



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

160 W. Government Street, Suite 308  
Pensacola, Florida 32502-5794

RICK SCOTT  
GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

**Permittee/Authorized Entity:**

Florida Department of Transportation  
% Ms. Joy Giddens  
District 3 Permit Coordinator  
1074 Hwy 90  
Chipley, Florida 32428  
[Joy.Giddens@dot.state.fl.us](mailto:Joy.Giddens@dot.state.fl.us)

**Project Name:**

North of Toms Creek to North of Turkey Creek (SR123)

**Authorized Agent:**

HDR Engineering, Inc.  
% John Wimberly, P.E.  
25 West Cedar Street, Suite 200  
Pensacola, Florida 32502  
[John.Wimberly@HDRinc.com](mailto:John.Wimberly@HDRinc.com)

**Environmental Resource Permit**

**State-owned Submerged Lands Authorization – Granted Pending Document  
Execution**

**U.S. Army Corps of Engineers Authorization – Separate Corps Authorization  
Required**

County: Okaloosa  
Permit No.: 46-0314567-002-SI  
Easement File No.: 41578

**Permit Issuance Date:** May 22, 2013

**Permit Construction Phase Expiration Date:** May 22, 2018

U.S. Army Corps of Engineers  
Permit # 545-2013-01012  
Date: SEP 27 2013  
Attachment: 3



**Consolidated Environmental Resource Permit and Sovereignty Submerged Lands  
Authorization**

**Permittee: Florida Department of Transportation**

**Permit No: 46-0314567-002-SI**

**PROJECT LOCATION**

The activities authorized by this Permit and sovereignty submerged lands authorization are located on SR 123 from north of Toms Creek to north of Turkey Creek, northwest of Niceville, in Okaloosa County, Florida, in Sections 3, 27, 34, Townships 1S, 1N, Range 23W, at latitude 30 degrees, 32 minutes, 22 seconds/Longitude 86 degrees, 32 minutes, 23 seconds.

**PROJECT DESCRIPTION**

The permittee is authorized to widen the segment of SR 123 to 4 lanes (designed for future 6 lanes) from north of Toms Creek to north of Turkey Creek, along with the replacement/construction of new bridges as a 113.31-acre project.

Surface water impacts are as described. The permittee is authorized to extend an existing culvert approximately 200 linear feet for a direct impact of .20 acre (8896 Square feet), replace an existing 6-foot by 10-foot box culvert with dual 40-foot by 166-foot span bridges for a direct impact of 0.118 acre (5149 square feet) and construction of a 50-foot by 830-foot span bridge over Turkey Creek with a direct impact of 0.413 acre (18021 square feet). The cumulative impacts for the project are 1.23 acres (53415 square feet) of permanent impacts to Waters of the State and 0.38 acre (16532 square feet) of shading impacts to Waters of the State. Secondary impacts have been addressed through a 200-foot buffer on either side of the road project. Turkey Creek is a Class III Water of the State, Prohibited Shellfish Harvesting Area. Authorized activities are depicted on the attached exhibits.

Mitigation will be developed in accordance with 373.4137, F.S.

**AUTHORIZATIONS**

**Project Name:** North of Toms Creek to North of Turkey Creek (SR123)

Environmental Resource Permit

The Department has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-346), Florida Administrative Code (F.A.C.).

#### Sovereignty Submerged Lands Authorization

The activity is located on sovereignty submerged lands owned by the State of Florida. It therefore also requires authorization from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Section 253.77, F.S.

As staff to the Board of Trustees under Sections 253.002, F.S., the Department has determined that the activity qualifies for and requires a public easement, as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions herein.

The final documents required to execute the public easement will be sent to the permittee by the Department's Division of State Lands for execution. The Department intends to issue the public easement, upon satisfactory execution of those documents, including payment of required fees and compliance with the conditions in Proprietary Authorization. **You may not begin construction of the activities described until you receive a copy of the executed public easement from the Department.**

#### Federal Authorization

A copy of this permit has been sent to the U.S. Army Corps of Engineers (USACE). The USACE may require a separate permit. Failure to obtain any required federal permits prior to construction could subject you to enforcement action by that agency.

#### Water Quality Certification

This permit also constitutes a:

water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341

#### Other Authorizations

You are advised that authorizations or permits for this project may be required by other federal, state or local entities including but not limited to local governments and homeowner's associations. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

#### **PERMIT/SOVEREIGNTY SUBMERGED LANDS CONDITIONS**

The activities described herein must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The General Conditions for Sovereignty Submerged Lands Authorization**
- **The limits, conditions and locations of work shown in the attached drawings**

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- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these conditions and drawings prior to commencing the authorized activities. Failure to comply with these conditions, including any mitigation requirements, shall constitute grounds for revocation of the Permit and appropriate enforcement action by the Department.

Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and this permit/certification/authorization and sovereignty submerged lands authorization, as specifically described above.

