



DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS  
1520 ROYAL PALM SQUARE BOULEVARD, SUITE 310  
FORT MYERS, FLORIDA 33919

March 28, 2023

Regulatory Division  
West Permits Branch  
Fort Myers Permits Section  
SAJ-2002-07813(NWP-HMM)

Lee County BoCC  
c/o Josh Malo, MSTBU Project Manager  
2115 Second Street  
Fort Myers, Florida 33901  
Sent via email: [jmalo@leegov.com](mailto:jmalo@leegov.com)

Dear Mr. Malo:

Your request for authorization under emergency permitting procedures was received on March 7, 2023. Your proposal involves maintenance dredging a residential canal that was shoaled in by Hurricane Ian to the previously authorized depth of -4 feet Mean Low Water as shown in the attached drawings. The area to be dredged is approximately 3.7 acres, and approximately 4,200 cubic yards of material will be removed. Dredged material will be placed in two upland dredged material management areas for dewatering. Turbidity curtains will be used throughout dredging activities to prevent sedimentation of the adjacent waterbody. Maintenance dredging and upland dredged material management areas in the same configuration were previously authorized by Corps permit number SAJ-2002-07813(NWP-WDD), issued on 6 November 2012.

The project is located in an unnamed residential canal on the west side of Old Pelican Bay Drive, Section 13, Township 46 South, Range 23 East, Fort Myers Beach, Lee County, Florida (Latitude: 26.47237°; Longitude: -81.95879°).

The proposed activities are authorized under approved emergency permitting procedures in accordance with the terms and conditions specified below.

**Terms:**

1. You are authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403).
2. The proposed activities are authorized by Nationwide Permit (NWP) 35 (Maintenance Dredging of Existing Basins). In order for this NWP authorization to be valid, you must ensure that the work is performed in

accordance with the Nationwide Permit General Conditions, the Jacksonville District Regional Conditions, and the General and Project-Specific Special Conditions listed below. Please access the U.S. Army Corps of Engineers Jacksonville District's Regulatory Source Book web page for links to view NWP information at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>. Please be aware this Internet address is case sensitive and should be entered as it appears above. Once there, select "Nationwide Permits."

3. The authorized work must be completed within 180 days from the date of this authorization.
4. You must adhere to the general and special conditions listed below.
5. Authorization granted under emergency procedures does not convey any property rights or exclusive privileges. It does not authorize any injury to the property or rights of others or obviate the need to obtain other Federal, state, or local authorizations required by law. In addition, it does not authorize interference with any existing or proposed Federal project.

**General Conditions (33 CFR Part 320-330):**

1. The time limit for completing the work authorized ends on **September 24, 2023**.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner on the transfer form attached to this letter and forward a copy to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Project-Specific Special Conditions:**

1. **Reporting Address:** The Permittee shall submit all reports, notifications, documentation, and correspondence required by the general and special conditions of this permit to either (not both) of the following addresses:
  - a. For electronic mail (preferred): [SAJ-RD-Enforcement@usace.army.mil](mailto:SAJ-RD-Enforcement@usace.army.mil) (not to exceed 15 MB).
  - b. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.

The Permittee shall reference this permit number, SAJ-2002-07813(NWP-HMM), on all submittals.

2. **Commencement Notification:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall submit a completed "Commencement Notification" form (attached).
3. **Posting of Permit:** The Permittee shall have available and maintain for review a copy of this permit and approved plans at the construction site.
4. **Self-Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.
5. **Cultural Resources/Historic Properties:**
  - a. No structure or work shall adversely affect, impact, or disturb properties listed in the *National Register of Historic Places* (NRHP), or those eligible for inclusion in the NRHP.

- b. If, during permitted activities, items that may have historic or archaeological origin are observed the Permittee shall immediately cease all activities adjacent to the discovery that may result in the destruction of these resources and shall prevent his/her employees from further removing, or otherwise damaging, such resources. The applicant shall notify both the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333 and the Corps, of the observations within the same business day (8 hours). Examples of submerged historical, archaeological or cultural resources include shipwrecks, shipwreck debris fields (such as steam engine parts, or wood planks and beams), anchors, ballast rock, concreted iron objects, concentrations of coal, prehistoric watercraft (such as log "dugouts"), and other evidence of human activity. The materials may be deeply buried in sediment, resting in shallow sediments or above them, or protruding into water. The Corps shall coordinate with the Florida State Historic Preservation Officer (SHPO) to assess the significance of the discovery and devise appropriate actions. Project activities shall not resume without verbal and/or written authorization from the Corps.
- c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition and, if deemed necessary by the SHPO or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
- d. In the unlikely event that unmarked human remains are identified on non-federal lands; they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archaeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the SHPO and from the Corps.

