



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

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August 14, 2014

U.S. Army Corps of Engineers
c/o Mr. Eric Summa, Chief
Environmental Branch
Jacksonville District
P.O. Box 4970
Jacksonville, Florida 32232

Permit Modification No. 0216012-021-JN
Permit No. 0216012-007-JC, Palm Beach County
Palm Beach Harbor Maintenance Dredging

Dear Mr. Summa:

Your request to modify Permit No. 0216012-007-JC was received on July 11, 2014, and has been reviewed by Department of Environmental Protection (Department) staff. The proposed permit modification is to reduce the number of rock removal and remediation inspections from four times per year to twice a year, before and after the sea turtle nesting season, and to authorize remediation simultaneously with each inspection.

Background

On September 21, 2006, the Department issued Permit No. **0216012-007-JC** to the United States Army Corps of Engineers (Corps). That was a major modification of Permit No. 0216012-001-JC, which authorized maintenance dredging of the entire navigation-related complex at Palm Beach Harbor/Lake Worth Inlet, and superseded the previous permit and its associated modifications. Placement of dredged material was authorized within the beach template, including both the dry beach and the nearshore portion of the beach landward of the -17-foot mean low water (MLW) contour. The berm has an elevation of approximately +8.7 feet (MLW), with a 1:20 (vertical:horizontal) seaward slope. The beach placement site begins immediately south of the south jetty, and proceeds in a southerly direction. Within the entrance channel (between Stations 25.0 to 56.0), the Permittee was allowed to transfer shoals of less than 5,000 cubic yards to deeper parts of the channel in order to temporarily alleviate navigational hazards. Permit No. 0216012-007-JC also authorized the placement of beach-quality sand within the Mid-Town template if, during a single dredging event, the beach template immediately south of the Lake Worth Inlet becomes filled. Construction of an artificial reef was required just offshore of R-105, at a depth of approximately 22 feet, to offset the burial of the patch hardbottom reef (approximately 0.12 acre) that was expected to occur at the nearshore placement site, between

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Department monuments R-78 and R-79. The new permit also added shorebird protection conditions and updated the marine turtle protection conditions of the previous permit. Regular maintenance dredging commenced on February 16, 2007, and continued until April 19, 2007.

For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit Authorization To Use Sovereign Submerged Lands* for Permit No. 0216012-007-JC at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/palm_bch/issued/216012_Palm_Beach_Harbor/007-JC/Intent_to_issue/Notice%20of%20Intent%20\(07-28-06\).pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/palm_bch/issued/216012_Palm_Beach_Harbor/007-JC/Intent_to_issue/Notice%20of%20Intent%20(07-28-06).pdf)

On September 14, 2006, prior to the issuance of Permit No. 0216012-007-JC, the Department issued a modification to Permit No. 0216012-001-JC (Modification No. **0216012-008-EM**). That minor modification authorized emergency dredging of a hurricane-induced shoal by allowing the use of mechanical dredges (e.g., backhoe or clamshell equipment). Emergency dredging of the hurricane-induced shoal began September 22, 2006, and was completed on November 14, 2006. The activities authorized in Permit No. 0216012-001-JC (as modified) were incorporated into Permit No. 0216012-007-JC.

On June 8, 2007, the Department issued a de minimus exemption for the rehabilitation of the south jetty (File No. **0216012-009-EE**). The jetty rehabilitation was not conducted within one year of exemption issuance, and the de minimis exemption expired. The Department issued a second de minimus exemption for the rehabilitation work on December 9, 2008 (File No. **0216012-012-BE**). Demobilization of the construction equipment could not be completed by the beginning of turtle nesting season on March 1, 2009. Therefore, in consultation with the Florida Fish and Wildlife Conservation Commission (FWC), the Department issued Field Permit No. **PB-8024269** under the Coastal Construction Control Line Program on March 11, 2009, authorizing the clean-up operations and removal of equipment from the beach.

On February 8, 2008, the Department issued Permit Modification No. **0216012-010-EM**. Permit No. 0216012-007-JC inadvertently included manatee protection language that prohibited all in-water work at night. The modification clarified that although nighttime dredging using mechanical dredges was prohibited, other in-water activities were allowed if the Corps utilized extra caution and limited in-water activities at night to the maximum extent practicable.

The second maintenance dredging event under Permit Modification No. 0216012-007-JC began on April 4, 2008. The Contractor's delay in commencement, and a Town of Palm Beach restriction on work during evening and weekend hours, prevented the completion of beach placement operations by May 1, the beginning of marine turtle nesting season. On April 29, 2008, the Department issued Permit Modification No. **0216012-011-JN** to allow beach placement operations to continue into turtle nesting season by two weeks, through May 15. This modification was only in effect for the Spring 2008 event.