### **SPECIFIC CONDITIONS**

#### **PRIOR TO CONSTRUCTION**

1. No work can begin on the proposed new Right-of-Way until the Department receives proof of legal easement from Eglin Air Force Base to use their property.
2. If the approved permit drawings conflict with the specific conditions, then the specific conditions shall prevail.

#### **SURFACE WATERS SPECIFIC CONDITIONS**

3. Prior to construction, the limits of the proposed fill areas shall be clearly flagged and staked by the agent and/or the contractor. All construction personnel shall be shown the location(s) of all wetland areas outside of the construction area to prevent encroachment from heavy equipment into these areas.

#### **MITIGATION**

4. Mitigation will be developed in accordance with 373.4137, F.S.

#### **STORMWATER SPECIFIC CONDITIONS:**

5. The 'Stormwater Operation/Maintenance Plan', as approved and enclosed with this permit, shall be implemented.
6. If construction of the stormwater management system authorized by this ERP, individual stormwater permit has not been completed and continued use of the system formally transferred to the operating phase before the expiration date of this permit, or an authorized extension, then at least 60 days before such expiration date, the permittee shall apply for another individual

stormwater permit, using the forms and accompanied by the fee required by rules in effect at that time.

7. The permittee shall notify the Department immediately of any easement termination, either during or after the construction phase of this permit.

8. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit.

9. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is **800-320-0519** (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is (850) 595-0580, day or night.

10. The mailing address for submittal of forms for the "Construction Commencement Notice", "As-Built Certification ...", "Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase", or other correspondence is FDEP, SLERP, 160 W. Government Street, Pensacola, Florida, 32502.

## **GENERAL CONDITIONS**

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity may constitute grounds for revocation or enforcement action by the Department, unless a modification has been applied for and approved in accordance with Rule 62-346.100, F.A.C.

2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity during the construction phase. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit. A weather-resistant sign, measuring at least 8 1/2 inches by 11 inches, and including the permit number **46-0314567-002-SI** (in lettering that is easily visible from the access road) shall be placed on the property facing the road.

3. Activities approved by this permit shall be conducted in a manner that does not cause violations of state water quality standards.

4. Immediately prior to, during construction, and for the period of time after construction to allow for stabilization of all disturbed areas, the permittee shall implement and maintain erosion and sediment control best management practices, such as silt fences, erosion control blankets, mulch, sediment traps, polyacrylamide (PAM), temporary grass seed, permanent sod, and floating turbidity screens to retain sediment on-site and to prevent violations of state water quality standards. These devices shall be installed, used, and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work, and shall remain in

place at all locations until construction is completed and soils are permanently stabilized. All best management practices shall be in accordance with the guidelines and specifications described in the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Transportation and Florida Department of Environmental Protection, 2007), unless a project-specific erosion and sediment control plan is approved as part of the permit. If project-specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediments beyond those specified in the approved erosion and sediment control plan, the permittee shall implement additional best management practices as necessary, in accordance with the guidelines and specifications in the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual*, Prepared for Florida Department of Transportation & Florida Department of Environmental Protection by HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources as soon as practicable. Once project construction has been deemed complete, including the re-stabilization of all side slopes, embankments, and other disturbed areas, and before conversion of the permit to the operation and maintenance phase, all silt screens and fences, temporary baffles, and other materials that are no longer required for erosion and sediment control shall be removed.

5. Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

6. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the Department a fully executed Form 62-346.900(3), "Construction Commencement Notice," incorporated by reference herein, indicating the expected start and completion dates. Information on how a copy of this form may be obtained is contained in Rule 62-346.900, F.A.C.

7. Within 30 days after completion of construction of the whole system, or independent portion of the system, the permittee shall notify the Department that construction has been completed and the system is ready for inspection by submitting one of the following forms to the Department office that issued the permit:

a. For systems other than those that serve an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex, Form 62-346.900(4), "As-Built Certification by a Registered Professional." If the registered professional has certified that the system has been built substantially in compliance with the plans and specifications in the permit, and that such system is ready for inspection, the permittee shall also submit Form 62-346.900(6), "Request for Conversion of Environmental Resource Individual Permit Construction Phase to Operation and Maintenance Phase." The system shall not be used and operated for its permitted purpose until the Department has approved the request to authorize the operation phase, in accordance with Rule 62-346.095, F.A.C. The "As-Built Certification" shall be for the purpose of determining if the work was completed in substantial compliance with permitted plans and specifications. The certification shall include as-built drawings in the form of the permitted drawings that clearly show any substantial deviations made during construction. The plans must be clearly labeled as "as-built" or "record" drawings.

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b. For systems that serve an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex, Form 62-346.900(5), "Construction Completion and Inspection Certification for a System Serving an Individual, Private Single-Family Dwelling Unit."

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of the facility, or the site infrastructure located within the area served by that portion or phase of the system.

9. The permittee shall remain liable for compliance with the operation and maintenance of the system in accordance with the terms and conditions of the permit for the life of the system, unless such permit is transferred to an acceptable responsible entity in accordance with Rules 62-346.095 and 62-346.130, F.A.C. Once transfer of the permit has been approved by the Department, the transferee shall be liable for compliance with all the terms and conditions of the operation and maintenance phase of the permit for the life of the system.

