



# Florida Department of Environmental Protection

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## CONSOLIDATED MAJOR MODIFICATION OF JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

### PERMITTEE:

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

### PERMIT INFORMATION:

Permit Number: 0216012-024-JM  
  
 Project Name: Palm Beach Harbor Maintenance  
 Dredging and Bypassing  
  
 County: Palm Beach  
  
 Issuance Date: June 27, 2017  
  
 Expiration Date: March 17, 2020

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### REGULATORY AUTHORIZATION:

This major modification to Permit No. 0216012-007-JC is issued under the authority of Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity. This major modification, hereafter referred to as Permit No. 0216012-024-JM, supersedes Permit No. 0216012-007-JC. The Changes to Permit No. 0216012-007-JC will not be tracked in this new permit.

### PROJECT DESCRIPTION:

The project is to 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 -100), Stn (32.0 to 37.5)
Extended Settling Basin	35 feet + 2 feet	Rge (-100 to -300), Stn (32.0 to 37.0)
Expanded Settling Basin	35 feet +2 feet	Rge (-300 to -800), Stn (32.0 to 37.5)

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Entrance Channel (Outer)	35 feet + 2 feet	Rge (000 to 400), Stn (25.0 to 30.0)
Entrance Channel (Main)	39 feet + 2 feet	Rge (000 to 400), Stn (30.0 to 47.0)
Entrance Channel (Main)	37 feet + 2 feet	Rge (000 to 400), Stn (47.0 to 56.0)
Inner Channel	33 feet + 2 feet	Rge (000 to 400), Stn (56.0 to 86.0)
Turning Basin (Main)	33 feet + 2 feet	Rge (-140000 to 1600), PI Stn (-1.4 to 17.2)
Turning Basin (Northern)	25 feet + 1 foot	Rge (-500 to 150080), 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, from the southern jetty to R-80.35, 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 template immediately south of the Lake Worth Inlet becomes filled, beach-quality sand may be placed within the Mid-Town template, in accordance with the Beach Management Agreement (BMA), File number 0328802-001-BMA. 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.

**PROJECT LOCATION:**

Dredging activity is located at or adjacent to Lake Worth Inlet, within Sections 34 and 35 Township 42 South, Range 43 East. The nearshore disposal template and the beach fill template in Reaches 1 and 2 are located immediately south of the jetty, between DEP reference monuments R-76 and R-80.35, Sections 34 and 3, Township 42 and 43 South, Range 43 East. The Mid-Town beach fill template is located in Reaches 3 and 4, between R-89 and R-102, Sections 14, 23, and 26, Township 43 South, Range 43 East. All activities are within Palm Beach County, Lake Worth Inlet, Lake Worth Lagoon (Atlantic Intracoastal Waterway) or the Atlantic Ocean, Class III Waters, **not** Outstanding Florida Waters.

**PROPRIETARY AUTHORIZATION:**

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253, F.S., Chapter 18-21 and Section 62-330.075, F.A.C., and the policies of the Board of Trustees.

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The Department has also determined that the beach and nearshore placement activity qualifies for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted to the Town of Palm Beach, the project's local sponsor, pursuant to Chapter 253.77, F.S., on behalf of the U.S. Army Corps of Engineers (Corps) to perform the activity on the specified sovereign submerged lands.

The Department acknowledges that the dredging of the channel, the settling basin and the turning basin falls within one of the federal powers listed in the Submerged Lands Act under 43 United States Code (USC) § 1311(d) or 43 USC § 1314, and, under those provisions, the Corps needs no authorization from the Board of Trustees to utilize sovereignty submerged lands for that activity. However, under the provisions of the Coastal Zone Management Act (16 USC §§ 1451-1465), this activity requires Florida's concurrence with a determination of consistency with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program prior to federal approval of the proposed activity. The State has determined that the activity is consistent with the sovereignty submerged lands provisions of Florida's approved Coastal Management Program.

**COASTAL ZONE MANAGEMENT:**

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

**WATER QUALITY CERTIFICATION:**

This permit constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

**LOCAL SPONSOR AGREEMENT:**

The Department has entered into a contractual agreement with the local project sponsor, the Town of Palm Beach, under which the Town of Palm Beach will be responsible for conducting the required hardbottom, shorebird and marine turtle monitoring at the beach or nearshore placement sites, for any required beach maintenance activities, and for any hardbottom mitigation that might be needed to offset unexpected hardbottom impacts. While some of these construction phase conditions are listed in this permit, all of these conditions are listed in the Local Sponsor Agreement (LSA), which references the Palm Beach Island Beach Management Agreement (BMA). As the beach placement component of the Palm Beach Harbor Maintenance Dredging Project is an approved activity listed under the BMA, the BMA contains relevant conditions for beach placement. The LSA is enforceable against the Town of Palm Beach and is independent of this permit.

