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April 21, 2015

U.S Army Corps of Engineers
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Jacksonville, Florida 32232

Permit Modification No. 0251706-006-JN
Permit No. 0251706-001-JC, St. Johns County
St. Augustine Inlet and AIWW Maintenance Dredging and Beach Placement
Nearshore Placement Site Modification

Dear Mr. Karch:

Your request to modify Permit No. 0251706-001-JC was received on February 13, 2015, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to authorize the disposal of dredged material in the Vilano Beach Nearshore Placement Area, located between Department reference monuments R-110 and R-118, for the 2015-2016 construction event only; and to update the permit Specific Conditions regarding shorebirds and manatees.

Permit History

On September 6, 1995, the Department issued a 10-year Wetland Resource Permit (No. **552444459**) to the U.S. Army Corps of Engineers (Corps). The permit authorized the maintenance dredging of the St. Augustine Inlet and the Atlantic Intracoastal Waterway (AIWW). The beach compatible dredged material was placed on the beach and in the nearshore disposal area between R-136 and R-148.

On April 16, 1996, the Department issued a modification to Permit No. 552444459. The modification waived the requirement of the submittal of a 10-year maintenance dredging schedule, due to the variability in shoaling conditions and funding availability; it removed the requirement to survey the nearshore disposal area; it modified the location of the temporary, shore-parallel berms (turbidity control best management practices), to allow the berm to be situated between the MHW line and the MLW line; and finally, it reduced the frequency for turbidity monitoring required by the permit.

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On April 16, 1997, the Department issued a second modification to Permit No. 552444459. The modification authorized a northern extension of the beach disposal area, from R-136A to R-132, for a single event. Approximately 25,000 cubic yards of material were placed in the authorized location.

On September 24, 1998, the Department issued a third modification to Permit No. 552444459. The permit was modified to include the dredging of the flood tidal shoal (inside St. Augustine Inlet), the extension of the beach disposal area northward from R-136A to R-134A, the reconstruction of the primary dune between R-135A and R-138A (in Anastasia State Park), and the authorization of beach and submerged pipeline access routes.

On October 26, 1998, the Department issued variance number **VE-55-731**. The variance authorized elevated turbidity levels within the Anastasia State Recreation Area. Turbidity levels were not to exceed 29 NTUs above background levels at the edge of the 150-meter mixing zone.

On October 15, 1999, the Department issued a fourth modification to Permit No. 552444459 to expand the limits of the north shoal dredging area by approximately 200 feet. The modification also expanded the beach placement and dune reconstruction area further north and south within the Anastasia State Recreation Area.

On May 4, 2000, the Department issued a 10-year JCP (**No. 0158721-001-JC**) to St. Johns County, authorizing the restoration of the beach from 600 feet north of R-137 to R-151. Approximately 3.1 million cubic yards of material was dredged from the St. Augustine Inlet Ebb Shoal and placed along the shoreline of St. Johns County. The initial restoration was the first phase of the Corps/St. Johns County 50-year Erosion Control Project. Beach restoration began in September of 2001; however, the project was suspended in November of 2001 due to a combination of factors including funding, scheduling conflicts and unfavorable weather conditions.

The Department issued **Variance No. 0158721-002-EV** for the initial restoration event, authorizing elevated turbidity levels during construction at the beach placement site and the offshore borrow area, not to exceed 29 NTUs within the Anastasia State Park OFW.

Storm events that occurred during the winter of 2001 caused considerable damage to the dunes in Anastasia State Park. The dunes were breached in places, and that allowed ocean waters to occasionally wash through the dunes, inundating the troughs between the tertiary dunes, and flow towards the Salt Run lagoon. In response to these conditions, on May 1, 2002, the Department issued **Modification No. 0158721-003-EM** to extend the original template an additional 5,142 feet north to R-132, and construct a dune from R-132 to R-141. The initial beach restoration was completed in January 2003.

