seagrass communities consisted primarily of Cuban shoal grass (*Halodule wrightii*) and turtle grass (*Thalassia testudinum*), with numerous species of macroalgae. Numerous fish and invertebrate species including blue crabs, snappers, grunts, baitfish and juvenile spiny lobster were associated with the habitat. During the October 1997 survey, the Applicant documented 2.61 acres of seagrass within the proposed beach fill. The impacts of that project were offset with mitigation, as discussed above. The report on the fourth annual mitigation monitoring, performed in August 2004, notes a total of 6.5 acres restored to seagrass and salt pond habitat. Therefore, the mitigation project was deemed successful. The current project is not expected to cause any new seagrass impacts beyond the previously authorized impact area.

Fish & Wildlife Impacts

Turtles

The nearshore marine habitat of Monroe County provides important foraging habitat for the loggerhead turtle, kemp’s ridley turtle, hawksbill turtle and the green turtle. During the period of May 1 through October 31, Monroe County beaches support nesting habitat that is essential for the recovery of the loggerhead turtle and the green turtle. Placement of sand material in the nearshore marine environment can destroy or disrupt resting or foraging grounds, and may affect nesting distribution through the alteration of nearshore bathymetry. The placement of sand can cause a disturbance to nesting turtles, including those nesting before the conclusion of the proposed project (particularly early nesting loggerhead turtles) if conducted immediately prior to or during the nesting season, at night, or if escarpments, obstructions or barriers are created. An increase in artificial lighting due to construction activities both on the beach and offshore can increase the occurrence of disorientations or misorientations of hatchling and nesting marine turtles, which are often fatal.

Therefore in accordance with Florida Statute 379.2431 (1), FWC has included marine turtle protection conditions in the draft permit.

Shorebirds

Beach nourishment and associated construction activity in close proximity to shorebird nests or nesting areas can interfere with ongoing or potential breeding activity, including mortality of eggs, chicks and fledglings due to disturbance from heavy equipment and construction. Continued nesting by shorebirds on the wider nourished berm could create a sink for reproductive effort unless all nesting areas are identified and protected. Migratory birds using the area are also protected by state and federal laws, including shorebirds and colonial nesting seabirds. The placement of beach compatible material creates or impacts existing habitat for these birds; therefore, measures are needed to protect them during sand placement.

Water Quality

The turbidity generated by the previous nourishment events at Smathers Beach has been negligible. The fill material has been low in silt content, and bring the fill in by truck has allowed the placement of dry material, i.e., there is no return water from pumping a slurry onto the beach. Most of the fill material is placed at low tide, landward of the mean low water line. The nourishment site is contained within a groin field, and the wave energy at the site is relatively low. Finally, turbidity curtains will be used to prevent any degradation of the adjacent seagrass beds or of Outstanding Florida Waters. Therefore, no turbidity monitoring will be required.

Sand Quality

Adequacy of Geologic and Geotechnical Data and Analysis

Pursuant to Rule 62B-41.007(2)(j), F.A.C., to protect the environmental functions of Florida's beaches only beach compatible fill shall be placed on the beach or in any associated dune system. Beach compatible fill is material that maintains the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system.

The Applicant submitted geotechnical analysis of the grain size distribution, carbonate content and Munsell color for upland sand sources proposed for use in this project. The procedures employed by the Applicant's coastal engineer in the data collection, processing and analysis for the geotechnical investigation are consistent with generally accepted professional standards and practices of coastal engineering. This information was sufficient for the Department to conduct a geotechnical review and determine this portion of the permit application to be complete.

In accordance with Rule 62B-41.008(1)(k)4, F.A.C., a sediment quality control/quality assurance plan for this project was submitted on February 11, 2013. That plan will ensure that the sediment from the borrow areas to be used will meet the standards in Rule 62B-41.007(2)(j), F.A.C. The Department requires compliance with the approved plan.

Five upland sand sources (borrow areas) have been selected for use in this project. The sand from the proposed sources is characterized in the table below.