**AGENCY ACTION:**

The above-named Permittee is hereby authorized to construct the work that is outlined in the Project Description and Project Location of this permit and as shown on the approved permit drawings, plans and other documents attached hereto. This agency action is based on the information submitted to the Department as part of the permit application, and adherence with

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the final details of that proposal shall be a requirement of the permit. **This permit and authorization to use sovereign submerged lands are subject to the General Conditions, General Consent Conditions and Specific Conditions, which are a binding part of this permit and authorization.** Both the Permittee and their Contractor are responsible for reading and understanding this permit (including the permit conditions and the approved permit drawings) prior to commencing the authorized activities, and for ensuring that the work is conducted in conformance with all the terms, conditions and drawings.

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**GENERAL CONDITIONS:**

1. This permit, including its general and specific conditions, must be construed in light of the February 28, 2006, Interagency Coordination Agreement for Civil Works Projects (ICA) between the Department and the Corps. As recognized in the ICA, the Department has the authority to include reasonable conditions in this permit. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t). The ICA is incorporated herein by reference.
2. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The Corps shall notify the Department in writing of any anticipated changes in:
  - a. operational plans;
  - b. project dimensions, size or location;
  - c. ability to adhere to permit conditions;
  - d. project description included in the permit;
  - e. monitoring plans.

If the Department determines that a modification to the permit is required then the Corps shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the Department to reduce the scope of work from that authorized under the original permit, and will not affect compliance with permit conditions or monitoring requirements.

3. If, for any reason, the Corps does not comply with any condition or limitation specified herein, the Corps shall immediately provide the Department with a written report containing the following information:
  - a. a description of and cause of noncompliance;

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- b. the period of noncompliance, including dates and times;
- c. impacts resulting or likely to result from the non-compliance;
- d. steps being taken to correct the non-compliance; and
- e. the steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any non-compliance.

- 4. The Corps shall obtain any applicable licenses, permits, or other authorizations which may be required by federal, state, local or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
- 5. Nothing herein conveys to the Corps or creates in the Corps any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgment of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
- 6. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under section 373.421(2), F.S., provides otherwise.
- 7. Nothing herein authorizes any entrance upon or activities on property which is not owned or controlled by the Corps or local sponsor, or conveys any vested rights or any exclusive privileges.
- 8. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The Corps shall require the contractor to review this document prior to commencement of the authorized activity.
- 9. The Corps specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with Corps specified safety standards access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor

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any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.

10. At least forty-eight (48) hours prior to the commencement of authorized activity, the Corps shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.
11. If historic or archaeological artifacts such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time on the project site, the Corps shall immediately stop all activities in the immediate area which disturb the soil and notify the Department and the State Historic Preservation Officer. In the event that unmarked human remains are encountered during permitted activities, all work shall stop in the immediate area and the proper authorities notified in accordance with Section 872.05, *Florida Statutes*.
12. Within a reasonable time after completion of construction activities authorized by this permit, the Corps shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the Corps.

**GENERAL CONSENT CONDITIONS (for local sponsor):**

1. Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
2. Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
4. Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
5. Construction, use or operation of the structure or activity shall not adversely affect any species that is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

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6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
7. Structures or activities shall not create a navigational hazard.
8. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident or fire.
9. Structures or activities shall be constructed, operated and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

**SPECIFIC CONDITIONS:**

1. All reports or notices relating to this permit shall be electronically submitted to the Department's JCP Compliance Officer (e-mail address: [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us)) unless otherwise specified in the specific conditions of this permit.
2. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storage, stockpiling or access of equipment on, in, over or through beds of submerged aquatic vegetation, wetlands or hardbottom is prohibited unless it occurs within a work area or ingress/egress corridor that is specifically approved by this permit and is shown on the approved permit drawings.
3. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
4. **Pre-construction Submittals.** At least 21 days prior to construction, the Permittee shall submit the following for review by the Department:
  - a. An electronic copy of detailed *final construction plans and specifications* for all authorized activities. The plans and specifications must be consistent with the project description of this permit and the attached permit drawings, and shall also be certified, as specified in the February 28, 2006, Interagency Coordination Agreement for Civil Works Projects (ICA) between the Department and the Corps. The Corps shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes would require a permit modification. The plans and

specifications shall include a description of the dredging and construction methods to be utilized and drawings and surveys that show all biological resources and work spaces (e.g., anchoring areas, pipeline corridors, staging areas, boat access corridors, etc.) to be used for this project;