On April 27, 2005, the Department issued **Modification No. 0158721-004-EM**, which extended the expiration date of the permit by one-year, to May 4, 2006, and authorized an

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additional nourishment event. The authorized dredge depth was also increased from what was previously authorized.

The original easement for the St. Augustine Inlet ebb shoal borrow area (Easement No. 30577, executed on May 4, 2000) authorized the use of this borrow area for a period of 5 years. On May 4, 2005, the expiration date of the easement was extended until May 4, 2015.

The permit drawings that were initially attached to Modification No. 0158721-004-EM included the incorrect slope of 1:10. Therefore, the Department issued **Modification No. 0158721-005-EM** on May 27, 2005, to incorporate the correct permit drawings that included a slope of 1:20.

During construction of the 2005 beach nourishment event, excavation of western portions of the navigation channel, located in the St. Augustine Inlet ebb tidal shoal borrow area, produced sand with a high shell hash content. This sand was not utilized due to adherence to the Quality Assurance/Quality Control (QA/QC) procedures, which outline measures to ensure that beach compatible sand is placed on the beach. Therefore, an additional 500,000 cubic yards of beach compatible sand was required to fill the design beach template. In order to meet this requirement, the Department issued **Modification No. 0158721-006-EM** on July 28, 2005. This modification authorized the extension of the borrow area 480 feet to the north and increased the maximum dredge depth to -30 feet MLW within the expanded area.

During construction of the 2005 beach nourishment event, in addition to the non-beach-compatible material found in the western portions of the navigation channel, sand with a high shell hash content was also found in the south lobe of St. Augustine Inlet ebb tidal shoal. This sand was not utilized due to adherence to the QA/QC procedures, which outline measures to ensure that beach compatible sand is placed on the beach. In order to obtain the additional 200,000 cubic yards of material required to complete the project, the Department issued **Modification No. 0158721-007-EM** on August 24, 2005. This modification authorized an extension of the borrow area 180 feet to the north and increased the maximum dredge depth to -30 feet MLW within the expanded area.

On September 2, 2005, the Corps requested a minor modification (File No. **0251706-002-DF**), to extend the expiration date of permit No. 552444459. That modification request was withdrawn.

On June 19, 2009, the Department issued **De Minimis Exemption No. 0295429-001-BE**, which authorized a vibracore investigation within the ebb shoal of St. Augustine Inlet. Approximately 26 vibracores were acquired.

On September 26, 2011, the Department issued a ten year permit, File No. **0295429-002-JC**, to the Corps to nourish St. Augustine Beach using material from the St. Augustine Inlet ebb shoal borrow area. The permit allowed a one-time use of the ebb shoal borrow area. The

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elevation of the beach berm was approximately +9.0 feet NAVD, with a seaward slope of 1:20 (vertical:horizontal). The dredged material was transported via pipeline to the beach placement site. The first borrow areas fell within the Federally-authorized navigation channels, a 200-foot widener along the south side of the navigation channel, and that portion of Vilano Point (also referred to as Porpoise Point) that encroaches into the navigation easement. After all available material from within these areas was transported to the beach, then dredging commenced at the southern boundary of the borrow area in the south lobe of the ebb shoal and proceed north through any or all the various sub-areas. Dredging did not extend north of the navigation channel.

Current Permit

On December 8, 2010, the Department issued Joint Coastal Permit No. **0251706-001-JC**, to the Corps to conduct maintenance dredging of the St. Augustine Inlet Entrance Channel, and to conduct new dredging of encroaching shoals adjacent to the navigation channel. Beach compatible sand was placed on the beach south of St. Augustine Inlet, from R-132 and R-152. Sandy material that did not meet the criteria for beach placement was disposed of in a nearshore site (between R-142 and R-148); in depths ranging from -12 feet mean lower low water (MLLW) to -20 feet MLLW. The beach disposal template for the permit is over-sized related to the anticipated volume of dredged material, allowing for placement of dredged material in areas within the fill template with the greatest need for nourishment.

