



FLORIDA DEPARTMENT OF Environmental Protection

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September 15, 2021

U.S. Army Corps of Engineers
Attn: Matthew Lang
109 St. Joseph Street
P.O. Box 2288
Mobile, AL 36602
Matthew.j.lang@usace.army.mil

Permit Modification No. 0295379-008-JN
Permit No. 0295379-001-JC, Escambia County
Lower Pensacola Harbor Maintenance Dredging

Dear Mr. Lang:

Your request to modify Permit No. 0295379-001-JC was received on August 10, 2021, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to increase the authorized placement template elevation to +10 NAVD.

Background

On December 9, 2010, the Department issued Permit No. **0295379-001-JC** and Variance No. **0295379-002-BV** to the U.S. Army Corps of Engineers (Corps) to periodically conduct maintenance dredging of the Lower Pensacola Harbor Federal Channel (Reaches B, C and D) for 10 years. The channel was authorized to be maintained at a bottom width of 500 feet and a maximum depth of -39 feet Mean Lower Low Water (MLLW). Dredged material was to be placed in the Perdido Key swash zone (Disposal Area #3), seaward of the +3-foot North American Vertical Datum (NAVD) contour, and not to exceed an elevation of +3 feet NAVD. Dredged material was also authorized to be placed just seaward of the primary sand bar system and landward of the -12 foot NAVD contour (prior to adjustment - Nearshore Disposal Area #4).

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. 0295379-001-JC at the following website:

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https://prodenv.dep.state.fl.us/DepNexus/public/electronic-documents/BCS_0295379-001-JC/facility!search

On August 26, 2015, the Department issued Permit Modification No. **0295379-003-JN** to the Corps, authorizing an advanced widening of three segments of the federal channel that exhibit excessive shoaling. An additional 100 feet of dredging was authorized on the eastern side of the channel for approximately 1 mile, through Pensacola Pass; an additional 100 feet of dredging was authorized on the western side of the channel for approximately one-half mile of the upper entrance channel (just outside of Pensacola Pass); and an additional 50 feet of dredging was authorized on both sides of the channel for approximately one mile of the lower (outer) section of the entrance channel. That modification also updated the FWC conditions.

On August 28, 2015, the Department issued Permit Modification No. **0295379-004-JN** to the Corps to correct an inadvertent error within the project description, as it had been revised in Permit Modification No. 0295379-003-JN.

On May 23, 2016, the Department issued Permit Modification No. **0295379-005-JN** to the Corps to extend the permit expiration date by an additional 5 years to allow for the maximum 15-year permit duration afforded by Rule 62B-49.011(5), Florida Administrative Code (F.A.C.).

On October 5, 2017, the Department acknowledged the Corps' intention to use (and certification that they meet the requirements of) the Port Maintenance Dredging Exemption in Section 403.813(3), Florida Statutes (F.S.). File No. **0295379-006-BE**.

On September 14, 2020, the Department acknowledged the Corps' intention to use (and certification that they meet the requirements of) the Port Maintenance Dredging Exemption in Section 403.813(3), F.S. File No. **0295379-007-BE**.

Staff Assessment and Justification

The Corps will be dredging the Pensacola Pass over the fall/winter of 2021/2022 and propose to use supplemental and Hurricane Sally related funds to facilitate the ecologically beneficial beach placement of approximately 200,000 cubic yards of material along Perdido Key between R-32 and R-64. This location experiences recurring breaches (last by Hurricane Sally in September 2020), and experiences erosional stress caused by Pensacola Pass. The breaches cause concern for genetic population continuity of the federally endangered Perdido Key beach mouse. When the breaches naturally refill (as most recently done in February 2021), they provide ideal and rare foraging habitat for the federally threatened piping plover and brood rearing habitat for the state threatened snowy plover. Additionally, the loss of dunes on this stretch of beach due to hurricane Sally has contributed to disorientations of federally threatened Green and Loggerhead sea turtle females (and hatchlings) nesting over the summer of 2021.

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Based on consultation with the Department, the Fish and Wildlife Conservation Commission (FWC), the Fish and Wildlife Service (FWS), and the National Park Service the Corps designed a placement template that would accommodate the aforementioned ecological concerns (beach mice, shore birds and marine turtles) as well as the technical capacity of the dredging/ placement crew. The proposed placement template includes the increase of the top elevation to +10 feet NAVD. During this upcoming event (2021/22), it is expected that material will be placed below the +8 foot elevation mark on the beach as well as in the Nearshore Primary Sand Bar area.

The Department and the FWC have reviewed and approved the request to expand the swash zone placement template. Prior to each construction event the final plans shall be submitted to the Department for review and confirmation that they adequately accommodate the afore mentioned ecological concerns. The Activity Description, Specific Conditions, and permit drawings of this permit shall be modified accordingly.

Inclusion of the General Consent Conditions

The General Consent Conditions have been added to the permit. Rule 18-21.004(7), F.A.C., says:

All authorizations granted by rule or in writing under Rule 18- 21.005, F.A.C., ... shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or 258, Part II, F.S.

Updating Specific Conditions

The Department has refined the language of certain Specific Conditions to reduce ambiguity and update contact information. These changes clarify common misinterpretations and update requirements. As such, updates have been made throughout the Specific Conditions of the permit.

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

The project is to periodically conduct maintenance dredging of the Lower Pensacola Harbor Federal Channel, which includes Reach B (lower Pensacola Bay and Pensacola Pass) and Reaches C and D (entrance channel into Pensacola Pass). The dredging will maintain a bottom width of 500 feet at a depth of -39 feet Mean Lower Low Water (MLLW). This maximum allowed dredge depth includes a design depth of -35 feet MLLW, plus 2 feet of advanced maintenance depth and 2 feet of allowable overdepth. Advanced maintenance widening is authorized to occur along three segments of the channel: between stations 148+42 and 195+00 an additional 100 feet of the channel is authorized to be dredged on the eastern side; between stations 206+00 and 235+00 an additional 100 feet of the channel is authorized to be dredged on the western side; and between stations 235+00 and 300+00 an additional 50 feet of the channel is authorized to be dredged on both the western and eastern sides. ~~Most of the dredged~~ Dredged material ~~will~~may be placed in the Perdido Key swash zone (Disposal Area #3),

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seaward of the +3-foot NAVD88 contour, and on the beach and dune not to exceed an elevation of ~~+3~~ +10 feet NAVD88. Some of the dredged material may also be placed just seaward of the primary sand bar system and landward of the -12-foot NAVD88 contour (prior to adjustment). This latter placement area is referenced in the drawings as Nearshore Disposal Area #4.

The requested variance (File No. 0295379-002-BV) from Rule 62-4.244(5)(c), F.A.C., would temporarily establish expanded mixing zones that extend 1,500 meters downcurrent from the dredge and 3,000 meters downcurrent from the point where water discharged from the dredge pipeline (at the swash zone or nearshore placement sites) reenters the Gulf of Mexico. The requested variance from the antidegradation provisions in Rule 62-4.242(2)(a)2.b., F.A.C., would establish a maximum allowable turbidity level of 3.5 NTUs above background for work within Fort Pickens Aquatic Preserve, and Gulf Islands National Seashore, OFWs.