- b. ***Turbidity monitoring qualifications.*** The names and qualifications of those individuals performing the turbidity monitoring, along with 24-hour contact information. These shall be individuals who are independent of the dredging contractor and the design engineer, with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. These individuals shall be responsible for notifying the Corps' Contacting Officer regarding turbidity exceedances so the dredging or beach construction operations can be shut down, and construction techniques can be altered if necessary;
  - c. A ***Scope of Work*** for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions; and
  - d. A detailed ***Physical Monitoring Plan*** subject to review by the Department.
  - e. ***Proof of Publication.*** Proof of Publication of the Intended Agency Action for Permit No. 0216012-024-JM. Proof of Publication shall be submitted to the Department within 21 days of publication.
5. **Pre-Construction Conference.** The Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with Permittee's contractors, the engineer of record, those responsible for turbidity monitoring and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least 21 days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

JCP Compliance Officer  
e-mail: [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us)

Imperiled Species Management Section  
Florida Fish & Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
phone: (850) 922-4330  
fax: (850) 921-4369 or email: [marineturtle@myfwc.com](mailto:marineturtle@myfwc.com)

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The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

6. In the event that the Town of Palm Beach, the local sponsor for this project, does not conduct all necessary marine turtle protection and monitoring requirements, the Permittee is still responsible for those marine turtle protection measures specified by the applicable U. S. Fish & Wildlife Service (FWS) Biological Opinion and the Local Sponsor Agreement (LSA) for this project.
7. 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.
8. When discharging slurried sand onto the beach from a pipeline, the Permittee shall employ best management practices (BMPs) to reduce turbidity. At a minimum, these BMPs shall include the following:
  - a. Use of shore-parallel sand dike to promote settlement of suspended sediment on the beach before return water from the dredged discharge reenters the Atlantic Ocean; and
  - b. A minimum set-back of 50 feet from open water, or at the landward end of the beach berm (without disturbing the dune), whichever is less, for the pipeline discharge location.
9. Sediment quality shall be assessed as outlined in the attached Sediment QA/QC Plan, approved on July 20, 2006. Placement of material that is not in compliance with the Plan shall be handled according to the protocols set forth in the Sediment QA/QC Plan. The sediment testing result shall be submitted to The Department within 90 days following the completion of beach construction. The following requirements are included in the Sediment QA/QC Plan:
  - a. If, during construction, the Permittee determines that the beach fill material does not comply with the sediment compliance specifications, the Permittee shall take measures to avoid further placement of noncompliant fill, and the sediment inspection results shall be reported to the Department.
  - b. The Permittee shall submit post-construction sediment testing results and an analysis report as outlined in the Sediment QA/QC Plan to the Department within

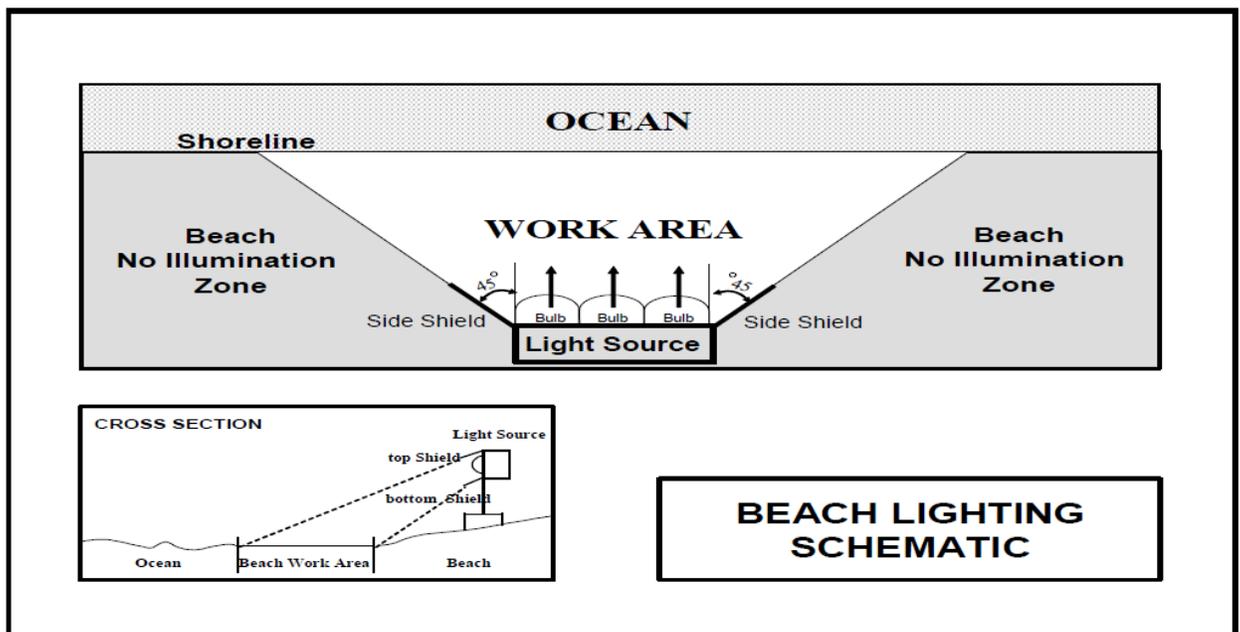
90 days following beach construction. The sediment testing results shall be certified by a P.E. or P.G. from the testing laboratory. A summary table of the sediment samples and test results for the sediment compliance parameters, as outlined in Table 1 of the Sediment QA/QC Plan, shall accompany the complete set of laboratory testing results. A statement of how the placed fill material compares to the sediment analysis and volume calculations from the geotechnical investigation shall be included in the sediment testing results report.