For additional background, please see the *Consolidated Notice Of Intent To Issue Joint Coastal Permit And Authorization To Use Sovereign Submerged Lands* for Permit No. 0251706-001-JC at the following website:

http://bcs.dep.state.fl.us/env-prmt/st_john/issued/0251706_St.%20Augustine_%20Inlet/001-JC/Intent/

On July 3, 2013, the Department issued Modification No. **0251706-003-JN** to the Corps, authorizing the extension of the original beach fill template by approximately 5,000 feet to the north. The template was expanded from R-132 to R-127, located within Anastasia State Park. That modification was effective during the 2013 dredging event only.

On January 24, 2014, the Department issued Administrative Modification No. **0251706-004-JN**. The modification was an administrative action to correct inaccurate numbering of cross-references between Specific Conditions of Permit No. 0251706-001-JC, and to update the contact information in certain wildlife protection conditions.

On June 19, 2014, the Department issued Modification No. **0251706-005-JN** to the Corps, clarifying that dredging of all hazardous shoals within the 600 foot easement of the St. Augustine Inlet Entrance Channel, from station 0+00 to 124+00, was authorized to a required dredge depth

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of -16 feet MLLW, with a -2-foot allowable overdepth, for a maximum allowable dredge depth of -18 MLLW.

The current application for Modification No. **0251706-006-JN** proposes, for one construction event only, to include a nearshore placement site, landward of the -12 foot contour line, at the Vilano Beach critically eroded area, north of the St. Augustine Inlet, between Department monuments R-110 and R-118, St. Johns County. Specific conditions related to the protection of Shorebirds and Manatees will also be updated and will guide subsequent activity for the duration of the permit.

Project Justification

Vilano Beach was designated a critically eroded area. The updated St. Augustine Inlet Management Plan recommends that roughly one third of the material obtained from maintenance dredging activities within the inlet system should be distributed to the adjacent critically eroded Atlantic-fronting beaches north of the inlet, and roughly two thirds placed to the south. Based on this recommendation, the Corps, during this maintenance dredging event, will place approximately 200,000 cubic yards of material north of the inlet.

Staff Assessment

Considering historic resource information, the geomorphology of the area and the relatively small volume of sediment to be placed in this single construction event, no additional adverse impacts to natural resources are expected, and no additional natural resource surveys were required. However, if the activity authorized in this permit modification is proposed to be included in the regular maintenance dredging of the inlet in a new application, or if a modification for a larger volume of material is proposed, then the Department may require a survey to verify the absence of resources in the project area. The nearshore disposal of dredged material north of the Inlet is not expected to exceed the water quality standard for turbidity (29 NTUSs) at the edge of the 150-meter mixing zone.

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

The proposed project is to conduct routine maintenance dredging of the St. Augustine Inlet Entrance Channel and an intersecting portion of the Atlantic Intracoastal Waterway (AIWW), plus routine and new dredging (including maintenance) of encroaching shoals adjacent to the channels. The beach compatible dredged material will be placed at the previously permitted beach placement area south of St. Augustine Inlet. Sediments that are unsuitable for beach placement will be placed at the nearshore disposal area located adjacent to the beach placement area. The nearshore disposal site will be located landward of the -20-foot MLLW contour line and will be filled to a maximum elevation of -12 feet MLLW. The beach placement site will be filled to a berm elevation of 10 feet NGVD, with a variable

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berm width of 100 to 200 feet and a seaward slope of 1:20 (vertical:horizontal). If suitable coquina shell hash is dredged, that material may be placed above the wrack line in Anastasia State Park to enhance shore bird nesting habitat. Some of the beach-compatible sand may also be used to enhance the dunes within Anastasia State Park. The dunes will have a crest elevation of 17 feet NAVD88 and side slopes of 1:5 (vertical:horizontal). For the 2015-2016 construction event only, the material dredged will be placed landward of the -12-foot contour line at the Vilano Beach nearshore disposal area.