6. **Assurance of Navigation and Maintenance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
  
7. **Jacksonville District Programmatic Biological Opinion (JAXBO):** Structures and activities authorized under this permit will be constructed and operated in accordance with all applicable PDCs contained in the JAXBO, based on the permitted activity. Johnson's seagrass and its critical habitat were delisted from the Endangered Species Act on May 16, 2022. Therefore, JAXBO PDCs required to minimize adverse effects to Johnson's seagrass and its critical habitat are no longer applicable to any project. Failure to comply with applicable PDCs will constitute noncompliance with this permit. In addition, failure to comply with the applicable PDCs, where a take of listed species occurs, would constitute an unauthorized take. The NMFS is the appropriate authority to determine compliance with the Endangered Species Act. The most current version of JAXBO can be accessed at the Jacksonville District Regulatory Division website in the Endangered Species section of the Sourcebook located at: <http://www.saj.usace.army.mil/Missions/Regulatory/SourceBook.aspx>  
  
JAXBO may be subject to revision at any time. The most recent version of the JAXBO must be utilized during the design and construction of the permitted work.
  
8. **Manatee Conditions:** The Permittee shall comply with the attached "Standard Manatee Conditions for In-Water Work – 2011." The most recent version of the Manatee Conditions must be utilized.
  
9. **Manatee Observer:** A dedicated manatee observer, whose sole responsibility is to watch for manatees, must be present during in-water work. The observer must be experienced in manatee observation techniques and have prior on-the-job experience as an observer during previous in-water work where the activities were similar in nature to the proposed project. The dedicated observer shall be present and perform no other duties that may interfere with their ability to observe for protected marine species. This person shall be someone other than the dredge and equipment operators/mechanics.
  
10. **Dredged Material Disposal:** The Permittee shall place all dredged material in a self-contained, upland disposal site as detailed in the attached drawings. The Permittee shall maintain the upland disposal site to prevent the discharge of dredged material and associated effluent into waters of the United States.

11. **Erosion Control:** Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area into waters of the United States. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized.
12. **Turbidity Barriers:** Prior to the initiation of any of the work authorized by this permit, the Permittee shall install floating turbidity barriers with weighted skirts that extend within 1 foot of the bottom around all work areas that are in, or adjacent to, surface waters. The turbidity barriers shall remain in place and be maintained daily until the authorized work has been completed and turbidity within the construction area has returned to ambient levels. Turbidity barriers shall be removed upon stabilization of the work area.
13. **Work During Daylight Hours:** All work shall be performed during daylight hours only.
14. **Water Quality Certification:** Prior to the initiation of any construction, projects qualifying for this DA permit must qualify for an exemption under section 403.813(1), Florida Statutes or 373.406, Florida Statutes, or otherwise be authorized by the applicable permit required under Part IV of Chapter 373, Florida Statutes, by the Department of Environmental Protection, a water management district under section 373.069, Florida Statutes, or a local government with delegated authority under section 373.441, Florida Statutes, and receive Water Quality Certification and applicable Coastal Zone Consistency Concurrence or waiver thereto, as well as any authorizations required for the use of state-owned submerged lands under Chapter 253, Florida Statutes, and, as applicable, Chapter 258, Florida Statutes. You should check State-permitting requirements with the Florida Department of Environmental Protection or the appropriate water management district.
15. **Coastal Zone Management Act Consistency Concurrence:** Prior to the initiation of any construction, projects qualifying for this DA permit must qualify for an exemption under section 403.813(1), Florida Statutes or 373.406, Florida Statutes, or otherwise be authorized by the applicable permit required under Part IV of Chapter 373, Florida Statutes, by the Department of Environmental Protection, a water management district under section 373.069, Florida Statutes, or a local government with delegated authority under section 373.441, Florida Statutes, and receive Water Quality Certification and applicable Coastal Zone Consistency Concurrence or waiver thereto, as well as any authorizations required for the use of state-owned submerged lands under Chapter 253, Florida Statutes, and, as applicable, Chapter 258, Florida Statutes. You should check State-permitting requirements with the Florida Department of Environmental Protection or the appropriate water management district.