The General Consent Conditions shall be added as follows:

GENERAL CONSENT CONDITIONS:

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.
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.

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8. Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.
9. 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.
10. 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)(g), F.A.C., or any other applicable law.

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

1. No work shall be conducted until and unless the Department issues a Final Order of Variance (File No. 0295379-002-BV) from Rule 62-4.244(5)(c), F.A.C. to establish an expanded mixing zone and Rules 62-4.242(2)(a)2.b., F.A.C., to establish a maximum allowable turbidity level above background for work within Outstanding Florida Waters (OFW) for this project.
2. Unless otherwise specified in the specific conditions of ~~All reports or notices relating to this permit, all submittals required herein (e.g., progress reports, water-quality reports etc.) shall be electronically submitted (via e-mail, file transfer site or hard drive). Email submittals shall be sent to the Department's of Environmental Protection, Bureau of Beaches and Coastal Systems, JCP Compliance Officer, 3900 Commonwealth Boulevard, Mail Station 300, Tallahassee, Florida 32399-3000 (e-mail address: JCP Compliance@dep.state.fl.us). If a file transfer site is used, a link shall be e-mailed to the JCP Compliance Officer. If data are too large to be submitted via e-mail or file transfer site, the Permittee may submit the data via an external hard drive, provided by the Permittee. The external hard drive shall be mailed to:~~

Department of Environmental Protection
Office of Resilience and Coastal Protection
Attn: JCP Compliance Officer
2600 Blair Stone Road, Mail Station 3566
Tallahassee, FL 32399-2400

3. There are two cultural resource sites in the nearshore disposal area extending from 500 feet to 5,700 feet south of Perdido Key, involving an historic shipwreck (Concrete Ballast

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Wreck 8ES2995) and an unrecorded historic barge wreck. A protective buffer zone, with a 1,000-foot radius, shall be established around these sites. Additionally, if prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery, and the Permittee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333. Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

4. 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, those responsible for protected species monitoring, staff representatives of the FWC and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (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:

DEP, JCP Compliance Officer
e-mail: JCP.Compliance@dep.state.fl.us

DEP, NW District Office
Submerged Lands & Environmental Resources
160 Governmental Center
Pensacola, Florida 32502-57945740
phone: (850) 595-8300
e-mail: NWD_ERP_Applications@dep.state.fl.us

~~FWC, 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: marine.turtle@myfwc.com~~

FWC Regional Biologist
See Contact list for phone numbers (<http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/contacts>)

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Ft. Pickens Aquatic Preserve
Beth Fugate, Aquatic Preserve Manager
Florida Coastal Office
160 Government Center
Pensacola, FL 32501
phone: (850) 595-0683 or email: Beth.L.Fugate@dep.state.fl.us

Gulf Islands National Seashore
~~Darrel Echols~~ ~~Daniel R. Brown~~
1801 Gulf Breeze Parkway
Gulf Breeze, Florida 32563
phone: (850) 934-261304
email: Darrel_Echols@nps.gov

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 (listed above) of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of each dredging event, the Permittee shall ensure that notification is sent to the FWC indicating the actual start date and the expected completion date to MarineTurtle@MyFWC.com. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

5. **Pre-Construction Submittals.** At least fourteen (14) days prior to the date of the pre-construction conference (as required above), the Permittee shall submit:

- a. An electronic copy of detailed the *final construction plans and specifications* for all authorized activities. this project, which The plans and specifications must be consistent with the activity description, conditions of this permit and the approved permit drawings of this permit. The Permittee shall point out any deviations from the activity description or the approved permit drawings, and any significant changes that would require a permit modification. ~~Submittal shall include one (1) hardcopy (sized 11 inches by 17 inches or greater, with all text legible) and one (1) electronic copy of the final plans and specifications.~~ The plans and specifications shall be accompanied by a letter indicating the project name, the permit number, the type of construction activity, the specific type of equipment to be used, the anticipated volume of material to be moved (if applicable) and the anticipated schedule. Further, the Permittee shall specify any anticipated sites that will be

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used (such as a disposal or re-use location) and appropriate contact information for those facilities. The drawings and surveys shall 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. The final plans and specifications submitted under this condition must comply with all conditions set forth in this permit. Beach placement designs shall be approved in writing by the National Park Service.

- b. ~~Additionally, the names and qualifications of the individuals who will conduct the turbidity monitoring shall be submitted to the Department. These individuals must be independent of the dredging contractor and must have experience collecting and measuring turbidity for navigational dredging and beach placement projects.~~

Turbidity Monitoring: In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit.

- i. Qualifications ... The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions;
- ii. 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;
- iii. Draft turbidity sampling map. An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 29)
- iv. Prior to the second event authorized under this permit, and each subsequent event, the results of the intermediate turbidity monitoring shall be evaluated and provided to the Department. If the results indicate that the project can be built using a smaller mixing zone, this adjustment shall be made through an administrative modification to the permit prior to commencement of construction; and

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- c. ~~The Permittee shall also submit documentation from the U.S. Fish and Wildlife Service (FWS) that addresses the recently listed Red Knot and indicates that this work will be covered either under a Statewide Programmatic Biological Opinion or the Biological Opinions (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, the Notice to Proceed will not be issued until the permit has been modified to include those additional conditions.~~
Documentation from the U.S. Fish and Wildlife Service (USFWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a **Biological Opinion(s)** (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, a permit modification may be required to include those additional conditions.
- d. **Fish & Wildlife Monitoring Qualifications:** To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors are capable of meeting the requirements in Specific Conditions 10 through 26. This documentation shall include the following:
- i. *Marine Turtle Protection:* A list of the names and the FWC permit numbers for the Marine Turtle Permit Holders.
 - ii. *Shorebird Protection:* A list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience, proposed locations of shorebird survey routes, and the locations of travel routes.
6. Sediment quality will be assessed as outlined in the approved Sediment QA/QAC Plan, dated April 2009 (attached). Any occurrences of unacceptable material will be handled according to the protocols set forth in the approved Sediment QA/QC Plan. The sediment testing results will be submitted to the Department FDEP within 90 days following the completion of dredging and sediment placement activities.
7. Pursuant to Section 161.142(2), F. S., the Department shall maintain a current estimate of the quantities of beach-compatible sand from maintenance dredging of inlet systems for purposes of prioritizing, planning and permitting of inlet management activities. As provided for in General Permit Condition No. 12, the Corps shall submit to the Department a written statement of completion that includes a description of the actual work completed. For the maintenance dredging activities authorized by this permit, the Corps shall describe the location (entrance channel, advance maintenance area(s),

intracoastal waterway) and estimated volume of material dredged from each location; and the location (beach with specific Department FDEP reference monuments; nearshore zone) and estimated volume of material placed within each location.