10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the Department in writing of the changes prior to implementation so that the Department can determine whether a permit modification is appropriate.

11. This permit does not convey to the permittee or create in the permittee any property right or any interest in real property, nor does it authorize any entrance upon or activities on property that is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in this permit or Chapter 62-346, F.A.C. Permittees having the right to exercise the power of eminent domain or who had a contract to purchase the property subject to this permit shall not commence any work under this permit until the permittee has provided the Department with proof of transfer of ownership of the property in the name of the permittee. If such transfer of ownership does not occur, the permittee shall surrender this permit, and the permit shall be null and void.

12. Pursuant to Section 373.422, F.S., prior to conducting any activities on sovereign submerged lands, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.

13. The permittee shall hold and save the Department harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.

14. The permittee shall notify the Department in writing at least 30 days prior to any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. Where ownership of the land subject to the permit was demonstrated through a long-term lease, the lessee must have transferred ownership and control of the permitted system to the current landowner or new lessee, effective prior to or on the date of expiration of the lease. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 62-346.095 and 62-346.130, F.A.C.

15. Upon reasonable notice to the permittee, Department staff with proper identification shall have permission to enter, inspect, sample and test the system to ensure conformity with the plans and specifications authorized in the permit.
16. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the Department.
17. The permittee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.
18. The issuance of this permit does not relieve the permittee from the responsibility to obtain any other required federal, state, and local authorizations.
19. The permittee is advised that, pursuant to Section 556.105, F.S., excavating contractors are required to provide certain information concerning the excavation that may affect underground facilities through the one-call notification system not less than two, nor more than five, business days before beginning any excavation.

#### **GENERAL CONDITIONS FOR SOVEREIGNTY SUBMERGED LANDS AUTHORIZATION**

Any use of sovereignty submerged lands is subject to the following general conditions are binding upon the applicant and are enforceable under Chapter 253, F.S. and, as applicable, Chapter 258, F.S.:

1. Sovereignty submerged lands may be used only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use will constitute a violation. Violation of the authorization will result in suspension or revocation of the applicant's use of the sovereignty submerged lands unless cured to the satisfaction of the Board of Trustees.
2. Authorization under Rule 18-21.005, Florida Administrative Code (F.A.C.), conveys no title to sovereignty submerged lands or water column, nor does it constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations under Rule 18-21.005, F.A.C., may be modified, suspended or revoked in accordance with its terms or the remedies provided in Sections 253.04, F.S. and Chapter 18-14, F.A.C.
4. Structures or activities will be constructed and used to avoid or minimize adverse impacts to resources.
5. Construction, use, or operation of the structure or activity will not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-



27.004, and 68A-27.005, F.A.C.

6. Structures or activities will not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity will be modified in accordance with the court's decision.
7. Structures or activities will not create a navigational hazard.
8. Structures will be maintained in a functional condition and will be repaired or removed if they become dilapidated to such an extent that they are no longer functional.
9. Structures or activities will be constructed, operated, and maintained solely for water dependent purposes.
10. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
11. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
12. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
13. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
14. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

## 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 filing of a petition means that the Department's final action may be different from the position taken by it in this notice.

### 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 Rule 28-106.201, 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. 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 subsection 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S. must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication. The 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 subsection 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 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 Department within 20 days from the date when the order is filed with the Clerk of the Department.

#### Judicial Review

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 Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 this action is filed with the Clerk of the Department.

If you have any questions about the stormwater aspects of this document, please contact Rich Boelens at 850-595-0567 or at [Richard.Boelens@dep.state.fl.us](mailto:Richard.Boelens@dep.state.fl.us). If you have any questions about the wetland/SSL aspects of this document, please contact Scott Casey at 850-595-0574 or at [Scott.Casey@dep.state.fl.us](mailto:Scott.Casey@dep.state.fl.us).

Executed in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Andrew Joslyn  
Program Administrator  
Submerged Lands & Environmental  
Resource Program

**Enclosures:**

Exhibit 1, Project Drawings, 22 pages  
Exhibit 2, Stormwater Operation/Maintenance Plan, 2 pages  
Exhibit 3, Wetland/SSL Drawings, 30 pages

Copies of 62-346.900 forms can be obtained at:  
<http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>

**Copies furnished to:**

DEP, Office of General Counsel  
U.S. Army Corps of Engineers  
FWC, Imperiled Species Management Section  
Mr. Josey Walker, [Josey.Walker@hdrinc.com](mailto:Josey.Walker@hdrinc.com)

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that this permit and authorization to use sovereignty submerged lands, including all copies, were mailed and/or emailed before the close of business on May 22, 2013, to the above listed persons.

## FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52(7) of the  
Florida Statutes, with the designated Department Clerk,  
receipt of which is hereby acknowledged.

May 22, 2013

Clerk

Date \_\_\_\_\_

Prepared By: *RB/SC*

54 pages attached