



# Florida Department of Environmental Protection

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April 15, 2016

U.S. Army Corps of Engineers  
Environmental Branch  
Jacksonville District  
Post Office Box 4970  
Jacksonville, Florida 32232-0019

Permit Modification No. 0303186-004-JN  
Permit No. 0303186-001-JC, Duval County  
Jacksonville Harbor Maintenance Dredging

Dear Mr. Hollingsworth:

Your request to modify Permit No. 0303186-001-JC was received on April 11, 2016, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to revise the tilling and escarpment monitoring conditions to include extending the deadline to perform mechanical activities until April 30<sup>th</sup> and to extend the permit expiration date for 5 years.

On May 23, 2012, the Department issued Joint Coastal Permit No. **0303186-001-JC** to dredge shoal material annually from the Jacksonville Harbor Terminal Channel through Entrance Channel Bar Cut 3, and the West Blount Island Channel. Dredged material would be deposited in upland disposal areas, including Bartram Island, Buck Island, and/or another operational upland placement area; in an Ocean Dredged Material Disposal Site (ODMDS) authorized under the Marine Protection, Research, and Sanctuaries Act (MPRSA); in Huguenot Park; or within the South Beach Placement Area.

On May 23, 2012, the Department issued Variance No. **0303186-002-BV** to temporarily establish an expanded mixing zone of 600 meters for the areas adjacent to the dredging site within the Nassau River - St. John's River Marshes Aquatic Preserve, which is designated as Outstanding Florida Waters (OFWs) and a maximum allowable turbidity level of 6 NTUs above background at the edge of the mixing zone.

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For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit, Variance, And Authorization To Use Sovereign Submerged Lands* for Permit No. 0303186-001-JC and Variance No. 0303186-002-BV at the following website:

[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/duval/issued/0303186\\_Jax\\_Harbor\\_M\\_D/001-JC/Intent/Jax%20Harbor%20NOI%20120511.pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/duval/issued/0303186_Jax_Harbor_M_D/001-JC/Intent/Jax%20Harbor%20NOI%20120511.pdf)

On May 24, 2012, the Corps submitted a request, Application No. **0303186-003-JN**, to include additional dredging cuts and place the beach compatible material in the approved beach placement area. That request was withdrawn on June 11, 2012.

**Staff Assessment**

On March 15, 2016, the U. S. Fish and Wildlife Service (USFWS) amended their Endangered Species Act Coordination Letter. As a result, specific consideration was given to extend the end date for tilling and escarpment remediation from April 15<sup>th</sup> to April 30<sup>th</sup>. Clarifications regarding the vegetative areas to be avoided by these activities were also included in the letter. In order to maintain consistency between the respective Federal and State Authorizations for this project, the Department has coordinated with the Florida Fish and Wildlife Conservation Commission (FWC) and agreed to change the specific conditions, as shown below.

The 10-year permit for the Jacksonville Harbor Maintenance Dredging project was issued on May 23, 2012, and was set to expire on May 23, 2022. When the permit was issued, Rule 62B-49.011(2), F.A.C., limited the duration of a Joint Coastal Permit (JCP) to a maximum of 10 years. On November 19, 2015, Rule 62B-49.011(5), F.A.C., was revised to allow the Department to extend the duration of an active JCP for up to 15 years. Therefore, in accordance with Rule 62B-49.011(5), F.A.C., the Department will grant the Corps' request for a 5-year time extension of the permit expiration date, from May 23, 2022, to May 23, 2027.

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

23. Sand compaction shall be monitored in the area of sand placement immediately after completion of the project and prior to April ~~15<sup>th</sup>~~ 30<sup>th</sup> for 3 subsequent years;
24. Sand compaction shall be monitored in accordance with a protocol agreed to by the USFWS, FWC, and the applicant or local sponsor. At a minimum, the protocol provided under 24a. and 24b. below shall be followed. If tilling is required, the area shall be tilled to a depth of 36 inches. All tilling activity shall be completed prior to those dates listed above. (NOTE: The requirement for compaction monitoring can be eliminated if the decision is made to till regardless of post-construction compaction levels. Additionally, out-year compaction monitoring and remediation are not required if placed material no longer remains

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on the dry beach or if funding is not available.). Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling. If the project is completed during the marine turtle nesting season, tilling will not be performed in areas where nests have been left in place or relocated. If compaction measurements are taken, a report on the results of the compaction monitoring shall be submitted electronically to FWC at [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com) prior to any tilling actions being taken.

- a. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high water line (normal wrack line);
  - b. At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports will include all 18 values for each transect line, and the final 6 averaged compaction values;
  - c. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled ~~immediately prior to the following dates listed above~~ no later than April 30<sup>th</sup>;
  - d. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the FWC or USFWS will be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required;
  - e. Tilling shall occur landward of the wrack line, seaward of the dune walkovers, and shall avoid all vegetated areas 3 square feet or greater with a 3-foot square foot buffer around the vegetated areas. These areas shall be easily identifiable with staked flagging.
25. Visual surveys for escarpments along the project area shall be made immediately after completion of the sand placement project and during March 15 to April 15

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for 3 subsequent years if sand from the project area still remains on the beach and funding is available.

Escarpmnts that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled and the beach profile shall be reconfigured to minimize scarp formation by April 15 ~~30~~<sup>th</sup>. Any escarpment removal shall be reported by location. If the project is completed during the sea turtle nesting and hatching season, escarpments may be required to be leveled immediately, while protecting nests that have been relocated or left in place. FWC shall be contacted immediately if subsequent reformation of escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet occurs during the nesting and hatching season to determine the appropriate action to be taken. If it is determined that escarpment leveling is required during the nesting or hatching season, the USFWS or FWC will provide a brief written authorization that describes methods to be used to reduce the likelihood of impacting existing nests. An annual summary of escarpment surveys and actions taken shall be submitted electronically to [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com) along with the annual summary as described below. (NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach or if funding is not available).

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, we are notifying all necessary parties of the modification.

This letter of approval extends the expiration date of the permit from May 23, 2022, to **May 23, 2027**. The only Specific Conditions of the permit that are altered by this modification are those stated above. 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 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

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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 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

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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 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 Florida Land and Water Adjudicatory Commission (FLAWAC) 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.

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If you have any questions regarding this matter, please contact Bobby Halbert by email at Robert.Halbert@dep.state.fl.us or by telephone at (850) 245-7667.

Sincerely,



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

cc: Michael Hollingsworth, USACE  
Tom Heal, City of Jacksonville  
Daryl Joseph, City of Jacksonville  
Joe Miller, Jacksonville Port Authority  
Marty Seeling, DEP  
JCP Compliance Officer, DEP

Trey Hatch, DEP NE District  
Tom Edwards, DEP  
Roxane Dow, DEP  
John Milio, USFWS  
Kellie Youmans, FWC

**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

4/15/2016

Date