- c. A post-remediation report containing the site map, sediment analysis, and volume of noncompliant fill material removed and replaced shall be submitted to the Department within 7 days following completion of remediation activities.
10. Beach placement activities are also authorized under the Palm Beach Island Beach Management Agreement (BMA), and are subject to the terms and conditions of Permit No. 0328802-001-BMA and any associated modifications. Therefore, the LSA requires turtle and shorebird monitoring as well as monitoring of hardbottom adjacent to the expanded template and references hardbottom monitoring permit conditions in the BMA for beach placement. The Permittee is not responsible for post-construction monitoring or mitigation under this permit (No. 0216012-024-JM); however, the Sediment QA/QC Plan adopted under this permit shall still apply.
  11. **Marine Turtle Protection.** The Permittee shall adhere to the following sea turtle protection measures:
    - a. All fill material placed shall be sand that is similar to that already existing at the beach site in both coloration and grain size distribution and suitable for marine turtle nesting. All such fill material shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than ten (10) percent fines (i.e., silt and clay) (passing the #230 sieve) and shall not exceed 5 percent of gravel or cobbles retained on the 3/4 sieve, or in a percentage or size greater than found on the native beach, whichever is less. At the Mid-Town disposal location, fines shall not exceed five (5) percent by weight.
    - b. Beach nourishment or sand placement on the beach shall be started after October 31 and be completed before May 1. During the May 1 through October 31 period, no construction equipment or pipes shall be stored on the beach.
    - c. If the beach nourishment will be conducted during the period from March 1 through April 30, the following conditions apply to the Local Sponsor:
      - i. A daily marine turtle nest survey of the nesting beach in the vicinity of the project (including areas of beach access) shall be conducted starting March 1 and continue until October 31. Only those nests that may be affected by construction activities shall be relocated. Nests requiring relocation shall be

- moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.
- ii. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left in place unless other factors threaten the success of the nest. Such nests will be marked and the actual location of the clutch determined. A circle with a radius of ten (10) feet, centered at the clutch, shall be marked by stake and survey tape or string. No construction activities shall enter this circle and no adjacent construction shall be allowed which might directly or indirectly disturb the area within the staked circle. Marked nest sites must be inspected daily during beach placement activities to ensure that nest markers remain in place and that the nest has not been disturbed by the construction.
  - iii. No construction activity may commence on any previously undisturbed section of adjacent beach more than 50 feet from the active work site until completion of the marine turtle survey each day unless provisions have been made for nighttime monitoring. This includes the performance of a survey immediately prior to movement of equipment onto a previously darkened section of beach, and the establishment of proper lighting prior to work in that section.
  - iv. It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nesting surveys, nest relocations screening or caging activities etc. shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by the Florida Fish & Wildlife Conservation Commission (FWC), pursuant to Florida Administrative Code 68E-1.
  - v. After March 1, or the date when the first leatherback sea turtle crawl is documented within one (1) mile north or south of Lake Worth Inlet, whichever is later, nighttime surveys for leatherback sea turtle nests shall be performed until beach placement operations have ceased and all equipment is removed from the beach. Nesting surveys must be conducted nightly from 9 P.M. until 6 A.M. The project area must be surveyed at one-hour intervals and eggs must be relocated per the preceding requirements. Because leatherbacks require at least 1.5 hours to complete nesting, this will ensure that all nesting leatherbacks are encountered.
- d. If the beach nourishment project will be conducted during the period from November 1 through November 30, daily early morning sea turtle nesting surveys

shall be conducted 65 days prior to project initiation and continue through September 30, and eggs shall be relocated per the preceding requirements.

- e. From March 1 through November 30, all project lighting shall be limited to the immediate area of active construction only and shall be the minimal lighting necessary to comply with U.S. Coast Guard and/or OSHA requirements. Stationary lighting on the beach and all lighting on the dredge shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to minimize illumination of the nesting beach and water (Figure 1).



