



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

## **CERTIFIED - RETURN RECEIPT REQUESTED**

January 23, 2013

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

**Permit Modification No. 0308009-004-JN  
Permit No. 0308009-001-JC, Volusia County  
Ponce de Leon Inlet Maintenance Dredging, Minor Modification**

Dear Mr. Summa:

Your request to modify Permit No. 0308009-001-JC was received on October 25, 2012, and has been reviewed by Department staff. The proposed permit modifications are to change the location of the nearshore disposal area and to allow nearshore placement more than one time. The nearshore disposal area authorized under Permit No. 0308009-001-JC has a landward edge along the -12-foot mean lower low water (MLLW) contour line and a waterward edge along the -18-foot MLLW contour line, and is located between Department monuments R-158 and R-161 (approximately 1.41 miles south of the Ponce de Leon Inlet south jetty). The proposed nearshore disposal area would be located closer to the shoreline, with a landward edge along the -8-foot MLLW contour line and a waterward edge along the -10-foot MLLW contour line, but would remain between R-158 and R-161. The proposal also includes revising the language of Specific Condition (SC) 1 by removing the one-time-only restriction on nearshore placement.

### **Permit History**

On August 3, 2012, the Department issued Joint Coastal Permit No. 0308009-001-JC to maintenance dredge material from the Ponce de Leon Inlet access channel, Inlet throat, and the north and south navigation channels, and to deposit the material in a nearshore disposal area located approximately 1 mile south of the Inlet. The permit authorized the Corps to place the dredge material in the nearshore disposal area one time only. Following the initial maintenance dredging event, beach-quality sand should 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 for the Biological Opinion by deleting beach placement of dredged material, which avoided the issues of the piping plover and the southeastern beach mouse. Therefore, beach placement would require a permit modification in order to allow review and approval of the placement activity and sites.

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 2 of 7**

For additional background regarding activities related to the project area, please see the Consolidated Notice of Intent to Issue a Joint Coastal Permit and Authorization to Use Sovereign Submerged Lands for Permit No. 0308009-001-JC at the following website:

[http://bcs.dep.state.fl.us/env-prmt/volusia/issued/0308009\\_Ponce\\_de\\_Leon\\_Inlet\\_Maintenance\\_Dredging/001-JC/Intent%20to%20Issue/071012%20Intent%20to%20Issue.pdf](http://bcs.dep.state.fl.us/env-prmt/volusia/issued/0308009_Ponce_de_Leon_Inlet_Maintenance_Dredging/001-JC/Intent%20to%20Issue/071012%20Intent%20to%20Issue.pdf)

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 allowing 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** to revise the language of SC 1 to be consistent with the Interagency Coordination Agreement for Civil Works Projects (2006); revise the language of SC 7 to adhere to the recommendations of the Florida Fish & Wildlife Conservation Commission; and to correct the project name and permit number in the document 'header' of the Final Order on pages 3, 5, 7, 9, 11, 13, and 15.

**Modification Justification and Staff Assessment**

The nearshore placement site was moved closer to shore in order to make the sand more available to the beach. The Permittee has provided the Department with reasonable assurance that relocating the nearshore disposal area closer to the shoreline is not anticipated to cause adverse impacts to water quality, submerged resources, or wildlife. The dredged material will be transferred from a small hopper dredge into the nearshore disposal area without disturbing the bottom.

Section 161.142(5), Florida Statutes, allows nearshore placement of dredged material from federal navigation projects. The language of SC 1 will be revised to include a contingency allowing additional nearshore disposal events if beach-quality material is not available or if economic constraints mandate nearshore disposal. A permit modification will be required for the preferred placement of beach-quality dredge material on the beach in order to address any wildlife issues.

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

**PROJECT DESCRIPTION:**

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 cubic yards of shoal material are expected

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 3 of 7**

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 1.41 miles south of the south jetty, for the initial maintenance dredging event only. 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 ~~for the~~ to placement of dredged beach-quality dredge material on the beach in order to complete that evaluation.

The project location shall be revised as follows:

**PROJECT LOCATION:**

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, with a landward edge along the -12 -8-foot mean lower low water (MLLW) contour line and a waterward edge along the -10-foot 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:

**SPECIFIC CONDITIONS:**

1. The Permittee and the Department, within their respective authorities and funding, shall ensure that beach compatible dredged material is placed on Florida's beaches, consistent with Florida's beach management plan adopted pursuant to Chapter 161, F.S. and other beneficial uses criteria as may be specified by the Department and applicable federal standards. The authorized activity includes ~~a one-time~~ placement of dredged beach-quality material in the nearshore disposal area. Future maintenance dredging events will be required to place beach-quality dredged material on the beach per the Ponce de Leon Inlet Management Plan of 1997 to the maximum extent practicable when sufficient beach-quality material and funding are available. ~~If the permittee desires to perform additional maintenance dredging events under this authorization, a~~ A permit modification will be necessary required to place beach-quality dredge material on the beach in order to complete that evaluation.

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 4 of 7**

2. Dredged material shall initially be placed at the ~~-12~~ -8-foot MLLW contour of the nearshore disposal area. When the ~~-12~~ -8-foot MLLW contour reaches capacity, the dredged material shall be deposited waterward in the disposal area, until the volume of material is exhausted, but shall not be placed seaward of the ~~-18~~ -10-foot MLLW contour.

The set of approved Permit Drawings will be revised as follows:

Plates 23 and 24 (dated February 2012) shall be replaced with the attached Plates 23 and 24 (dated October 2012).

After thorough review of your application, staff finds that the proposed modifications are not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed relocation of the nearshore disposal area 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 does not reduce the design adequacy of the project. Since the proposed modifications are not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modifications.

This letter of approval does not alter the August 3, 2022, expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings 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**

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

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 5 of 7**

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), Florida Administrative Code (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 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;

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 6 of 7**

- (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.

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

**Notice of Permit Minor Modification**  
**Permit Modification No. 0308009-004-JN**  
**Ponce de Leon Inlet Maintenance Dredging**  
**Page 7 of 7**

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 Kristina Evans at the letterhead address (add Mail Station 300) or by telephone at (850) 413-7765.

Sincerely,



Martin K. Seeling, Administrator  
Beaches, Inlets & Ports Program  
Division of Water Resources Management

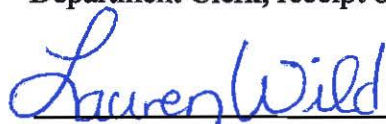
MKS/ke

Attachments: Plates 23 and 24 dated October 2012

cc: Russ Jones, USACE	Vladimir Kosmynin, DWRM
Cheryl Grieb, ECFRPC	Dave Herbster, DEP, Central District Office
Joie Alexander, Volusia County	David Kriger, CCCL Processor
Patricia Northey, Volusia County	Alex Reed, DWRM
Joyce Cusak, Volusia County	Guy Weeks, BECP Project Manager, DWRM
Daniel Fondren, DWRM	Wesley Cich, Field Inspector
Roxane Dow, DWRM	Robbin Trindell, FWC, ISMS
Martin Seeling, DWRM	Laura DiGruttlo, FWC, CPS
Kristina Evans, DWRM	<a href="mailto:MarineTurtle@MyFWC.com">MarineTurtle@MyFWC.com</a>
Robert Brantly, DWRM	<a href="mailto:FWCConservationPlanningServices@myfwc.com">FWCConservationPlanningServices@myfwc.com</a>
El Kromhout, DWRM	JCP Compliance Officer
Lt. Steve Van Nortwick, FWC, LE	DWRM File
Irene Sadowski, USACE	

**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.



Deputy Clerk

1-23-13

Date