



FLORIDA DEPARTMENT OF Environmental Protection

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February 24, 2025

Town of Fort Myers Beach
Attn: Chadd Chustz
2525 Estero Boulevard
Fort Myers Beach, FL 33931
chadd@fmbgov.com

c/o

Coastal Engineering Consultants
Attn: Michael Poff, P.E. President
28421 Bonita Springs Boulevard
Bonita Springs, FL 34135
mpoff@cecifl.com

Permit Modification No. 0413684-004-JN
Permit No. 0413684-001-JC, Lee County
Estero Island Nourishment Project

Dear Mr. Chustz and Mr. Poff:

Your request to modify Permit No. 0413684-001-JC was received on December 2, 2024, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to authorize the one-time only extension of the environmental construction window at the southern end of Estero Island between Department Reference Monuments R-203 to R-207 for the 2025 nourishment event.

Background

Hurricane Ian in 2022 severely impacted the entire coastline of Lee County causing substantial erosion to the beach and dune system and infrastructure damage on Estero Island. The Town's primary objective is to prioritize construction activities in environmentally sensitive areas before the end of the environmental construction windows outlined in the permit. This one-time request to extend the construction window to allow work to continue past March 1 on the south end for the initial construction is necessary to facilitate the restoration of critical shorebird nesting

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habitats within the Little Estero Island Critical Wildlife Area (CWA) that were impacted by Hurricane Ian.

Permitting History

On January 18, 2023, the Department issued a Joint Coastal Permit No. **0413684-001-JC**, to nourish approximately 6.5 miles of critically eroded shoreline along Estero Island, Lee County.

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. 0413684-001-JC at the following website:

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=20.219666.1\]&\[profile=Permitting_Authorization\]](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=20.219666.1]&[profile=Permitting_Authorization])

On June 29, 2023, the Department issued a Joint Coastal Permit Modification No. **0413684-002-JN** to authorize a one-time event to restore a previously unrestored section of the beach at the southern end of Estero Island that was impacted by Hurricane Ian.

On March 6, 2024, the Department issued Joint Coastal Permit Modification No. **0413684-003-JN** to authorize the one-time event extension of the environmental construction window to March 1 for the southern end of Estero Island and to modify the side-slope and depth of the Nearshore Borrow Area.

Staff Assessment and Justification

The Department and representatives from the Florida Fish and Wildlife Commission (FWC) have reviewed this request for a one-time only extension to April 1 for the South Beach Fill area (R-203 to R-207) Environmental Window. This extension is required due to project delays from factors which included impacts from Hurricanes Helene and Milton. The south beach segment (R-203 to R-207) is located within the Little Estero Island Critical Wildlife Area (LEICWA), which is utilized by several state-listed beach nesting birds.

This one time only extension of the environmental construction window for the restoration of the southern end of Estero Island will increase protection from future storm events and sea level rise, create a sustainable habitat for marine turtle and shorebird species, and protect the recreational use of this shoreline.

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

26. **Little Estero Island Critical Wildlife Area.** To minimize potential impacts to marine turtles and breeding shorebirds within the Little Estero Island Critical Wildlife Area (CWA), construction-related activities are authorized to occur

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on the South Beach Fill Segment (R-203 to R-207), commencing after October 31 and completed before March 1. The Permittee shall adhere to the requirements pursuant to Specific Conditions 10 through 25 above for all construction-related activities occurring during marine turtle and shorebird nesting/breeding seasons.

- a. For the **initial sand placement event only**, construction-related activities are authorized to occur on the South Beach Fill Segment (R-203 to R-207), commencing after all shorebird nesting is complete (all chicks are of fledging age and are capable of flight; no eggs present) or September 1 (whichever is later) and completed before ~~March 1~~ April 1. Please contact the Regional Species Conservation Biologist, Becky Schneider at Rebecca.Schneider@MyFWC.com or the [Regional Shorebird Biologist](#), by August 15 to verify the completion of the shorebird nesting season.
- b. The Permittee shall conduct a pre-season meeting prior to the start of shorebird nesting season to review specific conditions and monitoring requirements. This meeting should include project personnel, those responsible for protected species monitoring, and staff representatives from FWC and DEP.

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

This letter of approval does not alter the **January 18, 2038**, expiration date of the permit. The only Specific Conditions of the permit that are altered by this modification are those stated above. This letter must be attached to the original permit.

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

NOTICE OF RIGHTS

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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;
- 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,

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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.

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 Diana Butsch by email at diana.butsch@floridadep.gov or by telephone at (850) 245-8069.