**Figure 1.**

- f. From March 1 through April 30 and November 1 through November 30, staging areas for construction equipment shall be located off the beach to the maximum extent possible. Nighttime storage of construction equipment not in use shall be off the beach to minimize disturbance to sea turtle nesting and hatching activities. 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.
- g. If only the nearshore template can be used during a given dredging event (i.e., no placement of material upon the dry beach), any placement of sand in the subtidal zone shall be accomplished such that no exposed sandy berm is created. Creation of a wide, shallow intertidal zone at or immediately adjacent to the berm shall also be avoided. Sand should be placed at or below mean low water.

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- h. Immediately after completion of each fill placement event, the beach shall be tilled to a depth of 36 inches. If the project is completed during the marine turtle nesting season, tilling shall not occur in areas where nests have been left in place or relocated unless authorized by the FWS in an Incidental Take Statement. A report on the results of compaction monitoring shall be submitted to the FWC prior to any tilling actions being taken. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.
- i. Visual surveys for escarpments along the beach fill area and landward of any in-water placement shall be made immediately after completion of the beach nourishment or sand placement. All scarps shall be leveled or the beach profile shall be reconfigured to minimize scarp formation.
- j. Reports on all nesting activity shall be provided for the initial nesting season on both the nourished beach and an adjacent control area of equal length. Reports submitted shall include daily report sheets noting all activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place (if any), dates of construction and names of all personnel involved in nest surveys and relocation activities. Data should be reported separately for the nourished areas and for an equal length of adjacent beach that is not nourished in accordance with the table below. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets). All reports should be submitted by January 15 of the following year.

Characteristic	Parameter	Measurement	Variable
Nesting Success	False crawls – number	Visual assessment of all false crawls	Number and location (i.e., fill or control or not filled) of false crawls
	False crawl – type	Categorization of the stage at which nesting was abandoned	Number in each of the following categories: emergence-no digging, preliminary body pit, abandoned egg chamber
	False crawls & nests – location	The location of every false crawl and false nest shall be marked on an aerial photograph and referenced to the R-monument	Position of false crawl and nest and mapped locations
	Nests	Location of all marine turtle nests shall be marked on an aerial photograph, and approximate distance to the tide or wrack line estimated	Number and location, (i.e., fill or control or not filled) of nests, distance to wrack line (recommended). Any abnormal cavity morphologies should be reported.
		Lost Nests	The number of marked nests lost to inundation, erosion or the number of inundated nests or the

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			number with lost markers that could not be relocated
Reproductive Success	Emergence & hatching success	Standard survey protocol	Numbers of the following: unhatched eggs, depredated eggs, live pipped eggs, dead pipped eggs, live hatchlings in nest, dead hatchlings in nest, hatchlings emerged as well as the number of inundation events. Depth from surface to top and bottom of nest cavity should also be reported.

- k. The Permittee shall arrange a meeting between representatives of the contractor, the Department, the FWC, and the permitted person responsible for egg relocation at least 30 days prior to the commencement of work on this project. At least seven (7) days advance notice shall be provided prior to conducting this meeting. This will provide an opportunity for explanation and/or clarification of the sea turtle protection measures. This meeting may be combined with the Pre-Construction Meeting required by Specific Condition 5 above.
  - l. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately and the permitted person responsible for egg relocation for the project should be notified so the eggs can be moved to a suitable relocation site.
  - m. In the event a hopper dredge is utilized for sand excavation, all conditions in the NMFS Biological Opinion for hopper dredging along the SE U.S. Atlantic Coast shall be followed, and the FWC shall be sent copies of the reports specified in the Biological Opinion.
  - n. Upon locating a dead, injured, or sick endangered or threatened sea turtle specimen, initial notification must be made to the FWC at 1-888-404-FWCC. Care should be taken in handling sick or injured specimens to ensure effective treatment and care and in handling dead specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered or threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
  - o. If a bed-leveling device is used for this project, the Permittee shall submit, with the Notice of Completion referenced in General Condition No. 12, a summary of specific dates, times and locations that bed leveling was under way.
12. **Shorebird Protection.** The Permittee’s Local Sponsor shall adhere to the following shorebird protection measures
- a. Selection of Bird Monitors. A list of Bird Monitors shall be provided to the FWC, along with their contact information and a summary of their qualifications,

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including bird identification skills and avian survey experience. This information shall be submitted to the FWC Regional Biologist (see contacts available at <http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/>) for review and consultation prior to any construction or shorebird surveys. Bird Monitors shall meet the following minimum qualifications.

