



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 31, 2012

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

Permit Modification No. 0216012-016-BN
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 November 2, 2011, and has been reviewed by Department staff. The proposed permit modification is 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 application for this modification also requests reauthorization for the Expanded Settling Basin that would enlarge the existing settling basin by 50 feet to the west, 500 feet to the north. The Expanded Settling Basin would be dredged to a depth of -37 feet MLLW (i.e., design depth of -37 feet MLLW, plus 2 feet of allowable overdredge).

For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0216012-007-JC, dated July 28, 2006, available at the Bureau website:

http://bcs.dep.state.fl.us/env-prmt/palm_bch/issued/0216012_Palm_Beach_Harbor/007-JC/

BACKGROUND/HISTORY

On September 21, 2006, the Department issued Permit No. **0216012-007-JC**, which was a major modification of Permit No. **0216012-001-JC**, to the U.S. Army Corps of Engineers (USACE). Permit No. 0216012-007-JC authorized maintenance dredging of the entire navigation-related

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complex at Palm Beach Harbor/Lake Worth Inlet. However, because of conflicting information about sediment quality, the modified permit removed the authorization to construct the Expanded Turning Basin, which was previously authorized in Permit No. 0216012-001-JC. The *CONSOLIDATED NOTICE OF INTENT TO ISSUE A MAJOR MODIFICATION TO JOINT COASTAL PERMIT* stated that “further discussion and analysis of the sediment characteristics reported for the settling basin extension (not previously dredged) will be required before the Department is prepared to authorize the expansion of the settling basin.” 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 design 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 USACE 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. This major modification 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 impact (i.e., burial) of the patch hardbottom reef (approximately 0.12 acre) that was expected to occur at the nearshore placement site, between DEP reference monuments R-78 and R-79. This major modification also added shorebird protection conditions and updated the marine turtle protection conditions.

On September 14, 2006, immediately prior to the issuance of Permit No. 0216012-007-JC, the Department issued Permit Modification No. **0216012-008-EM**, which was a minor modification to Permit No. 0216012-001-JC. This minor modification was requested to facilitate emergency dredging of a hurricane-induced shoal by authorizing 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. Regular maintenance dredging under Permit No. 0216012-007-JC commenced on February 16, 2007, and continued until April 19, 2007.

On June 8, 2007, the Department issued a de minimus exemption for the rehabilitation of the south jetty (File No. **0216012-009-EE**). The USACE did not perform jetty rehabilitation within one year of exemption issuance, so the Department issued a second de minimus exemption for that 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, but the exemption was not valid after that date. Therefore, in consultation with the Florida Fish and Wildlife Conservation Commission (FWC), the Department issued Field Permit No. **PB-8024269** on March 11, 2009, to authorize clean-up operations and removal of equipment from the beach under the Coastal Construction Control Line program.

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Between July 26, 2007, and October 25, 2007, an 0.8-acre artificial reef was constructed offshore of the Town of Palm Beach, approximately 1500 feet east of DEP monument R-105, at depths of -21 feet to -26 feet (NAVD), as required by Permit No. 0216012-007-JC. Upon demonstration of success, this reef is expected to offset the impacts to the 0.12-acre patch hardbottom in the vicinity of R-78 and R-79 associated with the nearshore disposal of material dredged from Lake Worth Inlet (Palm Beach Harbor).

On February 8, 2008, the Department issued a minor modification (Permit Modification No. **0216012-010-EM**) to correct an error in Permit No. 0216012-007-JC by removing unintended manatee protection language that prohibited all in-water work at night.

The second maintenance dredging event under Permit 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. Therefore, after consultation with FWC, on April 29, 2008, the Department issued Permit Modification No. **0216012-011-JN** to extend beach placement operations into turtle nesting season by two weeks, through May 15. This modification was only in effect for the Spring of 2008 event.

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 issued 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 USACE 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, the Permittee requested a minor modification 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 Permittee withdrew the request on May 14, 2010, but the Department issued 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.

On September 10, 2010, the Department issued Permit Modification No. **0216012-015-JN** to remove the restriction on bed-leveling (Specific Condition 9.o.). A slight adjustment was also proposed to clarify that construction lighting shall be minimized during the entire turtle nesting period (Specific Condition 9.e.), and that hourly nighttime monitoring for turtle nests does not need to begin for a given season until the first leatherback turtle crawl is documented in the vicinity of the Lake Worth Inlet (Specific Condition 9.c.v.).

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On November 2, 2011, the USACE applied for Permit Modification No. 0216012-016-BN, which is the subject of this letter, to allow an additional 2 feet of advanced maintenance dredging in the entrance channel, from Sta. 30+00 to Sta. 47+00, and to reauthorize the Expanded Settling Basin.