The St. Augustine Inlet Entrance Channel dredging is authorized to a maximum depth of -18 feet MLLW, which includes a design depth of -16 feet MLLW, plus two feet of allowable over depth. The bottom width for the entrance channel is 200 feet, with 1:3 (vertical:horizontal) side slopes. The channel may be dredged to achieve an alignment of "best fit" within the confines of a 600 foot wide easement between the south jetty and the north shore. The shoal adjacent to the St. Augustine Inlet Entrance Channel, within the authorized 600-foot easement, in any dredging event, may also be dredged to the same depth as the channel.

The AIWW dredging is authorized to a maximum depth of -14 feet MLLW, which includes a design depth of -12 feet MLLW, plus two feet of allowable over depth. The bottom width of the AIWW Channel is 125 feet, with 1:3 (vertical:horizontal) side slopes. The flood shoal adjacent to the AIWW Channel may also be dredged to the same depth as the channel.

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

The project area is located in St. Johns County. The dredging sites are located in Sections 5, 8, and 9, Townships 6 South and 7 South and, Range 30 East, in the Atlantic Ocean (Class III Waters), St. Augustine Inlet (Class II waters) and the Tolomato River (Class II waters). The shoals that will be dredged outside of the channels are located at the intersection of the AIWW and the St. Augustine Inlet Entrance Channel, between STA. 11 + 17.70 and STA. 13 + 40.90, and at Vilano Point. The beach placement site and the nearshore disposal site are located in the Atlantic Ocean (Class III waters), south of St. Augustine Inlet, at Anastasia State Park, in Sections 3, 10, 27, and 34, Townships 7 South and 8 South, and Range 30 East. The beach placement site extends from DEP monument R-132 to R-152, except in 2013 when the beach placement site extends from DEP monument R-127 to R-152, and the nearshore disposal site extends from DEP monument R-142 to R-148, except in the 2015-2016 construction event, when dredged material will be placed in the Vilano Beach nearshore placement area, located between DEP monuments R-110 to R-118. The shell hash placement area is located in Anastasia State Park, from approximately 800 feet north of R-130 to R-132.

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

26. All personnel associated with the project shall be instructed about the potential presence of nesting Seabirds and Shorebirds (shorebirds) and the need to avoid take of (including disturbance to) these protected species.

27. All vehicles shall be operated in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you-conserve/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed <6 mph and run at or below the high-tide line.

28. ***Shorebird Conditions for Beach Placement of Material.*** The following requirements of this condition shall apply for beach placement of material:
 - a. ***Selection of Bird Monitors.*** The permittee or designated representative ("Permittee") shall hire one or more Bird Monitors, depending on the size of the area to be affected, who shall monitor shorebird and seabird (shorebird) activity before, during, and after construction. Bird Monitors shall have proven seabird and shorebird identification skills and avian survey experience. Before hiring any Bird Monitors, the Representative shall provide a list of candidate Bird Monitors with (1) their contact information and (2) a summary of their qualifications, including bird identification skills and avian survey experience, to the FWC Regional Species Conservation Biologist (**contact information available at: <http://www.myfwc.com/shorebirds>**) and copied to JCPCCompliance@dep.state.fl.us for FWC approval before the Permittee hires the Bird Monitor(s).

 - b. ***Beach Maintenance.*** If beach debris removal activities take place during shorebird breeding or nesting seasons, the work shall be conducted during daylight hours only and shall not commence until completion of daily shorebird surveys each day.

