



**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Division of Water Resource Management  
2600 Blair Stone Road - Mail Station 3522  
Tallahassee, Florida 32399-2400  
(850) 245-8336**

PERMIT NUMBER: BE-1430

**PERMITTEE**

Mary Ellen Donner, Brevard County Director of Parks and Recreation  
c/o Thomas Vill, P.E.  
Infrastructure Solution Services, LLC  
7185 Murrell Road, Suite 101  
Melbourne, Florida 32940

**NOTICE TO PROCEED AND PERMIT FOR CONSTRUCTION OR OTHER ACTIVITIES  
PURSUANT TO SECTION 161.053, FLORIDA STATUTES**

**FINDINGS OF FACT:** An application for authorization to conduct the activities seaward of the coastal construction control line that are indicated in the project description, was filed by the applicant/permittee named herein on February 3, 2020 and was determined to be complete pursuant to rule on May 5, 2020.

**CONCLUSIONS OF LAW:** After considering the merits of the proposal and any written objections from affected persons, the Department finds that upon compliance with the permit conditions, the activities indicated in the project description of this permit are of such a nature that they will result in no significant adverse impacts to the beach/dune areas or to adjacent properties; that the work is not expected to adversely impact nesting sea turtles, their hatchlings, or their habitat; that the work is expendable in nature and/or is appropriately designed in accordance with Section 62B-33.005, Florida Administrative Code. Based on the foregoing considerations, the Department approves the application; authorizes construction and/or activities at the location indicated below in strict accordance with the project description, the approved plans (if any) and the General Permit Conditions which are attached and are by this reference incorporated herein, and any additional conditions shown below, pursuant to Section 161.053(4), Florida Statutes.

**EXPIRATION DATE:** July 2, 2021

**LOCATION:** Between approximately 85 feet and 706 feet south of the Department of Environmental Protection's reference monument R-105, in Brevard County. Project address: 3299 North Highway A1A, Melbourne Beach 32903.

**PROJECT DESCRIPTION:**

The applicant/permittee is authorized to reconstruct and widen the existing dune crossover to 12 feet in the shore-parallel direction, to match the existing walkover. Existing posts are to be utilized on the project. Terminal end elevations shall be adjusted so steps are above grade.

The applicant/permittee is also authorized to replant the removed plants for construction along the seaward toe of the dune, as depicted in the approved plans as mitigation measures.

SPECIAL PERMIT CONDITIONS:

1. Prior to commencement of construction activity authorized by this permit, a preconstruction conference shall be held at the site among the contractor, the owner or authorized agent, and a staff representative of the Department to establish an understanding among the parties as to the items specified in the special and general conditions of the permit. The proposed locations of the structures shall be staked out for the conference. **Contact Sydney Wilson at (561) 681-6675 to schedule a conference.**
2. Prior to commencement of construction activity authorized by this permit, a temporary construction fence shall be erected along the perimeter of the permitted activity. The fence shall remain in place until the construction authorized by this permit is complete. The optimum siting of the construction fence shall be determined during the preconstruction conference by the staff representative so as to provide maximum protection to the existing native vegetation and dune features located on the site.
3. Prior to completion of construction activities authorized by this permit, the permittee shall transplant all native salt-tolerant species disturbed in the frontal dune and any disturbed areas seaward of the authorized structures. Dune restoration plantings shall consist of salt-tolerant species indigenous to the native plant communities existing on or near the site or with other native species approved by the Department. Sod composed of non-native grasses is not authorized seaward of a major structure or decks. Plantings in other areas of the project site shall not include invasive nuisance plant species such as listed in the Florida Exotic Pest Plant Council's List of Category I and II Invasive Species.
4. No construction, operation, transportation or storage of equipment or materials, and no temporary lighting of the construction area is authorized in sea turtle nesting habitat, seaward of the frontal dune crest or rigid coastal protection structure in marine turtle nesting habitat at any time during the sea turtle nesting season (May 1 through October 31, or for Brevard through Broward Counties, March 1 through October 31).
5. Permittee shall submit compliance reports as specified in Special and General Permit Conditions of this permit. General Permit Condition 1(s) pertain to a written report which must be submitted to the Department of Environmental Protection at specified times. The form for the report: 1(s) Final Certification (DEP Form 73-115B) is available by clicking on the following link <http://www.dep.state.fl.us/beaches/forms.htm#CCCL>. The form may be submitted electronically.