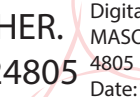
This letter of authorization does not include conditions that would prevent the 'take' of a state-listed fish or wildlife species. These species are protected under sec. 379.411, Florida Statutes, and listed under Rule 68A-27, Florida Administrative Code. With regard to fish and wildlife species designated as species of special concern or threatened by the State of Florida, you are responsible for coordinating directly with the Florida Fish and Wildlife Conservation Commission (FWC). You can visit the FWC license and permitting webpage (<http://www.myfwc.com/license/wildlife/>) for more information, including a list of those fish and wildlife species designated as species of special concern or threatened. The Florida Natural Areas Inventory (<http://www.fnai.org/>) also maintains updated lists, by county, of documented occurrences of those species.

This letter of authorization does not give absolute Federal authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions mandated by the National Flood Insurance Program. You should contact your local office that issues building permits to determine if your site is located in a flood-prone area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program.

Should you have any questions related to this verification or have issues accessing the documents reference in this letter, please contact Heather M. Mason via telephone at (239) 850-2171, or via e-mail at [Heather.M.Mason@usace.army.mil](mailto:Heather.M.Mason@usace.army.mil).

Sincerely,

MASON.HEATHER.  
MARIE.1242224805



Digitally signed by  
MASON.HEATHER.MARIE.124222  
4805  
Date: 2023.03.28 15:16:48 -04'00'

Heather M. Mason  
Project Manager

Enclosures:

Permit Transfer Request Form  
Commencement Notification Form  
Self-Certification Statement of Compliance  
Manatee Conditions for In-Water Work  
JaxBO PDCs for All Projects  
JaxBO PDCs for In-Water Activities  
JaxBO PDCs for Dredging  
Project Drawings

Cc:

Agent, Grady Timmins, P.E., Coastal Engineering Consultants

**DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST**

**DA PERMIT NUMBER: SAJ-2002-07813(NWP-HMM)**

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Section, Post Office Box 4970, Jacksonville, FL 32232-0019 or submit via electronic mail to: [SAJ-RD-Enforcement@usace.army.mil](mailto:SAJ-RD-Enforcement@usace.army.mil) (not to exceed 15 MB).

\_\_\_\_\_  
(TRANSFEREE-SIGNATURE)

\_\_\_\_\_  
(SUBDIVISION)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(LOT)

\_\_\_\_\_  
(BLOCK)

\_\_\_\_\_  
(NAME-PRINTED)

\_\_\_\_\_  
(STREET ADDRESS)

\_\_\_\_\_  
(MAILING ADDRESS)

\_\_\_\_\_  
(CITY, STATE, ZIP CODE)

**COMMENCEMENT NOTIFICATION**

*Within ten (10) days of initiating the authorized work, submit this form to via electronic mail to [saj-rd-enforcement@usace.army.mil](mailto:saj-rd-enforcement@usace.army.mil) (preferred, not to exceed 15 MB) **or** by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.*

**1. Department of the Army Permit Number:** SAJ-2002-07813(NWP-HMM)

**2. Permittee Information:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**3. Construction Start Date:** \_\_\_\_\_

**4. Contact to Schedule Inspection:**

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Printed Name of Permittee

\_\_\_\_\_  
Date

**SELF-CERTIFICATION STATEMENT OF COMPLIANCE**

*Within sixty (60) days of completion of the authorized work, submit this form via electronic mail to [saj-rd-enforcement@usace.army.mil](mailto:saj-rd-enforcement@usace.army.mil) (preferred) or by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.*

1. **Department of the Army Permit Number:** SAJ-2002-07813(NWP-HMM)

2. **Permittee Information:** Name: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

3. **Date Authorized Work Started:** \_\_\_\_\_ **Completed:** \_\_\_\_\_

4. **Contact to Schedule Inspection:** Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

5. **Description of Authorized Work (e.g. bank stabilization, fill placed within wetlands, docks, dredging, etc.):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. **Acreage or Square Feet of Impacts to Waters of the United States:** \_\_\_\_\_

7. **Describe Mitigation completed (if applicable):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. **Describe any Deviations from Permit (attach drawing(s) depicting the deviations):**

\_\_\_\_\_

\*\*\*\*\*

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Printed Name of Permittee

\_\_\_\_\_  
Date

## STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species 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 area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service 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](mailto:ImperiledSpecies@myFWC.com)
- f. 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* 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](http://MyFWC.com/manatee). Questions concerning these signs can be sent to the email address listed above.

