



Florida Department of Environmental Protection

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Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

December 14, 2017

U.S. Army Corps of Engineers
Attn: Eric Summa, Chief
Environmental Branch
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232-0019

Permit Modification No. 0308009-007-JN
Permit No. 0308009-001-JC, Volusia County
Ponce de Leon Inlet Nearshore Disposal

Dear Mr. Summa:

Your request to modify Permit No. 0308009-001-JC was received on September 29, 2017, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to re-authorize the nearshore placement area originally authorized by the Ponce Inlet DMMA 434/434C Offloading Permit No. 0177220-004-JC along with adjustments to the limits of the placement area.

Background

On August 3, 2012, the Department issued Joint Coastal Permit No. 0308009-001-JC to the U.S. Army Corps of Engineers (Corps) for maintenance dredging of the Ponce de Leon Inlet access channel, Inlet throat, and north and south navigation channels. The permit authorized the Corps to place the dredge material in the nearshore disposal area, located approximately 1 mile south of the Inlet, for one time only. Following the initial maintenance dredging event, beach-quality sand would be placed on the downdrift beach during subsequent events, as specified in the Inlet Management Plan for Ponce de Leon Inlet. However, the project scope was modified to address restrictions in the Biological Opinion by deleting beach placement of dredged material, thereby avoiding conservation measures associated with the piping plover and the southeastern beach mouse. Beach placement of material from subsequent maintenance dredging events would require a permit modification in order to allow review and approval of the placement activity and sites.

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For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit And Authorization To Use Sovereign Submerged Lands* for Permit No. 0308009-001-JC at the following website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/volusia/issued/0308009_Ponce_de_Leon_Inlet_Maintenance_Dredging/

On August 8, 2012, the Corps applied for a modification to Permit No. 0308009-001-JC to remove the one-time-only restriction on nearshore placement; allow near beach-quality material to be placed in the nearshore disposal area; and add a contingency to allow additional nearshore disposal events if beach-quality material was not available, or if economic constraints mandated nearshore disposal. The application for Modification No. **0308009-002-JN** was withdrawn on August 15, 2012.

On November 14, 2012, the Department issued Permit Modification No. **0308009-003-JN**. The modification changed the language of Specific Condition (SC) 1 to be consistent with the Interagency Coordination Agreement for Civil Works Projects (2006), and revised the language of SC 7 to adhere to the recommendations of the Florida Fish & Wildlife Conservation Commission (FWC).

On January 23, 2013, the Department issued Permit Modification No. **0308009-004-JN** to the Corps to change the configuration of the nearshore disposal area and to authorize nearshore placement more than one time.

On September 23, 2013, the Department issued Permit Modification No. **0308009-005-JN** to the Corps to authorize any type of dredging method necessary to accomplish the maintenance dredging of the channel, and to authorize the placement of a dredged material disposal pipe.

On June 30, 2014, the Department issued Permit Modification No. **0308009-006-JN** to the Corps to authorize dredging of beach quality shoal material from the Intracoastal Waterway (ICWW) near Ft. Pierce, Florida, and disposal of material in the nearshore disposal area of Ponce de Leon Inlet. This was a one-time event only.

Staff Assessment and Justification

The Permittee has requested to change the configuration of the south nearshore placement area so that it extends from monument R-158 southward to R-166 between the -8 feet and -22 feet MLLW contours. The previous authorized nearshore placement area extended from R-160 to R-177 from between the -12 feet and -32 feet MLLW contours. This modification will re-authorize the placement area originally authorized under the Ponce Inlet DMMA 434/434C Offloading Permit No. 0177220-004-JC along with adjustments to the limits of the placement area. A

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permit modification to AIWW Volusia, Permit No. 0183817-009-JN, is being issued concurrently to have the same nearshore placement area.

The Department has reviewed the application as well as past project performance. Per discussion between the Department and the Corps, the proposal of shifting the landward contour to -8 feet MLLW will enhance incorporation of the dredged material into the southward littoral drift and to be consistent with the landward placement contours of the currently authorized AIWW Volusia nearshore placement area. Analysis performed by the Corps also indicates that a -22 feet seaward contour limit is sufficient for placing material within the depth of closure. To be consistent with the limits of the AIWW Volusia nearshore placement area, the Corps proposes a northern limit at R-158. Since Corps coordination with the State Division of Historical Resources only extends southward to R-166, a reduction of the southern limit from R-177 to R-166 is sufficient. Based on this information, the Department finds reasonable assurance to modify Permit No. 0308009-001-JC accordingly.