8. The National Parks Service (NPS) will conduct all necessary marine turtle and shorebird protection and monitoring requirements of this permit on behalf of the Permittee. In the event that the NPS does not conduct all necessary marine turtle and shorebird protection and monitoring requirements, the Permittee is still responsible for those measures specified by the applicable U. S. Fish and Wildlife Service Biological Opinion through the end of the Corps' fiscal year.
9. 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.

Wildlife Protection Conditions

The Specific Conditions 10 – 37 shall be replaced with Specific Conditions 10 – 26 below.

10. **In-water Activity.** The Permittee shall adhere to the following requirements for all in-water activity:
 - a. The Permittee shall instruct all personnel associated with the project about the presence of marine turtles and manatees, and the need to avoid collisions with (and injury to) these protected marine species. The Permittee shall be responsible for harm to these resources and shall require their contractors to advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees or marine turtles, which are protected under the Endangered Species Act, the Marine Mammal Protection Act, the Marine Turtle Protection Act and the Florida Manatee Sanctuary Act.
 - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate project 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.
 - c. Siltation or turbidity barriers (if used) shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee or marine turtle movement or travel.

- d. The Permittee is responsible for all on-site project personnel and shall require them to observe water-related activities for the presence of marine turtles and manatee(s). All in-water operations shall be immediately shut down if a marine turtle or manatee comes within 50 feet of the operation. For unanchored vessels, operators shall disengage the propeller and drift out of the potential impact zone. If drifting would jeopardize the safety of the vessel then idle speed may be used to leave the potential impact zone. Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.
- e. Any collision with (or injury to) a marine turtle or manatee shall be reported immediately to the FWC Hotline at 888-404-3922, and to the FWC at ImperiledSpecies@MyFWC.com. Any collision with (and/or injury to) a marine turtle shall also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at SeaTurtleStranding@MyFWC.com.
- f. Temporary signs concerning manatees shall be prominently posted prior to and during all in-water project activities, at sufficient locations to be regularly and easily viewed by all personnel engaged in water-related activities. Two temporary signs, which have already been approved for this use by the FWC, shall be posted at each location. One sign shall read "Caution Boaters - Watch for Manatees". A second sign measuring at least 8 ½" by 11", shall explain the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations. All signs shall be removed by the Permittee upon completion of the project. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to ImperiledSpecies@MyFWC.com.
11. **Hopper Dredging.** If a hopper dredge is used for this project, the following requirements shall be met:

In order to minimize impingement or entrainment of marine turtles within the water column, when initiating dredging, suction through the dragheads shall be allowed just long enough to prime the pumps, then the drag heads shall be placed firmly on the bottom. When lifting the drag heads from the bottom, suction through the drag heads shall be allowed just long enough to clear the lines, and then shall cease while maneuvering or during travel to/from the placement area. When possible, dredging pumps shall be disengaged by the operator when the drag heads are not firmly on the bottom.

12. **Trawling.** If relocation trawling for marine turtles is required as per applicable NMFS Biological Opinions and Incidental Take authorizations, the following is required:

- a. Any activity involving the use of nets to harass and/or to capture and handle marine turtles in Florida waters requires a Marine Turtle Permit from the FWC prior to trawling.
- b. The Permittee or their contractor shall e-mail (MTP@MyFWC.com) reports to the FWC's Imperiled Species Management Section on Friday of each week that trawling is conducted in Florida waters. These weekly reports shall include the species and number of turtles captured, their general health, and release information. A summary of all trawling activity (including non-capture trawling) shall be submitted to MTP@MyFWC.com by January 15 of the following year, or at the end of the project. The summary shall be recorded/documentated on the FWC-provided Excel spreadsheet (available at <https://myfwc.com/media/3168/rawl-report-template.pdf>), and shall list all turtles captured in Florida waters, the measurements of all captured turtles, the location of captures (latitude and longitude in decimal degrees), the location of tow start-stop points (latitude and longitude in decimal degrees), and times for the start-stop points of the tows (including tows when no turtles are captured).

13. Construction Area Project Lighting.

During the marine turtle nesting season (May 1 through October 31), direct lighting of the beach and nearshore waters shall be limited to the immediate area of active construction.

Lighting on offshore and onshore equipment shall be minimized by reducing the number of fixtures, shielding, lowering the height and appropriately placing fixtures to avoid excessive illumination of the water's surface and nesting beach. The intensity of lighting shall be reduced to the minimum standard required for general construction area safety. Shields shall be affixed to the light housing on dredge and on land-based lights and shall be large enough to block lamp light from being transmitted outside the construction area or to the adjacent marine turtle nesting beach. (Figure 1 below).

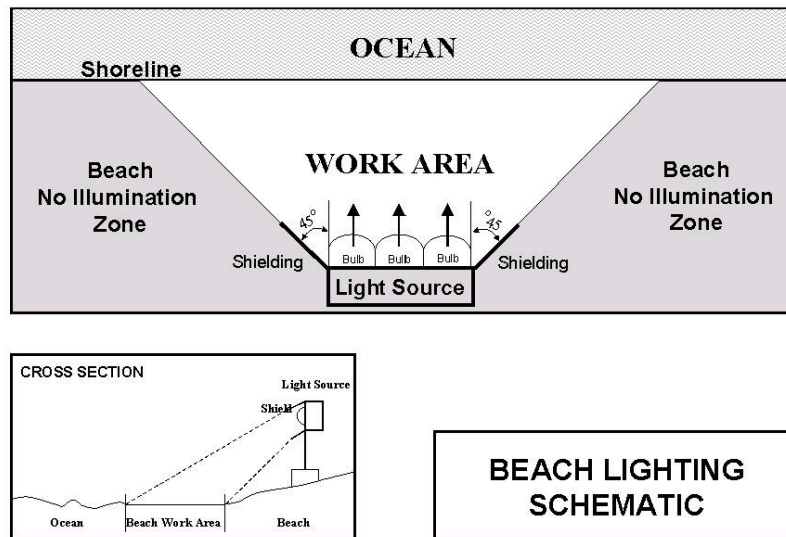


Figure 1

14. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle and shorebird nesting/breeding seasons [February 15 through October 31].

a. **Beach Maintenance.**

i. The Permittee shall require their contractor and protected species monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping flightless shorebird chicks or marine turtle hatchlings. If so, the deviations shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.

ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach to the maximum extent practicable prior to any placement of fill material. If debris removal activities will take place during protected species nesting seasons, the work shall be conducted during daylight hours only, and shall not commence until completion of daily monitoring surveys.

b. **Equipment Storage and Placement.**

- i. Staging areas and temporary storage for construction equipment and pipes shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle and shorebird protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction. All construction pipes that are in use on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to the dune shall be 5 to 10 feet away from the toe of the dune.
- ii. If it is necessary to extend construction pipes past a known shorebird nesting site, then those pipes shall 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. If such placement is not feasible for the project, the FWC's Regional Biologist shall be contacted for alternative measures. See contacts available at <https://myfwc.com/conservation/you-conserve/wildlife/shorebirds/contacts/>.
- c. **Beach Driving.** All vehicles operated on the beach 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/>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species. *Note: when flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present pursuant to Specific Condition 24.*

15. Marine Turtle Protection Conditions.

Construction-related activities are authorized to occur on the nesting beach (sandy beach seaward of existing coastal armoring structures or dune crest and all areas used for beach access) during marine turtle nesting season (May 1 through October 31) under the following conditions:

- a. Daily early morning marine turtle nest surveys shall start two weeks prior to marine turtle nesting season (April 15) or 65 days prior to beach placement whichever is later. Daily nesting surveys shall continue through November 30, or until two weeks after the last crawl in the project area, whichever is earlier.
- b. Daily nesting surveys shall be conducted beginning ½ hour prior to sunrise, and no

construction activity may commence until completion of the marine turtle survey each day.

- c. The Permittee shall ensure that marine turtle nesting surveys are conducted as required in this authorization, and only conducted by personnel with a valid FWC Marine Turtle Permit, that covers all project activities as required by Chapter 68E-1, F.A.C. For information on the authorized Marine Turtle Permit Holders in the project area, contact FWC at MTP@MyFWC.com.
 - d. Only those nests laid in the area where sand placement will occur shall be relocated, and nest relocation shall cease after the sand placement is completed. Nests requiring relocation shall be moved no later than 9 a.m., the morning following deposition (no longer than 12 hours from the time the eggs are laid), to a nearby self-release beach site in a secure setting, where artificial lighting will not interfere with hatchling orientation. The relocation site shall be determined in conjunction with and approved by the FWC prior to nest relocations. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of beach settings that are not expected to experience any of the following: inundation by high tides; severe erosion; previous egg loss; or illumination by artificial lighting.
 - e. Nests deposited within areas where construction activities will not occur for 65 days, or nests laid in the nourished berm prior to tilling, shall be marked and left in place. The Marine Turtle Permit Holder shall install on- beach markers at the nest site to establish a minimum 5- foot radius around the approximate clutch location and shall also install a secondary marker at a point as far landward as possible to assure that the nest can be located should the on- beach marker be lost. No activity shall occur within the marked area, nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.
16. **Fill Restrictions.** During the marine turtle nesting season, the contractor shall not advance the beach fill more than 500 feet along the shoreline between dusk and the following day, until the daily nesting survey is completed, and the beach has been cleared for fill advancement. If the 500-foot advancement limitation is not feasible for the project, an alternative distance shall be established during the preconstruction meeting, if a distance can be agreed upon in consultation with the FWC. If the work area is extended, nighttime nesting surveys are required, and a Marine Turtle Permit Holder is required to be present on-site to ensure that no nesting and hatching marine turtles are present. If any nesting turtles are sighted on the beach within the immediate construction area, activities shall cease immediately until the turtle has returned to the water and the Marine Turtle Permit Holder responsible for nest monitoring has relocated the nest.

17. **Marine Turtle or Nest Encounters.** Upon locating a dead or injured marine turtle adult, hatchling, or egg that may have been harmed or destroyed as a result of the project, the Permittee shall be responsible for notifying the FWC Wildlife Alert at 888-404-FWCC (3922). Care shall be taken in handling injured marine turtles or exposed eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials for later analysis. If a marine turtle nest is excavated during construction activities, but not as part of the authorized nest relocation process outlined in these specific conditions, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.

18. **Tilling, Compaction and Escarpment Remediation Requirements.** For the years after the first- year sand placement (out- year), compaction monitoring, tilling and escarpment monitoring are not required if placed material no longer remains on the dry beach.
 - a. **Compaction Sampling.** Sand compaction shall be monitored in the area of sand placement immediately after completion of the nourishment event, and two weeks prior to the beginning of marine turtle nesting season, for three (3) subsequent years. The requirement for compaction monitoring may be eliminated if the placed sand is tilled, regardless of post- construction compaction levels. If the average value for any depth exceeds 500 pounds per square inch (psi) for any two or more adjacent stations, then that area shall be tilled prior to the beginning of marine turtle nesting season. If a few values exceeding 500 psi are present randomly within the project area, tilling will not be required. Compaction monitoring shall be in accordance with the following protocol:
 - i. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area), and one station shall be midway between the dune line and the high-water line (normal wrack line).

 - ii. At each station, the cone penetrometer shall be pushed to depths of 6, 12 and 18 inches three times (i.e., three replicates at each depth). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

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- iii. If values exceeding 500 psi are distributed throughout the project area, but in no case do those values exist at two adjacent stations at the same depth, then the Permittee shall consult with the FWC to determine if tilling is required. A request for a tilling waiver based on these compaction values shall be submitted to the FWC at MarineTurtle@MyFWC.com.
- b. Tilling Requirements.** If tilling is performed regardless of post-construction compaction levels or tilling is required based on compaction measurements, the area shall be tilled to a depth of 24 inches. Tilling shall be in accordance with the following protocol:

 - i. All tilling activity shall be completed prior to the marine turtle nesting season. If the project is completed during the marine turtle nesting season, tilling shall not be performed in areas where nests have been relocated to or left in place.
 - ii. 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. Each pass of the tilling equipment shall be overlapped to allow thorough and even tilling.
 - iii. Tilling shall occur landward of the wrack line and shall avoid all naturally vegetated areas that are at least 3 square feet in size, as well as any planted areas that have been authorized by the Department. A 3-foot-wide No-Tilling buffer shall be maintained around vegetated areas. The slope between the mean high- water line and the mean low water line shall be maintained to approximate natural slopes.
- c. Escarpment Surveys.** Visual surveys for escarpments along the project area shall be made immediately after completion of sand placement, within 30 days prior to April 15 and weekly throughout the marine turtle season for three (3) subsequent years, each year placed sand remains on the dry beach. Escarpment remediation shall be as follows:

 - i. Prior to marine turtle nesting season, escarpments that interfere with marine turtle nesting or that exceed 18 inches in height for a distance of at least 100 feet shall be leveled to the natural beach contour or the beach profile shall be reconfigured to minimize scarp formation. Any escarpment removal shall be reported relative to R monument location to the FWC at MarineTurtle@MyFWC.com with a copy sent to the JCP Compliance Officer.
 - ii. If weekly surveys during the marine turtle nesting season document escarpments that exceed 18 inches in height for a distance of at least 100 feet and have persisted for more than two weeks, the FWC shall be contacted

immediately to determine the appropriate action to be taken. The Permittee shall provide locations and measurements of the escarpments to the closest R monument as well as the coordinates for the location of marine turtle nests located within 20 feet of the escarpments (latitude and longitude in decimal degrees), with photographs when possible. Upon written notification by the FWC that the escarpment needs to be leveled, the Permittee shall level the escarpment. If nests are located nearby, to minimize impacts to any existing nest the Permittee shall also coordinate with the marine turtle permit holder prior to leveling the escarpments. An annual summary documenting weekly escarpment surveys (including dates, presence and height of escarpments) and any remediation actions taken shall be submitted electronically to the FWC (MarineTurtle@MyFWC.com) by December 31 of each year.