 - c. ***Pre-Construction Meeting.*** The Permittee is shall arrange a meeting with the U.S. Fish and Wildlife Service (USFWS), the FWC, and the Bird Monitor(s) before any work begins. The Permittee shall notify the USFWS, the FWC Regional Species Conservation Biologist (**contact information available at: <http://www.myfwc.com/shorebirds>**), and the Bird Monitor(s) at least 10 business days before the date of that meeting. The purpose of this meeting is to ensure that the Permittee and Bird Monitor(s) fully understand and agree with the protection measures and any additional site-specific measures that need to be taken before, during, and after construction.

d. *Bird Monitors shall use the following survey protocols:*

- i. The Bird Monitor(s) shall review and become familiar with the general information on the FWC's Florida Shorebird Database (FSD) website (<http://www.flshorebirddatabase.org>). They shall use the data-collection protocol and implement data-entry procedures as outlined in that website. An outline of data to be collected, including downloadable field data sheets, is available on the website.

Breeding season varies by species. Most species have completed the breeding cycle by September 1, but flightless young may be present through September. The following dates are based on the best available information regarding ranges and habitat use by species for this project: March 15 – September 1.

Surveys during the breeding season shall begin on the first day of the breeding season, or 10 days before any site work begins, whichever is later. Surveys shall be conducted through August 31, or until all breeding activity has concluded, whichever is later.

- ii. During the breeding season, the Bird Monitor(s) shall survey all potential beach-nesting bird habitats that may be affected by construction or pre-construction activities. The Bird Monitor(s) shall establish one or more shorebird survey routes in the FSD website to cover these areas.
- iii. During the pre-construction and construction phases of the project, the Bird Monitor(s) shall complete surveys on a daily basis to detect breeding activity and the presence of flightless chicks before (1) equipment is moved to the area, (2) vehicles are operated in the area, or (3) any other activities occur that have the potential to disrupt breeding behavior or cause harm to the birds or their eggs or young. Once construction is completed and all personnel and equipment have been removed from the beach, surveys shall be conducted at weekly intervals.
- iv. The Bird Monitor(s) shall survey the project area by walking and looking for evidence of (1) shorebirds exhibiting breeding behavior, (2) shorebird chicks, or (3) shorebird juveniles, as outlined in the FSD's *Breeding Bird Protocol for Shorebirds and Seabirds*. The Bird Monitor(s) shall use binoculars for these surveys. If an ATV or other vehicle is needed to cover large project areas, operators shall adhere to the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed under 6 mph and

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only on beaches at or below the high-tide line. The Bird Monitor(s) shall stop at no greater than 200-meter intervals to look for breeding activity.

- v. Once the Bird Monitor(s) confirms that birds are breeding, as evidenced by the presence of a scrape, eggs, or young, the Bird Monitor(s) shall notify the FWC Regional Species Conservation Biologist (**contact information available at: <http://www.myfwc.com/shorebirds>**) within 24 hours. The Bird Monitor(s) shall report all breeding activity to the FSD website within one week of data collection.

- e. *Seabird and Shorebird Buffer Zones and Travel Corridors.* The Bird Monitor(s) shall establish a disturbance-free buffer zone around any location within the project area where shorebirds have been engaged in breeding behavior, including territory defense. The FWC considers a 300-foot-wide buffer to be adequate based on published studies; however, a smaller, site-specific buffer may be established if approved by the FWC Regional Species Conservation Biologist (**contact information available at: <http://www.myfwc.com/shorebirds>**). All sources of human disturbance (including pedestrians, pets and vehicles) shall be prohibited in the buffer zone.
 - i. The Bird Monitor(s) shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds appear to be agitated or disturbed by these activities, then the Bird Monitor(s) shall widen of the buffer zone immediately to a sufficient size to protect breeding birds.
 - ii. The Bird Monitor(s) shall ensure that reasonable and traditional pedestrian access is not blocked in situations where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when breeding was initiated within 300 feet of an established beach access pathway. The Bird Monitor(s) shall work with the FWC Regional Species Conservation Biologist to determine if pedestrian access can be accommodated without compromising nesting success.
 - iii. The Bird Monitor(s) shall ensure that the perimeters of designated buffer zones are marked with posts, twine, and signs stating “Do Not Enter, Important Nesting Area” or similar language. The signs shall include the name and a phone number of the entity responsible for posting. Posts shall not be higher than 3 feet once installed. “Symbolic fencing” (i.e.,