Since the Expanded Settling Basin was previously authorized in 2005, under Permit No. 0216012-001-JC, the Department had already evaluated the potential for adverse impacts at that time. Authorization to construct the Expanded Settling Basin had been rescinded in 2006, under Permit No. 0216012-007-JC, only because of conflicting information about sediment quality. For the current application, the Department reevaluated the sand quality at the proposed settling basin, as well as the advanced maintenance material that would be dredged from the main entrance channel, and has found the material to be beach-compatible. Therefore, this modification is not expected to cause any adverse impacts.

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

PROJECT DESCRIPTION:

The project is to expand the settling basin and maintenance dredge the entire navigation-related complex at Palm Beach Harbor/Lake Worth Inlet to the following specifications:

Location	Depth + Overdredge (below MLW)	USACE Boundaries* (Approximate)
Settling Basin (Southern)	35 feet + 2 feet	Rge (000 to -100825), Stn (32.0 to 37.5)
<u>Extended</u> Settling Basin (Northern)	<u>35 feet + 2 feet</u> 29 feet + 1 foot	Rge (-100825 to -300975), Stn (32.0 to 37.0 <u>5</u>)
<u>Expanded Settling Basin</u>	<u>35 feet + 2 feet</u>	<u>Rge (-300 to -800), Stn (32.0 to 37.5)</u>
Entrance Channel (Outer)	35 feet + 2 feet	Rge (000 to 400), Stn (25.0 to 30.0)
Entrance Channel (Main)	<u>39 feet + 2 feet</u> 37 feet + 2 feet	Rge (000 to 400), Stn (30.0 to 47.0 <u>56.0</u>)
<u>Entrance Channel (Main)</u>	<u>37 feet + 2 feet</u>	<u>Rge (000 to 400), Stn (47.0 to 56.0)</u>
Inner Channel	33 feet + 2 feet	Rge (000 to 400), Stn (56.0 to 86.0)
Turning Basin (Main)	33 feet + 2 feet	Rge (-140 to 1600), PI Stn (-1.4 to 17.2)
Turning Basin (Northern)	25 feet + 1 foot	Rge (-500 to 150), PI Stn (10.1 to 19.6)

* Reference from USACE plans. Rge interval = one foot, Stn interval = 100 feet.

Dredged material will be placed within the beach template, which includes both the dry beach and the nearshore area landward of the -17-foot mean low water (MLW) contour. The berm will have an elevation of approximately +8.7 feet (MLW), with a 1V:20H seaward slope. Placement of material will begin immediately south of the south jetty, and proceed in a southerly direction. If, during a single dredging event, the beach

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template immediately south of the Lake Worth Inlet becomes filled, beach-quality sand may be placed within the Mid-Town template, in accordance with Permit Modification No. 0164713-002-EM. Within the entrance channel (between USACE Stations 25.0 to 56.0), shoals of less than 5,000 cubic yards may be transferred to deeper parts of the channel to temporarily alleviate navigational hazards. An artificial reef will be constructed to offset the impact (i.e., burial) of the patch hardbottom reef (approximately 0.12 acre) between DEP reference monuments R-78 and R-79. ~~Authorization to dredge is currently limited to maintenance only; a permit modification is necessary prior to expansion of the settling basin.~~

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 requested. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **March 17, 2015** 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 subject to the result of the administrative review process. Accordingly, the applicant is advised

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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;
- (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

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- 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.

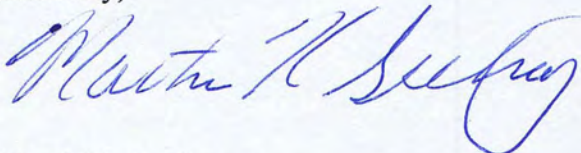
This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office 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 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 Molly Edson at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7798.

Sincerely,



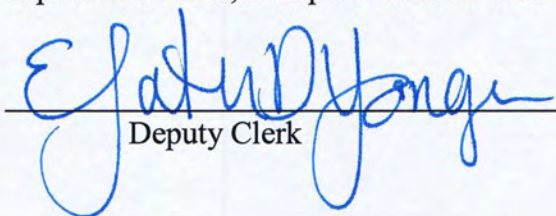
Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/mte

cc: Russel Jones, USACE, Jacksonville	Jennifer Smith, DEP, SE District
James McAdams, USACE, Jacksonville	Gene Chalecki, BBCS
Ivan Soto, USACE, Jacksonville	Laine Edwards - BBCS
Rob Weber, Town of Palm Beach	Robert Brantly, BBCS-CE
Dan Bates, Palm Beach County ERM	Paden Woodruff, BBCS-BECP
Manual Almira, Port of Palm Beach	Alex Reed, BBCS-BECP
Robbin Trindell, FWC, ISMS	Roxane Dow, BBCS-BECP
Major David Stermen, FWC, South Region A	Benjamin (Rob) Buda, BBCS-BECP
Jeffrey Howe, USFWS, Vero Beach	Mark Taynton, BBCS-CCCL
Jocelyn Karazsia, NMFS, West Palm Beach	JCP Compliance Officer
BBCS Permit File	

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.

 1/31/12
Deputy Clerk Date