- b. The shorebird nesting season is generally April 1 to September 1, but some nesting may occur through September.
  - i. Nesting season surveys shall begin on April 1, or 45 days prior to construction commencement, whichever is later, and shall be conducted daily throughout the construction period.
  - ii. Post-construction surveys shall be required if shorebird nesting is documented on site. These surveys shall be continued by the local sponsor, the Town of Palm Beach, for the year of construction if fill material is placed in the nearshore zone and for one additional year post-construction if material is placed on the beach. Post-construction surveys shall be conducted on a weekly basis through the nesting and hatching season to document if nesting occurred on site and the fate of eggs, nestlings, or fledglings in the project area.
  - iii. The following information shall be logged and reported monthly to the FWC Regional Biologist: each shorebird species observed, a rough estimate of numbers of each species, the location of the birds, and their activity (e.g., foraging, resting, nesting, courtship behavior).
- c. Within the project area, the Permittee shall establish a 300 foot-wide buffer zone around any location where shorebirds have been engaged in courtship or nesting behavior, or around areas where piping plovers occur or winter migrants congregate in significant numbers. Any and all construction activities, including movement of vehicles, should be prohibited in the buffer zone.
  - i. The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.
  - ii. Site-specific buffers may be implemented upon approval by FWC, as needed.
  - iii. Designated buffer zones shall be posted with clearly marked signs around the perimeter. These signs shall be maintained until nesting is completed or terminated, the chicks fledge, or piping plovers or winter migrants depart.
  - iv. No construction activities or stockpiling of equipment shall be allowed within the buffer area.

- v. FWC-approved travel corridors shall be designated and marked outside the buffer areas. Heavy equipment, other vehicles, or pedestrians may transit past nesting areas in these corridors. However, other activities such as stopping or turning shall be prohibited within the designated travel corridors adjacent to the nesting site.
  - vi. Where such a travel corridor must be established within the project area, it shall avoid critical areas for shorebirds (known nesting sites, wintering grounds, FWC-designated Critical Wildlife Areas, and FWS-designated critical piping plover habitat) as much as possible, and be marked with signs clearly delineating the travel corridor from the shorebird buffer areas described above.
  - vi. To the degree possible, the Permittee should maintain some activity within these corridors on a daily basis, without directly disturbing any shorebirds documented on site or interfering with sea turtle nesting, especially when those corridors are established prior to commencement of construction. Passive methods to modify nesting site suitability must be approved by the FWC Wildlife Diversity Conservation Biologist for that region.
- d. If shorebird nesting occurs within the project area, a bulletin board shall be placed and maintained in the construction area with the location map of the construction site showing the bird nesting areas and a warning, clearly visible, stating that “BIRD NESTING AREAS ARE PROTECTED BY THE FLORIDA THREATENED AND ENDANGERED SPECIES ACT AND THE FEDERAL MIGRATORY BIRD ACT”.
- e. **Beach Contours.** All tilling and scarp removal shall be accomplished outside the shorebird nesting season. If necessary, contractors shall contact the FWC Regional Wildlife Diversity Conservation Biologist at 561-625-5122 to obtain data on known shorebird nesting areas. It is the responsibility of the Permittee and their contractors to avoid tilling or scarp removal in areas where nesting birds are present.
- i. A relatively even surface, with no deep ruts or furrows, shall be created during tilling. To do this, chain-linked fencing or other material shall be dragged over those areas as necessary after tilling.
  - ii. The slope between the mean high water line and the mean low water line shall be maintained in such a manner as to approximate natural slopes.
13. **Manatee Protection.** The Permittee shall comply with the following manatee protection construction conditions:

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- a. The Permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- b. The Permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.
- c. Dredging operations shall be conducted in such a manner and suspended as necessary to preclude impacting and/or avoiding collisions with manatees. All vessels should proceed in a cautionary manner that enables an on-board watch to look for manatees. The observer(s) shall contact the captain of the vessel in order to reduce the speed or alter the course, as necessary, should any manatees be observed. For the smaller boats associated with this project, the vessel operator can fulfill this requirement.
- d. Shallow draft vessels, preferably of the light-displacement type, shall be used whenever practicable for transporting personnel to and from the dredge.
- e. Siltation barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.
- f. Inner Channel, Turning Basin, Extended Basin, Entrance Channel and Settling Basin construction/dredging shall be allowed year round, with the use of manatee observer(s) during the duration of the project that coincides with the aggregation of manatees at the power plant (November 15 through March 31). During this time, vessel movement at night within the Inner Channel, Turning Basin, and Extended Basin shall be minimized to the greatest extent practicable, since the possibility of spotting animals is negligible. All vessels shall travel at speeds no greater than idle speed while inshore.
- g. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
- h. Observer(s) must be placed aboard the dredging equipment to maintain a watch for manatees during dredging operations and during the dredge transit to and from the disposal site. At least one manatee observer shall be posted to observe the presence

of animals for every large vessel/barge utilized. At least one person shall be designated as a manatee observer when in-water work is being performed. That person shall have experience in manatee observation. The manatee observer shall be on site during all in-water construction activities, and shall advise personnel to cease operations upon sighting a manatee within 50 feet of any in-water construction activity.