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twine, string or rope) shall be placed between all posts and be clearly visible to pedestrians. In areas where marine turtles nest, the ropes shall be at least 2.5 feet above the ground. If pedestrian pathways are approved by the FWC Regional Species Conservation Biologist within the 300-foot buffer zone, these should be clearly marked. The Bird Monitor(s) shall ensure that the posting is maintained in good repair until breeding is completed or terminated. Although solitary nesters may leave the buffer zone with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.

- iv. The Bird Monitor(s) shall ensure that no construction activities, pedestrians, moving vehicles, or stockpiled equipment are allowed within the buffer area.
 - v. The Bird Monitor(s) shall designate and mark travel corridors outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may go past breeding areas in these corridors. However, other activities such as stopping or turning heavy equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site.
 - vi. When flightless chicks are present on the beach, the Bird Monitor(s) shall accompany any moving vehicles or equipment to ensure that no chicks are in the path of the moving vehicle and no tracks are left that could trap flightless chicks.
 - vii. The FWC recommends that the Bird Monitor(s) ensure that some activity in the travel corridor is maintained on a daily basis in order to discourage birds from nesting within the travel corridor. These activities should not be allowed to disturb shorebirds nesting on site or interfere with marine turtle nesting, especially if the corridors are established before construction has started.
- f. **Shorebird Notification.** If the Bird Monitor finds that shorebirds are breeding within the project area, he or she shall ensure that an informational bulletin board is placed and maintained in the construction staging area. This bulletin board shall display the location map of the construction site, depict the location(s) of the bird breeding areas, and include a clearly visible warning stating: “NESTING BIRDS ARE PROTECTED BY LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE AND FEDERAL MIGRATORY BIRD ACTS”.

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- g. **Marine/Sea turtle monitors.** Marine/Sea turtle monitors shall not enter posted shorebird buffer areas to conduct monitoring or to relocate nests.
- h. **Equipment Storage and Placement.** If it will be necessary to extend construction pipes past a known shorebird nesting site or over-wintering area for piping plovers, then whenever possible those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a shorebird nesting site during the shorebird nesting season.
- i. **Sand Compaction Sampling.**
 - i. No compaction sampling shall occur within 300 feet of any shorebird nest.
 - ii. Any vehicles operated on the beach in association with compaction surveys shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>).
- j. **Tilling.** If tilling occurs during shorebird nesting season (See Specific Condition 28(d)(ii) above), shorebird surveys shall be conducted prior to tilling per the Shorebird Conditions included within this document. It is the responsibility of the contractors to avoid tilling, scarp removal, or dune vegetation planting in areas where nesting birds are present. 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 shall not be performed in areas where nests have been left in place or relocated.
 - i. No tilling shall occur within 300 feet of any shorebird nest.
 - ii. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.
 - iii. 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.
 - iv. Tilling shall occur landward of the wrack line and avoid all vegetated areas 3 square feet or greater with a 3-foot-wide buffer around the vegetated areas. The slope between the mean high water line and the

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mean low water line must be maintained in such a manner as to approximate natural slopes.

- v. Any vehicles operated on the beach in association with tilling shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>).