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On May 29, 2009, the Department issued Permit Modification No. **0216012-013-JN** to allow a one-time increase in the sand volume authorized for redistribution within the channel from 5,000 cubic yards to 15,000 cubic yards. The modification was requested to remove a shoal within the Lake Worth Inlet, between approximately Stations 43+00 and 47+00, which was preventing larger ships from entering Palm Beach Harbor. Routine maintenance dredging was planned for later in the summer of 2009, but action had to be taken immediately to restore design depths until the routine maintenance could occur. The Corps used their hopper dredge, the McFarland, to relocate the necessary material to deeper portions of the outer entrance channel, between Stations 0+00 and 20+00.

On October 22, 2009, a minor modification was requested to delete the pre-construction requirement for submittal of a vessel operations plan (VOP) or replace it with a more detailed list of information that would be required (File No. **216012-014-JN**). The Corps withdrew the request on May 14, 2010; however, the Department sent a letter on May 26, 2010, to clarify the information that the Department expects to receive as part of the VOP and/or the final Plans and Specifications for each event, in accordance with Specific Condition No. 4 of the permit.

On September 10, 2010, the Department issued Permit Modification No. **0216012-015-JN** to the Corps to remove the restriction on bed-leveling, adjust nighttime sea turtle nesting conditions and beach lighting conditions.

On January 31, 2012, the Department issued Permit Modification **0216012-016-JN** to allow an additional 2 feet of advanced maintenance dredging in the main entrance channel, from Sta. 30+00 to Sta. 47+00, for a total maximum depth of -41 feet MLLW (i.e., design depth of -37 feet MLLW, 2 feet of allowable overdredge, plus 2 feet of advanced maintenance). The modification also authorized the expanded settling basin to be enlarged by 50 feet to the west and 500 feet to the north. The basin would be dredged to a depth of -37 feet MLLW (i.e., design depth of -35 feet MLLW, plus 2 feet of allowable overdredge).

On September 27, 2013, the Department issued Permit Modification No. **0216012-017-JN** to require the continuation of rock removal efforts in the Town of Palm Beach following the unintentional placement of non-compliant material during the 2013 maintenance dredging event. Visual inspections for rock, and remediation through removal of observed rock, are required to be conducted quarterly or following a storm event along the length of the beach fill area used in the 2013 maintenance event.

On September 17, 2013, the Corps applied for a permit to expand the channels and basins associated with Palm Beach Harbor. Many of the design detail were unavailable at that time, so the application for a construction permit was converted to an application for a conceptual permit. However, the statute for Port Conceptual Permits required any associated proprietary authorizations to be approved by the Board of Trustees of the Internal Improvement Trust Fund. So, instead, the application was split into 2 applications: File No. **0216012-019-EC** was for the conceptual approval of the expansion of the navigation channels and turning basin, which did not

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require proprietary authorization; and File No. **0216012-018-JC** was for the construction of an expanded settling basin, a sheetpile extension of the north jetty and the beach/nearshore sand placement sites. The Corps later withdrew the applications for both the Joint Coastal Permit (File No. 0216012-018-JC) and the Conceptual Approval Environmental Resource Permit (File No. 0216012-019-EC) on June 17, 2014.

On July 3, 2014, the Department issued a Statutory Time Extension (File No. **0216012-020-JN**) to the Corps to extend the expiration date of Permit No. 0216012-007-JC by an additional two years. The new expiration date is March 17, 2017.

Justification

On February 27, 2013, the Department became aware that the dredging contractor for this project had placed sand on the beach and in the nearshore that contained rock, which was not in compliance with the permit or Rule 62B-41.007(2)(j), F.A.C. The Permittee then entered into a voluntary compliance agreement with the Department that required the initial mechanical removal of rock, quarterly inspections, post-storm inspections, continued remediation and reporting. On September 27, 2013, the permit was revised, through Modification No. 0216012-017-JN, to include the continuing compliance requirements noted above. One of those requirements was for the Permittee to get approval from FWC prior to any rock removal that would occur during the marine turtle nesting season.

The permit modification being requested at this time would adjust the timing of the inspections to occur outside the marine turtle nesting season. That would allow immediate rock remediation by eliminating the need for FWC coordination, except for post-storm cleanup that would occur during marine turtle nesting season.