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

The project is to conduct maintenance dredging of the Ponce de Leon Inlet entrance channel, Inlet throat, and Inlet channels leading to the Atlantic Intracoastal Waterway (AIWW). Approximately ~~200,000~~ 300,000 cubic yards of shoal material are expected to be removed every 4 years to maintain the federal channel depths. The channels will be maintained to the following maximum depths, which include the design depths, plus 2 feet of allowable overdepth: -17 feet mean lower low water (MLLW) for the entrance channel across the ocean bar; -14 feet MLLW for the Inlet throat; -14 feet MLLW for the southward channel to the AIWW; -14 feet MLLW for Cut-3N, Cut-4N and Cut-5N in the northward channel to the AIWW; and -9 feet MLLW for the remaining northward channel to the AIWW (Cut-6N through Cut-13N). Dredged material will be placed in a nearshore disposal area (D/A) located south of the south jetty, between R-158 and R-1616, and from the ~~-10 foot to -8 foot~~ -8 feet to -22 feet MLLW bathymetric contours. The material will be placed within the permitted nearshore disposal area by any dredging operations method without significantly disturbing the bottom. The landward portion of the D/A will be filled first, and disposal will proceed waterward only as the landward portion reaches capacity. Dredged material from subsequent maintenance dredging events will be placed on the beach to the maximum extent practicable when sufficient beach-quality material and funding are available. A permit modification will be required to place beach-quality dredge material on the beach in order to complete that evaluation. ~~For a one-time event in 2014 only, beach-quality material dredged from Cut SL-1 of the Intracoastal Waterway (ICWW) near Ft. Pierce may be placed in the Ponce de Leon Inlet nearshore disposal area.~~

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

The maintenance dredging area is located at Ponce de Leon Inlet and the interior channels connecting the Inlet to the AIWW. The nearshore disposal area is located 1.41 miles south of the Inlet, between Department Monuments R-158 and ~~R-161~~ R-166, with a landward edge along the -8 feet mean lower low water (MLLW) contour line and a waterward edge along the ~~-40~~ -22 feet MLLW contour line. The project is located in Volusia County, Sections 32 and 37, Township 16 South, Range 34 East, in Ponce de Leon Inlet and the Atlantic Ocean, Class III Waters.

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

~~10. No operation, transportation or storage of equipment or materials, including construction pipes or pipelines, are authorized within potential marine turtle nesting habitat during the marine turtle nesting season or within migratory bird nesting habitat during the migratory bird nesting season. The marine turtle nesting season in Volusia County is May 1 through October 31 and the migratory bird nesting season in Volusia County is March 15 through September 1. Potential marine turtle nesting habitat is defined as the dry beach landward of the swash zone (approximately one foot above mean high water). Placement or operation of construction pipes or pipelines across the jetty during the marine turtle and migratory bird nesting season shall be allowed if pipes are located seaward of the swash zone (approximately one foot below mean low water) and are placed as far seaward as possible. The parallel placement along the shoreline shall be placed as far seaward as possible and such that beach access of nesting and hatching sea turtles is not impeded.~~

10. **Equipment Storage and Placement:** Staging areas for construction equipment shall be located off the beach, if off-beach staging areas are available, during the sea turtle nesting season. Nighttime storage of construction equipment not in use shall be off the beach. In addition, all construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to the vegetation line shall be 5 to 10 feet away from the toe of the vegetation line. Temporary storage of pipes shall be off the beach to the maximum extent possible. If the pipes shall be on the beach, they shall be placed in a manner that will minimize the impact to nesting habitat and shall not compromise the integrity of the dune systems. If it will be necessary to extend construction pipes past a known migratory bird nesting site or over-wintering area for piping plovers, then whenever possible, those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed within or seaward of a migratory bird nesting site during the migratory bird nesting season.

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

Plates 1 and 2 (dated February 2012) shall be replaced with Plates 1 and 2 (dated September 2017). Plates 28 and 29 (dated September 2017) will be added to the set of approved drawings.

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 sea 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 drawing, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **August 3, 2022**, expiration date of the permit. This letter and the attached drawing and associated certification page must be attached to the original permit.

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

NOTICE OF RIGHTS

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

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to 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, any email address, any facsimile number, and telephone number of the petitioner; the name, address, and telephone number of the

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- 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 Rule 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 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, before the applicable deadline for filing a petition for an administrative hearing. A timely

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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 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 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.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact Karina Kronsis by email at Karina.Kronsis@dep.state.fl.us or by telephone at (850) 245-7545.

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EXECUTION AND CLERKING:

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Gregory W. Garis
Environmental Manager
Beaches, Inlets and Ports Program
Division of Water Resource Management

for

Lainie Edwards, Ph.D.
Program Administrator
Beaches, Inlets and Ports Program
Division of Water Resource Management

Attachments: Permit Drawings. Sheets 1, 2, 28, and 29. Dated September 2017.

CERTIFICATE OF SERVICE

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

cc: Paul Karch, Corps
Jason Spinning, Corps
Ralph Clark, DWRM
Martin Seeling, DWRM
Robert Brantly, DWRM
Roxane Dow, DWRM
Shelly Trulock, Corps
Paul DeMarco, Corps

Gina Ralph, Corps
Chris Ferraro, DEP, Central District
JCP Compliance Officer, DWRM
Lainie Edwards, DWRM
Kellie Youmans, FWC
Greg Garis, DWRM
MarineTurtle@MyFWC.com
fwcconservationplanningservices@myfwc.com

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.

Kaelyn Massey 12/14/2017
Clerk Date