29. Post-construction Shorebird Protection Conditions.

- a. **Escarpments.** If escarpment removal occurs during shorebird breeding season (See Specific Condition 28(d)(ii), above), shorebirds surveys shall be required per the *Shorebird Conditions for Beach Placement of Material* included within this document prior to removal. NOTE: Out-year escarpment monitoring and remediation are not required if placed material no longer remains on the dry beach.
 - i. No heavy equipment shall operate within 300 feet of any shorebird nest.
 - ii. If flightless shorebird young are observed within the work zone or equipment travel corridor, a Shorebird Monitor shall be present during the operation to ensure that equipment does not operate within 300 feet of the flightless young.
 - iii. Any vehicles operated on the beach in association with escarpment surveys or removal shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>).
- b. **Beach Cleaning.** If beach cleaning will occur on the nourished beach, a minimum of 30% of the biotic material within the wrack line shall be left on the beach post-cleaning at the strand line, in a natural configuration to ensure that the nourished beach re-establishes its function as foraging habitat for shorebirds. This shall occur for as long as the placed sand remains on the beach.

~~26. **Shorebird Surveys.** Shorebird surveys should be conducted by trained, dedicated individuals (Shorebird Monitor) with proven shorebird identification skills and avian survey experience. Credentials of the Shorebird Monitor will be submitted to the FWC Regional Biologist for review. Shorebird Monitors will use the following survey protocols:~~

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- a. ~~Nesting Season Surveys.~~ Shorebird Monitors should review and become familiar with the general information and data collection protocols outlined on the FWC's Beach Nesting Bird Website (<http://myfwc.com/shorebirds/>). An outline of what data should be collected, including downloadable field data sheets, is available on the website.
 - i. ~~The shorebird nesting season is generally 1 April—1 September, but some nesting may occur through September.~~
 - ii. ~~Nesting season surveys shall begin on April 1 or 10 days prior to project commencement (including surveying activities and other pre-construction presence on the beach), whichever is later, and be conducted daily throughout the construction period or through August, whichever is earlier. If project activities continue after August 31 and active nests or fledglings remain on the beach, then weekly surveys of the project site shall continue until all hatchlings have fledged.~~
 - iii. ~~Nesting season surveys shall be conducted in all potential beach nesting bird habitat within the project boundaries that may be impacted by construction or pre-construction activities during the nesting season. Portions of the project in which there is no potential for project-related activity during the nesting season may be excluded.~~
 - iv. ~~Surveys for detecting new nesting activity will be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt nesting behavior or cause harm to the birds or their eggs or young.~~
 - v. ~~Surveys should be conducted by traversing the length of the project area and visually inspecting, using binoculars or spotting scope, for the presence of shorebirds exhibiting breeding behavior.~~
 - vi. ~~If an ATV or other vehicle is needed to cover large project areas, the vehicle must be operated at a speed less than 6 mph, shall be run at or below the high tide line, and the Shorebird Monitor will stop at no greater than 200 meter intervals to visually inspect for nesting activity.~~
 - vii. ~~Once breeding is confirmed by the presence of a scrape, eggs, or young, the Bird Monitor will notify the Regional Nongame Biologist of the FWC at (352) 732-1225 within 24 hours.~~
 - viii. ~~All breeding activity will be reported to the Beach Nesting Bird website within one week of data collection. Weekly updates shall be reported on~~

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~~the Beach Nesting Bird website until fledgling or loss of identified nests or hatchlings. A monitoring report of all shorebird nesting that takes place within the shell hash layer shall be submitted to the FWC Imperiled Species Management Section in Tallahassee by January 15 of the following year.~~

~~ix. Observations of non-breeding shorebirds should be reported to the Shorebird Seabird Occurrence Database, as described below.~~

~~27. **Buffer Zones and Travel Corridors.** Within the project area, the Permittee shall establish a 300 foot wide buffer zone around any location where shorebirds have been engaged in nesting behavior, including territory defense. Any and all construction activities, including movement of vehicles, should be prohibited in the buffer zone.~~

~~a. The width of the buffer zone shall be increased if birds appear agitated or disturbed by construction or other activities in adjacent areas.~~

~~b. Site-specific buffers may be implemented upon approval by FWC as needed.~~

~~c. Reasonable and traditional pedestrian access should not be blocked where nesting birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when nesting was initiated within 300 feet of an established beach access pathway. The Permittee shall work with FWC staff to determine if pedestrian access can be accommodated without compromising nesting success.~~