Note for Shorebird Protection: If compaction sampling, tilling or escarpment removal occurs during shorebird breeding season, the Shorebird Conditions (including surveys) included in this authorization shall be followed. No heavy equipment shall operate, and no compaction sampling or tilling shall occur within 300 feet of any shorebird nest. If flightless shorebird chicks are present within the work zone or equipment travel corridor, a Bird Monitor shall be present during the operation to ensure that no heavy equipment operates within 300 feet of the flightless young or within a site-specific corridor established per Specific Condition 24. It is the responsibility of the Permittee to ensure that their contractors avoid tilling, scarp removal or dune vegetation planting in areas where nesting birds are present.

19. **Post-Construction Lighting Surveys.** The Permittee shall ensure that lighting surveys be conducted from the renourished berm and the following actions taken to address potential adverse impacts expected with artificial lights visible from any dry portion of the newly elevated beach. The surveys shall be conducted from the top of the foreshore slope (i.e., the seaward edge of the filled berm before it slopes into the water), facing landward. The survey shall follow standard techniques for such a survey, such as including the number and type of visible lights, location of lights, and photo documentation (see additional techniques as per the [2015 USFWS Statewide Programmatic Biological Opinion](#)).
- a. The first survey shall be conducted between May 1 and May 15 for the first nesting season following construction. For each visible light source, the Permittee shall document that the property owners have been notified and has been provided with recommendations for correcting the light as soon as possible. Recommendations shall be in accordance with local lighting ordinances. A report summarizing all visible lights and the recommendations for correcting the light shall be forwarded to local code enforcement. If no lighting ordinances exist, the recommendations to the property owners shall be consistent with the FWC lighting guidelines, which include no lights or light sources shall be visible from the newly elevated beach. The second

survey shall be conducted between July 15 and August 1 to assess any remaining visible lights requiring corrective action.

- b. A summary report of the surveys and what corrective actions or local enforcement actions have been taken shall be submitted to the FWC at MarineTurtle@MyFWC.com and copied to JCPCCompliance@dep.state.fl.us by December 31 of the year in which surveys are conducted. Upon request by the FWC, the Permittee shall set up and hold a meeting with the those responsible for code enforcement (when applicable), the FWC and the USFWS to discuss the report and potential additional corrective action needed, as well as any documented marine turtle disorientations in or adjacent to the project area.

20. Post-Construction Monitoring and Reporting Marine Turtle Protection Conditions.

- a. For each sand placement event, reports for all required marine turtle nesting surveys shall be provided for the post construction (partial or remaining) nesting season and for two full nesting seasons post construction in accordance with the Table 1 (below). If nesting and reproductive success is less than the criteria in the table below, an additional year of monitoring and reporting may be required. If criteria is not met, additional conditions prior to the next sand placement on this beach may be required by the Department and the FWC.
- b. Data shall be reported and summarized for the nourished areas and reference beach in accordance with Table 1 (below). Reports shall summarize all crawl activity, hatching success of a representative sampling of nests left in place (if any) by species, project name and applicable project permit numbers and dates of construction. Data on nesting activity on the nourished areas and on an equal length of beach that is not nourished shall be submitted in electronic format (Excel spreadsheets) which are available upon request from MarineTurtle@MyFWC.com. Reports shall be sent to the FWC Imperiled Species Management section at MarineTurtle@MyFWC.com and copied to JCPCCompliance@dep.state.fl.us. All summaries should be submitted by January 15 of the following year.

Table 1. Marine Turtle Monitoring for Beach Placement of Material.

Date	Duration	Variable	Criterion
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<u>Nesting Success</u>	<u>Year of in-season construction and two entire nesting seasons post construction, with possible additional year (for a total of three years)^{1 & 2}</u>	<u>Number of nests and non-nesting emergences by day by species</u>	<u>40 percent or greater</u>
<u>Hatching success</u>	<u>Year of in-season construction and one entire nesting season post construction, with possible additional year^{1 & 2}</u>	<u>Number of hatchlings by species to hatch from egg</u>	<u>60 percent or greater (a statistically valid number of loggerhead and green nests, and all leatherback nests)</u>
<u>Emergence Success</u>	<u>Year of in-season construction and one entire nesting season post construction, with possible additional year^{1 & 2}</u>	<u>Number of hatchlings by species to emerge from nest onto beach</u>	<u>Average must not be significantly different than the average hatching success</u>
<u>Disorientations</u>	<u>Year of in-season construction and two entire nesting seasons post construction¹</u>	<u>Number of nests and/or individuals that misorient or disorient</u>	
<u>Nests affected by erosion or inundation</u>	<u>Year of construction and two years post construction if placed sand remains on the beach</u>	<u>Number of nests lost and/or affected, by species</u>	
<u>Lighting Surveys</u>	<u>Two in-season surveys the year following construction; First survey between May 1 and May 15 and second survey between July 15 and August 1¹</u>	<u>Number, location and photographs of lights visible from nourished berm, corrective actions recommended, and notifications made</u>	<u>Lighting survey and possible meeting resulting with plan for reduction in lights visible from nourished berm</u>

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<u>Compaction</u>	<u>Three nesting seasons beginning with the year of construction. Not required if the beach is tilled prior to nesting season¹</u>	<u>Shear resistance</u>	<u>Less than 500 psi</u>
<u>Escarpment Surveys</u>	<u>Weekly during nesting season for three years beginning with year of construction¹</u>	<u>Number of scarps 18 inches or greater extending for more than 100 feet that persist for more than 2 weeks</u>	<u>Successful remediation of all persistent scarps as needed</u>
¹ If placed sand remains on the beach ² Additional years may be required if variable does not meet criterion based on previous year			

21. **Shorebird Protection.** The term “shorebird” is used here to refer to all solitary nesting shorebirds and colonial nesting seabirds that nest on Florida’s beaches. These conditions are intended to avoid direct impacts associated with the construction of the project and may not address all potential take incidental to the operation and use related to this authorization. The Permittee shall adhere to the shorebird protection conditions during the shorebird breeding cycle, which includes nesting.

- a. Shorebird breeding season dates for this project area are **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).
- b. Any parts of the project where “project activities” on the beach take place *entirely outside the breeding season*, do not require shorebird surveys. The term “project activities” includes operation of vehicles on the beach, movement or storage of equipment on the beach, sand placement or sand removal, and other similar activities that may harm or disturb shorebirds. Bird survey routes must be established and monitored throughout the entire breeding season in any parts of the project area where: 1) potential shorebird breeding habitat occurs, and 2) project activities are expected to occur at any time within the breeding season. Breeding season surveys shall begin on the first day of the breeding season or 10 days prior to project commencement (including survey activities and other pre- construction

presence on the beach), whichever is later.