Material Characterization

	Munsell Color	Mean grain size	Sorting	Silt (passing #230 sieve)	Fine Gravel (retained on #4 sieve)	Carbonate
Ortona Beach Sand C	10 YR 7/1 to 8/1	0.498 mm	0.105	0.03%	0%	0%
Witherspoon Sand Plant	10 YR 7/1	0.56 mm	0.57	0.03%	0%	1.46%
Davenport Sand Mine	10 YR 8/1	0.41 mm		0.10%	0%	0.20%
Lake Wales Sand Mine	10YR 8/1	0.44 mm		0.00%	0%	1.90%
Stewart Mine	10YR 7/1	0.40 mm	0.89	0.20%	0%	0.52%
Existing Beach	10 YR 7/1 to 8/1	0.51 mm	0.12	0.10%	0%	0%

Beach and Borrow Area Compatibility

The fill material to be obtained from Ortona Sand Mine's Beach Sand "C", Witherspoon Sand Plant, Davenport Sand Mine, Lakes Wales Sand Mine and the Stewart Mine is sand that is similar to the existing beach sediment in terms of color, grain size, sorting, fine gravel and silt content. Based upon the information and analysis provided by the Applicant, the material to be excavated from the proposed maintenance dredge cuts for placement in the beach project area is expected to maintain the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system, pursuant to Rule 62B41.007(2)(j), F.A.C.

Coastal Engineering

Consistency with Policy and Eligibility Criteria for Coastal Construction

Pursuant to Rule 62B-41.005(2), F.A.C., coastal construction authorized under Section 161.041, F.S. shall be limited. In keeping with the intent of Chapter 161, F.S., it is the Department's responsibility to prevent further degradation, and to promote restoration of existing degraded portions, of the coastal system by means of the regulation of coastal construction. The necessity to conduct such coastal construction shall be stated and fully justified by the Applicant. Further, the potential benefits or impacts to the coastal system shall be clearly identified.

Project Need and Justification

The project area has been designated as a Critically Eroded Beach in accordance with Section 161.101, F.S., and Rule 62B-36.002(4), F.A.C. The proposed nourishment project is sited entirely within the beach restoration project area that was previously authorized in Permit No. 0129031-001-JC. Pursuant to Rule 62B-41.008(1)(m), F.A.C., the proposed nourishment is consistent with the adopted statewide strategic beach management plan for Smathers Beach, which says, “Maintain the project at Smathers Beach through monitoring and nourishment using sand from approved sources.” The proposed project is consistent with Rule 62B-41.005(4), F.A.C., which says, “Flexible coastal structures will be used whenever practicable to achieve coastal protection objectives.”

Engineering and Design

Pursuant to Rule 62B-41.005 (3), F.A.C., “The Department will determine whether to authorize coastal construction at any coastal location upon consideration of the facts or circumstances, including: (a) Adequate engineering data concerning the existing coastal system, including topography, bathymetry; wave and current data; coastal processes, conditions and morphological trends; (b) Design features of the proposed structures or activities; and (c) Such other specific information or calculations as are necessary for the evaluation of the application.”

Pursuant to Rule 62B-41.007(2), F.A.C., the proposed project is designed in accordance with established engineering and scientific practice. Pursuant to Rule 62B-41.007(4), F.A.C., the project’s design professional engineer, registered in the State of Florida, has certified that the design plans and specifications submitted as part of the permit application are in compliance with the standards established in Chapter 62B-41, F.A.C.

Potential Benefits and Impacts to the Coastal System

Pursuant to Section 161.041(2)(c), F.S., the Department may authorize erection of coastal structures upon consideration of potential impacts of such structures, including potential cumulative effects to the beach-dune system, which in the opinion of the department clearly justify a permit. The necessity to construct the proposed project is fully justified and the potential benefits and impacts to the coastal system are clearly identified. The Applicant has provided adequate engineering data that demonstrates the proposed project has been designed to improve shoreline stability and storm protection while minimizing potential for impacts to the coastal system.