GENERAL PERMIT CONDITIONS:

(1) The following general permit conditions shall apply, unless waived by the Department or modified by the permit:

(a) The permittee shall carry out the construction or activity for which the permit was granted in accordance with the plans and specifications that were approved by the Department as part of the permit. Deviations therefrom, without written approval from the Department, shall be grounds for suspension of the work and revocation of the permit pursuant to Section 120.60(7), F.S., and shall result in assessment of civil fines or issuance of an order to alter or remove the unauthorized work, or both. No other construction or activities shall be conducted. No modifications to project size, location, or structural design are authorized without prior written approval from the Department. A copy of the notice to proceed shall be conspicuously displayed at the project site. Approved plans shall be made available for inspection by a Department representative.

(b) The permittee shall conduct the construction or activity authorized under the permit using extreme care to prevent any adverse impacts to the beach and dune system, marine turtles, their nests and habitat, or adjacent property and structures.

(c) The permittee shall allow any duly identified and authorized member of the Department to enter upon the premises associated with the project authorized by the permit for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department until all construction or activities authorized or required in the permit have been completed and all project performance reports, certifications, or other documents are received by the Department and determined to be consistent with the permit and approved plans.

(d) The permittee shall hold and save the State of Florida, the Department, and its officers and employees harmless from any damage, no matter how occasioned and no matter what the amount, to persons or property that might result from the construction or activity authorized under the permit and from any and all claims and judgments resulting from such damage.

(e) The permittee shall allow the Department to use all records, notes, monitoring data, and other information relating to construction or any activity under the permit, which are submitted, for any purpose necessary except where such use is otherwise specifically forbidden by law.

(f) Construction traffic shall not occur and building materials shall not be stored on vegetated areas seaward of the control line unless specifically authorized by the permit. If the Department determines that this requirement is not being met, positive control measures, such as temporary fencing, designated access roads, adjustment of construction sequence, or other requirements, shall be provided by the permittee at the direction of the Department. Temporary construction fencing shall not be sited within marine turtle nesting habitats.

(g) The permittee shall not disturb existing beach and dune topography and vegetation except as expressly authorized in the permit. Before the project is considered complete, any disturbed topography or vegetation shall be restored as prescribed in the permit with suitable fill material or revegetated with appropriate beach and dune vegetation.

(h) All fill material placed seaward of the control line shall be sand which is similar to that already existing on the site in both coloration and grain size. All such fill material shall be free of construction debris, rocks, clay, or other foreign matter; shall be obtained from a source landward of the coastal construction control line; and shall be free of coarse gravel or cobbles.

(i) If surplus sand fill results from any approved excavation seaward of the control line, such material shall be distributed seaward of the control line on the site, as directed by the Department, unless otherwise specifically authorized by the permit.

(j) Any native salt-tolerant vegetation destroyed during construction shall be replaced with plants of the same species or, by authorization of the Department, with other native salt-tolerant vegetation suitable for beach and dune stabilization. Unless otherwise specifically authorized by the Department, all plants installed in beach and coastal areas – whether to replace vegetation displaced, damaged, or destroyed during construction or otherwise – shall be of species indigenous to Florida beaches and dunes, such as sea oats, sea grape, saw palmetto, panic grass, saltmeadow hay cordgrass, seashore saltgrass, and railroad vine, and grown from stock indigenous to the region in which the project is located.

(k) All topographic restoration and revegetation work is subject to approval by the Department, and the status of restoration shall be reported as part of the final certification of the actual work performed.

(l) If not specifically authorized elsewhere in the permit, no operation, transportation, or storage of equipment or materials is authorized seaward of the dune crest or rigid coastal structure during the marine turtle nesting season. The marine turtle nesting season is May 1 through October 31 in all counties except Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward counties where leatherback turtle nesting occurs during the period of March 1 through October 31.

(m) If not specifically authorized elsewhere in the permit, no temporary lighting of the construction area is authorized at any time during the marine turtle nesting season and no additional permanent exterior lighting is authorized.

(n) All windows and glass doors visible from any point on the beach must be tinted to a transmittance value (light transmission from inside to outside) of 45% or less through the use of tinted glass or window film.

(o) The permit has been issued to a specified property owner and is not valid for any other person unless formally transferred. An applicant requesting transfer of the permit shall sign two copies of the permit transfer agreement form, agreeing to comply with all terms and conditions of the permit, and return both copies to the Department. The transfer request shall be provided on the form entitled "Permit Transfer Agreement" – DEP Form 73-103 (Revised 1/04), which is hereby adopted and incorporated by reference. No work shall proceed under the permit until the new owner has received a copy of the transfer agreement approved by the Department. A copy of the transfer agreement shall be displayed on the construction site along with the permit. An expired permit shall not be transferred.

(p) The permittee shall immediately inform the Department of any change of mailing address of the permittee and any authorized agent until all requirements of the permit are met.