- c. Bird surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established by the Permittee to cover project areas which require shorebird surveys. These routes shall be determined in coordination with the FWC Regional Biologist prior to the initiation of construction. Routes shall not be modified without prior notification to the FWC.
- d. During the pre-construction and construction activities associated with the project, the Permittee shall ensure that surveys for detecting breeding activity and the presence of flightless chicks shall be completed **on a daily basis** by a qualified bird monitor. This shall be completed prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young. If all project activities are completed and all personnel and equipment have been removed from the beach prior to the end of the breeding season, route surveys shall continue to be conducted at least weekly through the end of the breeding season. If breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall establish a buffer in accordance with Specific Condition 24 around the site and shall notify the FWC Regional Biologist within 24 hours. The posts and materials for the shorebird buffer zones shall be removed once all breeding or nesting behavior has ceased.
- e. The Permittee shall require the Bird Monitor to conduct a shorebird education and identification program (and/or provide educational materials) with the on-site staff to ensure protection of precocial (mobile) chicks. All personnel are responsible for watching for shorebirds, nests, eggs and chicks. If the Bird Monitor finds that shorebirds are breeding within the project area, the Permittee shall place and maintain a bulletin board in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that “NESTING BIRDS ARE PROTECTED BY LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS”.

22. **Shorebird Monitor Requirements.**

- a. The Permittee shall ensure that nesting and breeding shorebird surveys are conducted by trained, dedicated individuals (Bird Monitors) with proven shorebird identification skills and avian survey experience.
- b. Bird Monitor(s) shall be required to review and become familiar with the general information, employ the data collection protocol, and implement data entry

procedures outlined on the FWC's FSD website (<http://www.flshorebirddatabase.org> or [Florida Shorebird Database](#)). They shall use the data-collection protocol and implement data entry procedures as outlined in that website.

- c. The Permittee shall submit a list of Bird Monitors, with their contact information and a summary of qualifications, including bird identification skills and avian survey experience to the FWC Regional Biologist and JCPCCompliance@dep.state.fl.us, prior to any construction or shorebird surveys. The determination that the selected Bird Monitor(s) meet the required qualifications shall be coordinated between the Permittee and the FWC Regional Biologist. Once approved, the Permittee shall submit the names and contact information of the Bird Monitor(s) who have been approved by the FWC to JCPCCompliance@dep.state.fl.us, prior to any construction or shorebird surveys. The Bird Monitor(s) shall meet the following minimum qualifications:
- i. Has previously participated in beach-nesting shorebird surveys in Florida (provide references or resume). Experience with previous projects must document the ability to 1) identify all species of beach-nesting birds by sight and sound, 2) identify breeding/territorial behaviors, and find nests of shorebirds that occur in the project area, and 3) identify habitats preferred by shorebirds nesting in the project area.
 - ii. Have a clear working knowledge of, and adhere to, the [Breeding Bird Protocol for Florida's Seabirds and Shorebirds](#).
<https://publictemp.myfwc.com/crossdoi/shorebirds/resources.aspx>
 - iii. Have completed full-length webinars: Route- Surveyor Training and Rooftop Monitoring Training, including the annual refresher training. Training resources can be found on the [Florida Shorebird Database \(FSD\)](#) website.
<https://publictemp.myfwc.com/crossdoi/shorebirds/index.aspx>
 - iv. Familiar with the [FWC beach driving guidelines](#).
[\(https://myfwc.com/conservation/you- conserve/wildlife/beach-driving/\)](https://myfwc.com/conservation/you- conserve/wildlife/beach-driving/).
 - v. Experience posting beach-nesting bird sites, consistent with [Florida Shorebird Alliance \(FSA\) Guidelines](#).
<http://flshorebirdalliance.org/resources/instructions-manuals.aspx>
 - vi. Has registered as a contributor to the FSD.
23. **Shorebird Survey Protocols.** Bird survey protocols, including downloadable field data sheets, are available on the [FSD website](#). All breeding activity shall be reported to the

FSD website within one week of data collection. If the use of this website is not feasible for data collection, the FWC Regional Biologist shall be contacted for alternative methods of reporting. The Permittee shall ensure that the Bird Monitors use the following survey protocols:

- a. Surveys shall be conducted by walking the length of all survey routes and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD Breeding Bird Protocol for Shorebirds and Seabirds. Use of binoculars (minimum 8x40) is required and use of a spotting scope may be necessary to accurately survey the area. If an ATV or other vehicle is needed to cover large survey routes, the Bird Monitor shall stop at intervals of no greater than 600 feet to visually inspect for breeding activity.
 - b. Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Biologist within 24 hours.
24. **Shorebird Buffer Zones and Travel Corridors.** The Permittee shall require the Bird Monitor(s) and Contractor(s) to meet the following:
- a. The Bird Monitor(s) shall establish a disturbance-free buffer zone around any location within the project area where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot buffer shall be established around each nest or around the perimeter of each colonial nesting area. A 300-foot buffer shall also be placed around the perimeter of areas where shorebirds are seen digging nest scrapes or defending nest territories. All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. **Smaller, site-specific buffers may be established if approved in writing by the FWC Regional Biologist.** Travel corridors shall be designated and marked outside the buffer areas for pedestrian, equipment, or vehicular traffic.
 - b. 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 immediately widen the buffer zone to a sufficient size to protect breeding birds.
 - c. 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 allowed 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. These site-specific buffers must be determined in coordination with the FWC Regional Biologist.

- d. The Bird Monitor(s) shall ensure that the perimeters of designated buffer zones shall be marked according to FSA Posting Guidelines available at: <http://flshorebirdalliance.org/resources/instructions-manuals.aspx> with posts, twine and the FWC-approved signs stating “Do Not Enter, Important Nesting Area” or similar language around the perimeter (see example of signage for marking designated buffer zones at <http://myfwc.com/conservation/you-protect/wildlife/shorebirds/>). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Biologist, these shall be clearly marked. **Posting shall be maintained in good repair until no active nests, eggs, or flightless young are present.** Although solitary nesters may leave the buffer zone temporarily 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.
- e. The Permittee shall ensure that no construction activities, pedestrians, moving vehicles, or stockpiled equipment are allowed within the buffer area.
- f. The Permittee shall ensure that the Bird Monitor(s) 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 transit 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.
- g. When flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless a Bird Monitor is present to adequately monitor the travel corridor. The Permittee shall require the contractor with the oversight of the Bird Monitor(s) to avoid any chicks that may be in the path of moving vehicles. The Permittee shall also require the contractor with the oversight of the Bird Monitor(s) to level any tracks, ruts, or holes that may be capable of trapping flightless chicks, while avoiding any impacts to the chicks.

Notification. Any injury or death of a shorebird (including crushing eggs or young) resulting from project activities shall be reported immediately to the FWC Regional Species Conservation Biologist.