Physical Monitoring for Impacts to the Beach-Dune System

The Applicant submitted a Physical Monitoring Plan dated December 14, 2012. Pursuant to Rule 62B-41.005(16), F.A.C., the proposed physical monitoring is deemed necessary and appropriate by the Department to monitor the performance of the coastal construction and determine its impacts to the coastal system.

Sovereign Submerged Lands

This project will maintain an artificial beach that was previously constructed for public recreation and was found to be in the public interest, as defined in Rule 18-21.003(51), F.A.C. Nourishing Smathers Beach will maintain this recreational resource and allow the continued use by the public beach for swimming, surfing, snorkeling and surf fishing, pursuant to Rule 18-21.001, F.A.C. Impacts to seagrasses from the original construction of this beach were previously offset with mitigation, and this beach nourishment project is not expected to cause any new impacts to fish and wildlife habitat.

The Florida Department of State's Division of Historical Resources evaluated this project and determined that no cultural resources will be affected by this project.

Impact Minimization

There are no anticipated impacts to hardbottom or seagrass communities from the proposed project. There will be some short-term turbidity associated with fill placement, but turbidity curtains will be used to contain the turbidity within the previously authorized impact area. The turbidity will be minimized by using fill material that has a low silt content, and bringing the fill in by truck will allow the placement of dry material, i.e., there is no return water from pumping a slurry onto the beach. Turbidity will be further minimized by placing most of the fill material landward of the mean low water line at low tide. Therefore, the project is not expected to degrade the water quality of this OFW outside of the turbidity curtains, which define the temporary mixing zone, pursuant to Rule 62-4.242, F.A.C. The borrow area sand also has a similar grain size as the existing beach, and is expected to maintain the general environmental character and functionality of the material on the existing beach, and promote rapid recovery of the infaunal community.

Physical Monitoring

Pursuant to 62B-41.005(16), F.A.C., physical monitoring of the project is required through acquisition of project-specific data to include, at a minimum, topographic and bathymetric surveys of the beach, offshore, and dredged areas, and engineering analysis. The monitoring data are necessary in order for both the project sponsor and the Department to

regularly observe and assess, with quantitative measurements, the performance of the project, any adverse effects that have occurred, and the need for any adjustments, modifications, or mitigative response to the project. The scientific monitoring process also provides the project sponsor and the Department, information necessary to plan, design and optimize subsequent follow-up projects, potentially reducing the need for and costs of unnecessary work, as well as potentially reducing any environmental impacts that may have occurred or would be expected.

Public Interest

Regulatory

The project is not expected to adversely affect the coastal system or the property of others in and adjacent to the coastal system. The nourishment will offset the ongoing erosion at this site. There are no hardbottom communities or SAV within the mixing zone that would be adversely affected by turbidity generated by this project. The project is not expected to adversely affect the conservation of fish and wildlife, recreational values or the relative function and value of the resources. The nourishment activity will maintain a beach that has been eroding, thereby maintaining the recreational value of this public beach. Therefore the Applicant has demonstrated that the project is clearly in the public interest, pursuant to Paragraph 373.414(1), F.S.

Proprietary

The proposed project will nourish a critically eroded shoreline, thereby maintaining this public beach. The project will not adversely affect the conservation of fish and wildlife, or their habitat. Pursuant to Rule 18-21.003(51), F.A.C., the demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of this activity would exceed all demonstrable environmental, social, and economic costs of the proposed action. Therefore, the Department has determined that this project will meet the Public Interest criteria established in Rule 18-21.003(51), F.A.C.

C. Specific Regulatory Basis for Issuance

The Applicant has provided affirmative reasonable assurance that the construction of the activity will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. The Department has considered the direct, secondary and cumulative impacts of the project, as well as the general and specific conditions to the attached draft permit, in making this determination. Specifically, construction of the activity will not result in violations of water quality standards, pursuant to Section 373.414(1), F.S., and set forth in Chapters 62-4, 62-302, 62-520, 62-522 and 62-550, F.A.C. Nor will the construction activities degrade ambient water quality in Outstanding Florida Waters pursuant to Rule 62-4.242, F.A.C., other than turbidity within the mixing zone. The Applicant also has demonstrated that this beach nourishment is clearly in the public interest, pursuant to Paragraph 373.414(1), F.S.