- i. If a manatee(s) is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities shall not resume until the manatee(s) has departed the project area of its own volition.
  - j. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. Collision and/or injury should also be reported to the FWS in Vero Beach (1-772-562-3909).
  - k. Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the Permittee upon completion of the project. A sign measuring at least 3 feet by 4 feet, which reads *Caution: Manatee Area* shall be posted in a location prominently visible to water related construction crews. A second sign shall be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign shall be at least 8 ½" by 11", which reads *Caution: Manatee Habitat*. Idle speed is required if operating a vessel in the construction area. All equipment shall be shutdown if a manatee comes within 50 feet of operation. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC. FWS should also be contacted in Vero Beach (1-772-562-3909).
  - l. For use of mechanical dredges, the Permittee must acquire written approval from the Department, in consultation with FWC. The Department may require the submittal of additional information in order to approve the use of a mechanical dredge for a particular project.
  - m. If mechanical dredges (e.g., backhoe or clamshell) are approved, **no** nighttime dredging shall occur.
14. **Seagrass Protection.** If a hopper dredge is used, no overflow from the dredge shall occur within 300 meters of seagrass beds. Also, no overflow, spillage or leakage shall occur while material is being transported from the dredging area to the disposal area. Dredges shall be anchored only within the bottom of the channel, settling basin or turning

basin, or other approved anchorage areas. Pipe and other dredging-related equipment shall not be stored/stockpiled on or over seagrass beds or hardbottoms, nor shall such equipment be stored/stockpiled in areas where it may drift into, onto, or over such natural resources. The Permittee shall require their contractor to immediately report any unauthorized impacts to the JCP Compliance Officer and to take corrective measures to restore any habitat damaged as a result of project activities.

**MONITORING REQUIRED:**

15. Water Quality - Turbidity shall be monitored as follows:

Units: Nephelometric Turbidity Units (NTUs).

Frequency: Monitoring for **in-channel placement** shall be conducted 3 times daily, approximately 4 hours apart, after placement occurs, and when the densest portion of the turbidity plume reaches the edge of the mixing zone.

Monitoring for a **pipeline dredge** shall be conducted 3 times daily, approximately 4 hours apart, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredging and sand placement operations.

Monitoring for a **hopper dredge** shall be conducted for each hopper dredge load during daylight hours. At the dredge site, sampling shall be conducted after overflow from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. At the fill placement site, sampling shall be conducted after discharge from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone.

All sampling shall be conducted **while the highest project-related turbidity levels are crossing the edge of the mixing zone**. Since turbidity levels can be related to pumping rates, the dredge pumping rates shall be recorded, and provided to the Department upon request. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., one shall immediately follow the other.

Location: Background: Sampling shall occur at surface, mid-depth, and (for sites with depths greater than 25 feet) 2 meters above the bottom, clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

**In-channel Placement:** Samples shall be collected at least 300 meters up-current from the dredge or placement sites, outside any visible turbidity plume.

**Pipeline Dredge Site:** Samples shall be collected at least 300 meters up-current from the source of turbidity at the dredge site.

**Beach or Nearshore Placement Sites:** Samples shall be collected at least 300 meters up-current from any portion of the beach that has been, or is being, filled during the current construction event, at the same distances offshore as the associated compliance samples.