Staff Assessment

The Corps has conducted three (3) beach inspections since rock was placed on the beach fill and in the nearshore. The most recent inspection identified 90 small rocks within the fill template. The number of inspections will be reduced from four (4) to two (2) per year, which will occur before and after sea turtle nesting season. This will allow inspection and simultaneous remediation without potential adverse impacts to marine turtle nesting or the need to coordinate with FWC. The storm-related compliance inspections and remediation requirements remain in effect, and the permit modification includes FWC coordination if the activities occur during the marine turtle nesting season.

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

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14. Rock Remediation. All rock contained within the fill material that was placed on the beach during the 2013 maintenance dredging event shall be removed from the beach and placed into a Department-approved rock disposal site, according to the following specifications:
- a. A visual inspection for rock shall be conducted ~~QUARTERLY~~ BIANNUALLY along the length of the beach fill area used in the 2013 maintenance event until all rock from that event has been removed from the beach.
 - b. In addition to ~~quarterly~~ biannual inspections, immediately following a storm event in the project area, a visual inspection for rock shall be conducted along the length of the beach fill area used in the 2013 maintenance event. If visible rock is found after a storm event during sea turtle nesting and hatching season, the Permittee shall contact the JCP Compliance Officer at the email address provided and FWC at marineturtle@myfwc.com to determine if remediation shall occur during turtle nesting season.
 - c. Remediation to remove all visible rock larger than 3/4 inch, within the defined beach fill area, ~~and shall be initiated within than 30 days of the date of inspection~~ shall occur simultaneously with each inspection, and shall be COMPLETED within 60 days prior to the commencement of sea turtle nesting season (March 1). ~~If visible rock is found during the nesting and hatching season, the Permittee shall contact the JCP Compliance Officer at the email address provided above and FWC at marineturtle@myfwc.com to determine if remediation shall occur during turtle nesting season.~~
 - d. Within 14 days following each inspection, an Inspection Report shall be prepared by the Permittee and submitted to the JCP Compliance Officer at JCPCCompliance@dep.state.fl.us. The report shall include the date of inspection, findings, progress made in the rock removal program, anticipated work/site management the description and planned dates for any remediation activities, and the information required in item 14.f. below. The reports shall continue to be submitted ~~quarterly~~ biannually until the Department has determined that all rock from the 2013 event has been removed.
 - e. If a remediation event occurs, a separate Remediation Report shall be prepared by the Permittee and submitted to the JCP Compliance Officer. The report shall include the dates that remediation occurred, a description of the work conducted (i.e. grading, mitigation, monitoring, management,

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maintenance, etc.), a copy of the permit drawings indicating where the remediation activities were conducted, the rock disposal location and the information required in item 14.f., below.

- f. All Inspection and Remediation Reports shall be submitted within 30 days of inspection or upon completion of remediation activities. The reports shall include a cover page indicating the permit number, project name, the Permittee's name, photographs taken from permanent stations and, if applicable, any anticipated work/site management for the next year. On the first page of the report, just below the title, the report shall also include the following certification statement by the individual who supervised preparation of the report: "This report represents a true and accurate description of the activities conducted." All reports shall be submitted to the following:

JCP Compliance Officer
JCPCCompliance@dep.state.fl.us

Florida Fish and Wildlife Conservation Commission
marineturtle@myfwc.com

- g. The Permittee may request termination of the rock monitoring and remediation requirement only after the Permittee has provided appropriate data to confirm that all rock from the 2013 maintenance event has been removed from the beach fill area.

Staff finds that the proposed modification is necessary, pursuant to Rule 62B-49.008(6), F.A.C., to remediate the rock that was placed on the beach. The modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the modification is necessary to minimize the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line and nesting sea turtles and hatchlings and their habitat, and that the modification 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, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **March 17, 2017**, expiration date, or other Specific Conditions or monitoring requirements of the permit. 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

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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

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 further modification of the permit 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 permit modification 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 under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

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. 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. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

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 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

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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.

In accordance with Rule 28-106.201, F.A.C., 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
- (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.

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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 permit modification 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.

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 Charles Grisafi by email at Charles.Grisafi@dep.state.fl.us or by telephone at (850)245-7594.

Sincerely,



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

MKS/cg

cc: Kristina May, DWRM
Martin Seeling, DWRM
Ralph Clark, DWRM
Roxane Dow, DWRM
Rob Buda, DWRM
Jennifer Coor, DWRM
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Paul Karch, Corps

FILING AND ACKNOWLEDGMENT

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



08/14/14

Deputy Clerk

Date