(q) For permits involving major structures or activities, the permittee shall submit to the Department periodic progress reports on a monthly basis beginning at the start of construction and continuing until all work has been completed. If a permit involves either new armoring or major reconstruction of existing armoring, the reports shall be certified by an engineer licensed in the State of Florida. The permittee or engineer, as appropriate, shall certify that as of the date of each report all construction has been performed in compliance with the plans and project description approved as a part of the permit and with all conditions of the permit, or shall specify any deviation from the plans, project description, or conditions of the permit. The report shall also state the percent of completion of the project and each major individual component. The reports shall be provided to the Department using the form entitled "Periodic Progress Report" – DEP Form 73-111 (Revised 6/04), which is hereby adopted and incorporated by reference. Permits for minor structures or activities do not require submittal of periodic reports unless required by special permit condition.

(r) For permits involving habitable major structures, all construction on the permitted structure shall stop when the foundation pilings have been installed. At that time the foundation location form shall be submitted to and accepted by the Department prior to proceeding with further vertical construction above the foundation. The form shall be signed by a professional surveyor, licensed pursuant to Chapter 472, F.S., and shall be based upon such surveys performed in accordance with Chapter 472, F.S., as are necessary to determine the actual configuration and dimensioned relationship of the installed pilings to the control line. The information shall be provided to the Department using the form entitled "Foundation Location Certification" – DEP Form 73-114B (Revised 9/05), which is hereby adopted and incorporated by reference. Phasing of foundation certifications is acceptable. The Department shall notify the permittee of approval or rejection of the form within seven (7) working days after staff receipt of the form. All survey information upon which the form is based shall be made available to the Department upon request. Permits for repairs or additions to existing structures with nonconforming foundations are exempt from this condition.

(s) For permits involving major structures, the permittee shall provide the Department with a report by an engineer or architect licensed in the State of Florida within thirty (30) days following completion of the work. The report shall state that all locations specified by the permit have been verified and that other construction and activities authorized by the permit have been performed in compliance with the plans and project description approved as a part of the permit and all conditions of the permit; or shall describe any deviations from the approved plans, project description, or permit conditions, and any work not performed. Such report shall not relieve the permittee of the provisions of paragraph 62B-33.0155(1)(a), F.A.C. If none of the permitted work is performed, the permittee shall inform the Department in writing no later than 30 days following expiration of the permit. The report shall be provided on the form entitled "Final Certification" DEP Form 73-115B (Revised 9/05), which is hereby adopted and incorporated by reference.

(t) Authorization for construction of armoring or other rigid coastal structures is based on an engineering review and assessment of the design and anticipated performance and impact of the structure as a complete unit. Construction of any less than the complete structure as approved by the Department is not authorized and shall result in the assessment of an administrative fine and the issuance of an order to remove the partially constructed structure. Modifications to the project size, location, or structural design shall be authorized by the Department in accordance with Rule 62B-33.013, F.A.C.

(2) The permittee shall not commence any excavation, construction, or other physical activity on or encroaching on the sovereignty land of Florida seaward of the mean high water line or, if established, the erosion control line until the permittee has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use.

(3) The permittee shall obtain any applicable licenses or permits required by Federal, state, county, or municipal law.

(4) This permit does not authorize trespass onto other property.

(5) In the event of a conflict between a general permit condition and a special permit condition, the special permit condition shall prevail.

(6) Copies of any forms referenced above can be obtained by writing to the Department of Environmental Protection, 2600 Blair Stone Road, MS 3522, Tallahassee, Florida 32399-2400, or by telephoning (850)245-8336.

**Approved plans are incorporated into this permit by reference.**

## **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;
- (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](mailto: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 21 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 21 days of publication of the notice or within 21 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](mailto: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.

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

#### Judicial Review

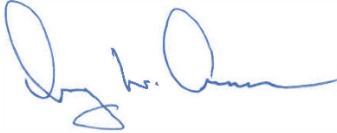
Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 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.

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### EXECUTION AND CLERKING

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Doug W. Aarons, P.E., Program Administrator  
Coastal Construction Control Line Program

### CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Mary Ellen Donner, Brevard County Parks and Recreation [Maryellen.donner@brevardfl.gov](mailto:Maryellen.donner@brevardfl.gov)

Thomas Vill, Agent [tvill@infrastructuress.com](mailto:tvill@infrastructuress.com)

George Ritchie, Brevard County Planner [George.ritchie@brevardfl.gov](mailto:George.ritchie@brevardfl.gov)

Sydney Wilson, CCCL Field Inspector [Sydney.e.wilson@floridadep.gov](mailto:Sydney.e.wilson@floridadep.gov)

### FILING AND ACKNOWLEDGMENT

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

Isaac Morales

Clerk

7/2/2020

Date