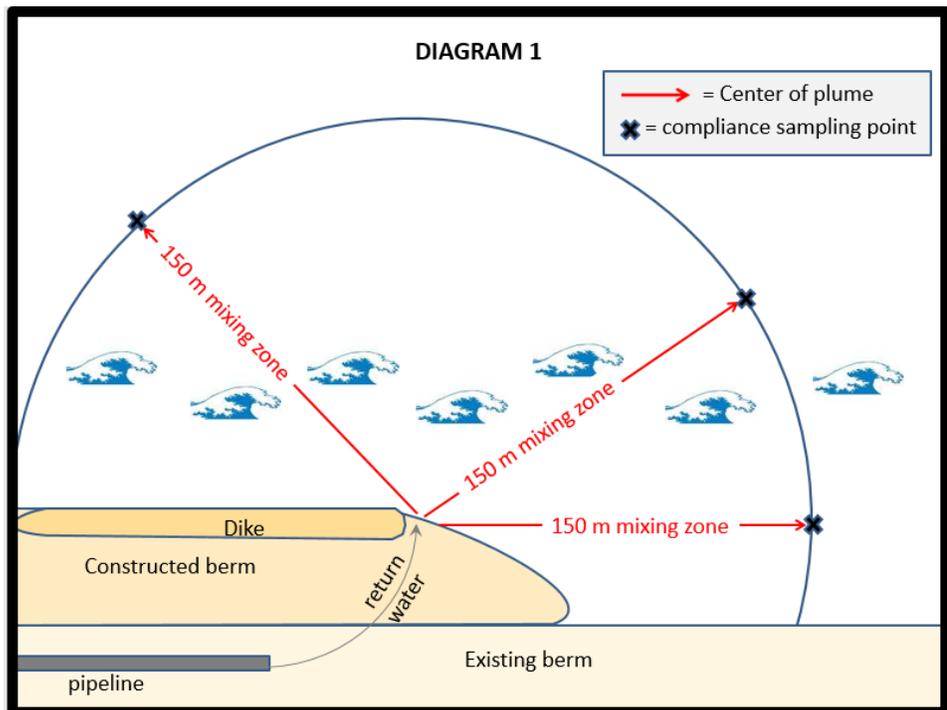
Compliance: Sampling shall occur at surface, mid-depth, and (for sites with depths greater than 25 feet) 2 meters above the bottom.

**In-channel Placement:** Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone, which measures 150 meters from the placement site.

**Dredge Site:** Samples shall be collected 150 meters down-current from the cutterhead or the hopper dredge overflow point, or at the edge of the nearest seagrass bed/hardbottom in the downcurrent direction, whichever is closest to the cutterhead or overflow point **and** from any other source of turbidity generated by the dredge, in the densest portion of any visible turbidity plume. If no plume is visible, follow the likely direction of flow.

**Nearshore Placement Site:** Samples shall be collected 150 meters down-current from the discharge point, or at the edge of the nearest seagrass bed/hardbottom in the downcurrent direction, whichever is closest to the discharge point, within the densest portion of the turbidity plume. Turbidity monitoring at the hardbottom edge (if located within 150 meters of the discharge point) is not required for hardbottom located landward of the Equilibrium Toe of Fill (ETOF) or hardbottom for which mitigation has already been provided.

**Beach Site:** Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone, which measures 150 meters from the point where the return water from the dredged discharge reenters the Atlantic Ocean. *Note: If the plume flows parallel to the shoreline, the densest portion of the plume may be close to shore, in shallow water. In that case, it may be necessary to access the sampling location from the shore, in water that is too shallow for a boat. See Diagram 1.*



**Calibration:** The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration with secondary standards shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity “standards” that bracket the anticipated turbidity samples. If the post-sampling calibration value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:

<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf>

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

16. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding

background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at [JCPCCompliance@dep.state.fl.us](mailto:JCPCCompliance@dep.state.fl.us) and include in the subject line, “TURBIDITY EXCEEDANCE”, and the Project Name and Permit Number. Also notify the Department’s Southeast District office.

Any project-associated turbidity source other than dredging or fill placement for beach nourishment (e.g., scow or pipeline leakage) shall be monitored as close to the source as possible. If the turbidity level exceeds 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state “OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE”.

When reporting a turbidity exceedance, the following information shall also be included:

- a. the Project Name;
- b. the Permit Number;
- c. location and level (NTUs above background) of the turbidity exceedance;
- d. the time and date that the exceedance occurred; and
- e. the time and date that construction ceased.

Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the “Exceedance Report”, plus the following information:

- a. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
- b. corrective measures that were taken; and
- c. cause of the exceedance.

17. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity

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levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:

- a. time of day samples were taken;
- b. dates of sampling and analysis;
- c. GPS location of sample;
- d. depth of water body;
- e. depth of each sample;
- f. antecedent weather conditions, including wind direction and velocity;
- g. tidal stage and direction of flow;
- h. water temperature;
- i. a map, overlaid on an aerial photograph, indicating the sampling locations, dredging and discharge locations, and direction of flow. A sample map shall reviewed and approved by the Department prior to construction;
- j. a statement describing the methods used in collection, handling, storage and analysis of the samples;
- k. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
- l. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

## **NOTICE OF RIGHTS**

### **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 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

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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 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.

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**Attachments:** Approved Permit Drawings (4 pages; dated March 22, 2017)  
Sediment QA/QC Plan (approved on July 20, 2006)  
Local Sponsor Agreement with the Town of Palm Beach

**EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.  
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this permit and all copies were sent on the filing date below.

**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.

  
**Clerk**

03/27/2017

**Date**