~~d. Designated buffer zones must be posted with clearly marked signs around the perimeter. If pedestrian pathways are approved within the 300-foot buffer zone, these should be clearly marked. These markings shall be maintained until nesting is completed or terminated. In the case of solitary nesters, nesting is not considered to be completed until all chicks have fledged.~~

~~e. No construction activities, movement of vehicles, or stockpiling of equipment shall be allowed within the buffer area.~~

~~f. FWC approved travel corridors should 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.~~

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- ~~i. Where such a travel corridor must be established within the project area it should avoid critical areas for shorebirds (known nesting sites, wintering grounds, FWC designated Critical Wildlife Areas, and USFWS 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.~~
 - ~~ii. 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 FWC Regional Biologist for that region.~~
- ~~28. **Placement of Equipment and Sand.** If it will be necessary to extend construction pipes past a known shorebird nesting site or over wintering area for piping plovers, then whenever possible those pipes should be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a known shorebird nesting site during the shorebird nesting season.~~
- ~~29. **Notification.** If shorebird nesting occurs within the project area, a bulletin board will 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 STATE AND FEDERAL MIGRATORY BIRD ACTS".~~
- ~~30. **Beach Contours.** Shorebird surveys must be conducted at least ten (10) days prior to any tilling or scarp removal that occurs during shorebird nesting season, starting February 15. It is the responsibility of the contractors to avoid tilling or scarp removal in areas where nesting birds are present.~~
- ~~a. 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.~~
 - ~~b. The slope between the mean high water line and the mean low water line must be maintained in such a manner as to approximate natural slopes.~~

Manatee Conditions

Specific Conditions **31 – 34** are renumbered as **30 – 33**.

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34. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the USFWS in Jacksonville (1-904-731-3336) for North Florida or Vero Beach (1-772-562-3909) for South Florida, and to FWC at ImperiledSpecies@myFWC.com
35. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads “*Caution Boaters: Watch for Manatees*” must be posted. A second sign measuring at least 8 ½” by 11” explaining the requirements for “Idle Speed/No Wake” and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.
- ~~35. Any collision with 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 U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336).~~
- ~~36. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the Permittee upon completion of the project. Awareness signs that have already been approved for this use by the FWC must be used (see MyFWC.com). One sign which reads “*Caution Boaters: Watch for Manatees*” must be posted. A second sign measuring at least 8 ½” by 11” explaining the requirements for “Idle Speed/No Wake” and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related~~

Specific Conditions **37 – 43** are renumbered as **36 – 42**.

The set of approved permit drawings shall be revised as follows:

Two permit drawings numbered C1-1 and C3-9 shall be appended to the set of approved Drawings.

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

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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, and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **December 8, 2020**, expiration date of the permit. The only Specific Conditions of the permit that are altered by this modification are those stated above. This letter and the attached 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 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.

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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 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

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- (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.

If you have any questions regarding this matter, please contact Ivana Kenny by email at Ivana.Kenny@dep.state.fl.us or by telephone at (850) 245-7618.

Sincerely,



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

MKS/ik

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Attachments: Permit drawings number C1-1 and C3-9, dated February 2015

cc: Martin Seeling , DWRM
Thomas Jacobs, DWRM
Ralph Clark, DWRM
Bob Brantly, DWRM
Coor, Jennifer, DWRM
Edwards, Tom, DWRM
Reed, Alex, DWRM
Dow, Roxane, DWRM
JCP Compliance Officer, DWRM

CE Review
Trey Hatch, NE District
Kershner, Matthew
SAJ-RD-N@usace.army.mil
Kellie Youmans, FWC
marineturtle@myfwc.com
FWCConservationPlanningServices@myfwc.com
bteple@nefrpc.org

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.



04/21/2015

Deputy Clerk

Date