The Applicant has also provided adequate engineering data to evaluate the design features of the project and any potential effects to the coastal system. Pursuant to Chapter 161, F.S., the Department finds that the proposed activities:

- will not result in any significant adverse impacts to the sandy beaches of the state;
- are not expected to adversely impact nesting sea turtles, their hatchlings or their habitat;
- will not interfere, except during construction, with the use by the public of any area of the beach seaward of mean high water; and
- are appropriately designed in accordance with Rule 62B-41, F.A.C.

D. Specific Proprietary Basis for Issuance

The Applicant has met all applicable requirements for proprietary authorizations to use sovereign submerged lands. That includes the requirements of Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., associated Rules 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees. Therefore, the Applicant has provided reasonable assurance that the proposed activity would:

- be in the public interest;
- maintain essentially natural conditions;
- not cause adverse impacts to fish and wildlife resources or public recreation or navigation; and
- not interfere with the riparian rights of adjacent property owners.

IV. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment, potential effect on the public, controversial nature or location, is likely to have a heightened public concern or is likely to result in a request for administrative proceedings. Therefore, pursuant to Section 373.413(4), F.S., and Paragraph 62B-49.005(8), F.A.C., you (the Applicant) are required to publish (at your own expense) the enclosed public notice of this *Consolidated Notice of Intent to Issue*. The notice is required to be published one time within 30 days, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The Applicant shall provide proof of publication to:

Department of Environmental Protection
JCP Compliance Officer
JCPCompliance@dep.state.fl.us
3900 Commonwealth Boulevard, Mail Station 300

Tallahassee, Florida 32399-3000

The proof of publication in the form of a notarized affidavit, with attached newspaper clip, shall be provided to the above address within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the permit and Letter of Consent to use sovereign submerged lands. The Department may agree to extend this period if the parties agree to extend the review period under the Coastal Zone Management Act.

V. RIGHTS OF AFFECTED PARTIES

The Department will issue the permit (draft attached) and the sovereign submerged lands authorization, unless a sufficient petition for an administrative hearing is timely filed pursuant to Sections 120.569 and 120.57, Florida Statutes, as explained below. The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Division of Water Resource Management, 4708 Capital Circle NW, Tallahassee, FL 32303, telephone number 850-414-7731. The application has also been posted on the Department's Internet Web site at: <ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/>. Mediation under Section 120.573, F.S., is not available for this proceeding.

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 a modification of the agency action 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 agency action 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 in accordance with this permit until the deadlines noted below for filing a petition for an administrative hearing, or request for an extension of time has expired.

Under Rules 28-106.111(3) and 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, 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.

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 Rules 28-106.111(2) and 62-110.106(3)(a)(4), 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.

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

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- (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 intent to issue 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.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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

Enclosures: Notice for Publication
DRAFT Permit

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cc: Lucy Blair, DEP, South District
Jon Iglehart, DEP, South District
Robbin Trindell, FWC, ISMS
Luke Davis, FWC, ISMS
Liz Yongue, DEP, BI&P
Bob Brantly, DEP, CE
Ralph Clark, DEP, CE
Martin Seeling, DEP

Jocelyn Karazsia, NOAA
Alex Reed, DEP, B&MFAP
Vladimir Kosmynin, DEP
Ingrid Sotelo, USACE, Miami
Isla Turner, USACE, Miami
BBCS Permit File
JCP Compliance Officer

FILING AND ACKNOWLEDGMENT

FILED, on this date with the designated Department Clerk, pursuant to
Section 120.52, F.S., receipt of which is hereby acknowledged.



5/20/2013

Deputy Clerk

Date