25. **Dune Planting Conditions.** Planting of dune vegetation is encouraged outside of marine turtle nesting season. However, planting activities may occur during the marine turtle nesting season May 1 through October 31 under the following conditions:
- a. It is the responsibility of the Permittee to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nest surveys and activities involving marine turtles shall be conducted only by persons with a valid FWC permit issued pursuant to Florida Administrative Code 68E-1. For information regarding marine turtle permit holders, contact the FWC at MTP@MyFWC.com.
 - b. Marine turtle nest surveys shall be initiated at the beginning of the nesting season or 65 days prior to installation of plants (whichever is later). Surveys shall continue until completion of the project or through October 31 (whichever is earliest). Surveys shall be conducted throughout the project area and all beach access sites.
 - c. Any nests deposited in the area shall be left in place. The marine turtle permit holder shall install an on-beach marker at any nest site and a secondary marker located at a point as far landward as possible to ensure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and survey ribbon or string shall be installed to establish an area of three (3) feet radius surrounding the nest. No planting or other activity shall occur within this area nor shall any activity occur which might cause indirect impacts within this area. Nest sites shall be inspected daily to ensure nest markers have not been removed.
 - d. The use of heavy equipment (including vehicles such as trucks) is not authorized in marine turtle nesting habitat. A lightweight (ATV style) vehicle, with tire pressures of 10 psi or less can operate on the beach if required.
 - e. Any vegetation planting shall be installed by hand labor/tools only. For more information on the Florida Panhandle coastal dune systems and specific information on coastal dune restoration and restoration enhancement activities please consult <http://edis.ifas.ufl.edu/pdf/files/sg/sg15600.pdf>.
 - f. All activity shall be confined to daylight hours and shall not occur prior to the completion of all necessary marine turtle surveys and conservation activities within the project area. Nighttime storage of equipment or materials shall be off the beach.
 - g. In the event a nest is disturbed or uncovered during planting activity, the Permittee shall cease all work and immediately contact the marine turtle permit holder responsible for marine turtle conservation measures within the project area. If a nest(s) cannot be safely avoided during construction, all activity within the affected

project area shall be delayed until complete hatching and emergence of the nest.

- h. All planting related activities must avoid marked marine turtle nests including those that may be on the beach before and after the marine turtle nesting season dates (May1 through October 31). Any impacts to nests or marine turtles that inadvertently occur shall be immediately reported the Florida Fish and Wildlife Conservation Commission (FWC) at MarineTurtle@MyFWC.com, and all work shall stop until authorized to continue by the Department and the FWC.
- i. All irrigation lines for the dune restoration planting, if proposed, will be temporarily installed along the landward side of the dune only and will be removed once the plants have become established. Any watering necessary along the seaward side of the dune will be done by hand on an “as needed” basis.

26. Beach Mice Protection.

- a. Beach mouse habitat shall be avoided when selecting sites for equipment, pipes, vehicle storage and staging to the maximum extent practicable. Suitable beach mouse habitat constitutes the primary dunes (characterized by sea and other grasses), secondary dunes (similar to primary dunes, but also frequently includes such plants as woody goldenrod, false rosemary), and interior or scrub dunes, as well as areas with natural vegetation adjacent to the dunes (seaward of the toe of the dune, in blow-outs, or other openings between dunes).
- b. Equipment placement or storage shall be excluded in the area between 5 to 10 feet seaward of the existing dune toe or 10 percent of the beach width (for projects occurring on narrow eroded beach segments) seaward of the dune toe in areas of occupied beach mouse habitat (Figure 2 below). The toe of the dune is where the slope breaks at the seaward foot of the dune.

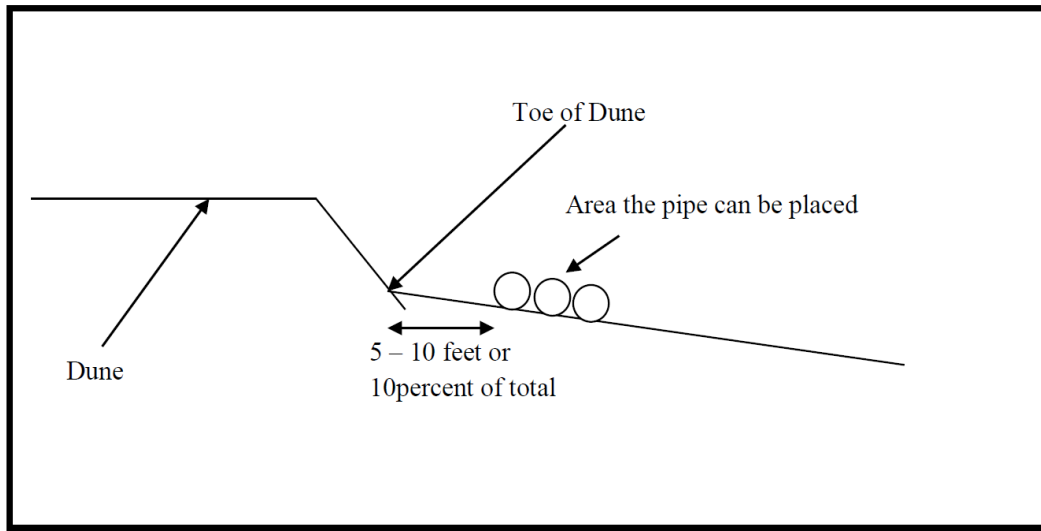


Figure
2

- c. Existing beach access points shall be used for vehicle and equipment beach access to the maximum extent practicable. These accesses shall be delineated by post and rope or other suitable material to ensure vehicles and equipment transport stay within the access corridor. The topography at the accesses shall be fully restored to pre-project work configuration following project completion. Parking areas for construction crews shall be located as close as possible to the work sites, but outside of vegetated dunes to minimize impacts to existing habitat and the need to transport workers along the beachfront. The creation of new or expansion of existing beach accesses for vehicles and equipment within beach mouse habitat consisting of vegetated dunes is authorized for no more than one every 4 miles. The distribution of access areas will result in the least number of access areas within beach mouse habitat as practicable and delineated by post and rope or other suitable material to ensure vehicles and equipment transport stay within the access corridor. The access points shall be as follows:
- i. No more than 25 feet wide for vehicles.
 - ii. No more than 50 feet wide for equipment.
- d. New or expanded beach accesses that impact vegetated dunes shall be replanted within 3 months following project completion. The habitat restoration shall consist of restoring the dune topography and planting with at least three species of appropriate native dune vegetation (i.e., native to coastal dunes in the respective county and grown from plant stock from that region of Florida). Seedlings shall be

at least 1 inch by 1 inch with a 2.5-inch pot. Planting shall be on 18-inch centers throughout the created dune; however, 24-inch centers may be acceptable depending on the area to be planted. Vegetation shall be planted with an appropriate amount of fertilizer and anti-desiccant material, as appropriate, for the plant size. No sand stabilizer material (coconut matting or other material) shall be used in the dune restoration. The plants may be watered without installing an irrigation system. In order for the restoration to be considered successful, 80 percent of the total planted vegetation shall be documented to survive six months following planting of vegetation. If the habitat restoration is unsuccessful, the area shall be replanted following coordination with the Service.

MONITORING REQUIRED:

2738. Water Quality - Turbidity shall be monitored as follows:

Units: - Nephelometric Turbidity Units (NTUs)

Dredging areas

Frequency: For hopper dredge: During each hopper dredge cycle during daylight hours, after overflow from the hopper begins and the associated turbidity plume reaches the edge of the mixing zone.

For hydraulic pipeline dredge: Every four hours during daylight hours, beginning at least two hours after dredging begins, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredging operations.

Location: **Background:** Five samples measured at least 5 meters apart (pooled to determine the mean background level for the sampling event), at mid-depth, at least 150 meters up-current from the point of excavation, clearly outside of any turbidity plume.

Compliance: At the point where the densest portion of the turbidity plume intersects the periphery of the mixing zone (1,500 meters down-current from the dredge), at mid-depth. If no plume is visible, follow the likely direction of flow.

Intermediate Monitoring: Additional samples will be collected in the densest portion of the turbidity plume, at intermediate distances within the mixing zone (150, 500, and 1,000 meters from the dredge), at mid-depth. These measurements will be used to calibrate the size of the mixing zone for future events.

Disposal areas

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Frequency: At least once during each hopper discharge cycle during daylight hours, after discharge from the hopper begins and while the densest part of the associated turbidity plume has reached ~~crosses~~ the edge of the mixing zone. When using a hydraulic pipeline dredge, every four hours during daylight hours, beginning approximately an hour after the turbidity plume passes the edge of the mixing zone.

Location: Background: Five samples measured at least 5 meters apart (pooled to determine the mean background level for the sampling event), at mid-depth, at least 150 meters up-drift from the entire approved placement area, clearly outside of any turbidity plume, taken at a distance offshore to correspond with the distance of the compliance sample.

Compliance: At the point where the densest portion of the turbidity plume intersects the periphery of the mixing zone (3,000 meters down-current from the point where return water from the discharge pipe enters the Gulf of Mexico), at mid-depth.

Intermediate Monitoring: Additional samples shall be collected in the densest portion of the plume, at intermediate distances within the mixing zone (150, 500, 1,000, 1,500, 2,000, and 2,500 meters from the point where return water from the discharge pipe enters the Gulf of Mexico), at mid-depth. These measurements will be used to calibrate the size of the mixing zone for future events.

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., background sample shall immediately follow the compliance sample.

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 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>

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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.

~~All monitoring data shall be submitted within one week of analysis with documents containing the following information: (1) permit number; (2) dates of sampling and analysis; (3) a statement describing the methods used in collection, handling, storage and analysis of the samples; (4) a map indicating the sampling locations; (5) a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.~~

~~Monitoring reports shall also include the following information for each sample that is taken:~~

- ~~(a) — time of day samples taken;~~
- ~~(b) — depth of water body;~~
- ~~(c) — depth of sample;~~
- ~~(d) — antecedent weather conditions;~~
- ~~(e) — tidal stage and direction of flow; and~~
- ~~(f) — wind direction and velocity.~~

- 28. Determination of Compliance within Fort Pickens Aquatic Preserve and Gulf Islands National Seashore:** The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring within the Fort Pickens Aquatic Preserve or Gulf Islands National Seashore reveals the turbidity level at the compliance site is greater than 3.5 NTUs above the mean of the associated background turbidity levels for that sampling event, the associated activity (dredging or filling) 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 ~~in~~ Tallahassee via e-mail at (850) 414-7716 or JCPCCompliance@dep.state.fl.us and include in the subject line, "TURBIDITY EXCEEDANCE", and the Project Name and Permit Number. ~~and~~ Also notify the Department's Northwest District office in Pensacola at NWD_ERP_Applications@dep.state.fl.us.

~~The monitoring reports shall indicate each exceedance, the duration of the shut-down, and the corrective actions.~~

~~Any project-associated discharge other than dredging, placement in the swash zone or placement in the nearshore disposal site (e.g., scow leakage or runoff from temporary containment area) should be monitored as close to the source as possible. If the turbidity level exceeds 3.5 NTUs above the mean of the associated background turbidity levels, the~~

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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 compliance turbidity levels return to 3.5 NTUs above the mean of the associated background turbidity levels 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-OTHER”, and include the Project Name and the Permit Number.

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

- i. the Project Name;
- ii. the Permit Number;
- iii. location and level (NTUs above background) of the turbidity exceedance;
- iv. the time and date that the exceedance occurred; and
- v. the time and date that construction ceased.

b. 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:

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

29. **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 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;

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- b. dates of sampling and analysis;
- c. GPS location of sample and source. When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001). Please also indicate the datum;
- 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 geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations (background and compliance), location of active construction, the visible plume pattern and direction of flow. The map shall also include the boundaries of any benthic resources or OFW. A sample map shall be submitted to and reviewed by the Department prior to construction (Specific Condition 5);
- 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.

Monitoring reports shall be submitted to the Department's ~~DEP Bureau of Beaches & Coastal Systems~~, JCP Compliance Officer, via email to JCPCCompliance@dep.state.fl.us and to the DEP NW District office. In the subject line of the reports, include the Project Name, Permit Number and the dates of the monitoring interval. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the ~~Department's JCP Compliance Officer-DEP~~, please clearly include, at the top of each page or as a cover page to the submittal: **"This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0295379-001-JC (Lower Pensacola Harbor Maintenance Dredging)."**

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

Sheet 9 (dated August 2021) shall replace sheet 9 (dated August 2015).

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 marine turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and is expected to be of environmental benefit, the **permit is hereby modified** as stated above. By copy of this letter and the attached plans, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **December 9th, 2025** expiration date of the permit. This letter and the attached plans must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, 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, 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

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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, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. 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 and persons entitled to written notice under Section 120.60(3), F.S., 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. 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 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, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for

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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 Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, 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 must be filed within 30 days from the date this action is filed with the Clerk of the Department.

If you have any questions regarding this matter, please contact Rachel Grundl by email at Rachel.Grundl@FloridaDEP.gov or by telephone at (850) 245-7594.

EXECUTION AND CLERKING:

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Gregory W. Garis
Program Administrator
Beaches, Inlets and Ports Program
Office of Resilience and Coastal Protection

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Attachments: Updated set of approved Permit Drawings (11 Pages, August 2015, 1 Page, August 2021)

cc: Greg Garis, RCP Raya Pruner, FWC
 Ivana KennyCarmola, RCP Nick Vitale, FWC
 Robert Brantly, RCP Summer Waters, Parks Service
 Ralph Clark, RCP Steven McCoy, NPS
 Beth Fugate, RCP Jennifer Manis, NPS
 JCP Compliance Officer Ashley Warren, NPS
 Darrel Echols, GUI marineturtle@myfwc.com
 Patricia Kelly, FWS fwcconservationplanningservices@myfwc.com
 Kristi Yanchis, FWS

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below to the following listed persons:

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.

Jacob Koerner 9/15/2021
Clerk Date