# CAUTION: MANATEE HABITAT

**All project vessels**

**IDLE SPEED / NO WAKE**

When a manatee is within 50 feet of work  
all in-water activities must

**SHUT DOWN**

Report any collision with or injury to a manatee:

**Wildlife Alert:**

**1-888-404-FWCC(3922)**

cell \*FWC or #FWC



**AP.1.** The applicant must agree to adhere to PDCs for *In-Water Activities* (provided below).

**AP.2.** All projects involving the installation of piles or sheet piles shall follow the PDCs for *In-Water Noise from Pile and Sheet Pile Installation* (Section 2.2). This Opinion does not cover projects that use seismic surveys, low frequency sonar, explosions, and seismic air guns.

**AP.3.** All projects proposed in or near areas with mangroves, seagrasses, corals, or hard bottom habitat must refer to PDCs for *Mangroves, Seagrasses, Corals, and Hard Bottom for All Projects* (provided below) to determine whether the project is covered under the Opinion and, if it is covered, to ensure it is sited, designated, and implemented following all of the PDCs in that section.

**AP.4.** For every project, the USACE must determine if the project is located within:

- Smalltooth sawfish critical habitat limited exclusion zones (Section 2.1.1.1)
- Gulf sturgeon critical habitat migratory restriction zones (Section 2.1.1.2)
- Atlantic sturgeon critical habitat exclusion zone (St. Marys River) (Section 2.1.1.3)
- North Atlantic right whale educational sign zones (Section 2.1.1.4)
- U.S. Caribbean sea turtle critical habitat restriction zones (Section 2.1.1.5)
- Bryde's whale exclusion zone (Section 2.1.1.6)

Where the activity is excluded from the Opinion within a particular zone, the application must be processed under a separate consultation. Where additional restrictions apply to activities within that zone, the USACE or other authorizing entity must ensure that the project meets the requirements for that zone.

**AP.5.** This Opinion only covers new construction (i.e., installation, repair, replacement) and does not apply to after-the-fact consultations or enforcement actions handled by the USACE.

**AP.6.** All activities must be completed during daylight hours.

For an activity to be covered under this Opinion, the USACE authorization must include the following conditions. Failure to comply with these conditions could result in enforcement action by the USACE and/or NMFS.

**AP.7. Education and Observation:** The permittee must ensure that all personnel associated with the project are instructed about the potential presence of species protected under the ESA and the Marine Mammal Protection Act (MMPA). All on-site project personnel are responsible for observing water-related activities for the presence of protected species. All personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing ESA-listed species or marine mammals. To determine which species may be found in the project area, please review the relevant Protected Species List at: [http://sero.nmfs.noaa.gov/protected\\_resources/section\\_7/threatened\\_endangered/index.html](http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/index.html)

**AP.8. Reporting** of interactions with protected species:

- a) Any collision(s) with and/or injury to any sea turtle, sawfish, whale, or sturgeon occurring during the construction of a project, shall be reported immediately to NMFS's Protected Resources Division (PRD) at (1-727-824-5312) or by email to [takereport.nmfsser@noaa.gov](mailto:takereport.nmfsser@noaa.gov) and [SAJ-RD-Enforcement@usace.army.mil](mailto:SAJ-RD-Enforcement@usace.army.mil).
- b) Smalltooth sawfish: Report sightings to 1-844-SAWFISH or email [Sawfish@MyFWC.com](mailto:Sawfish@MyFWC.com)
- c) Sturgeon: Report dead sturgeon to 1-844-STURG 911 (1-844-788-7491) or email [nmfs.ser.sturgeonnetwork@noaa.gov](mailto:nmfs.ser.sturgeonnetwork@noaa.gov)
- d) Sea turtles and marine mammals: Report stranded, injured, or dead animals to 1-877-WHALE HELP (1-877-942-5343).
- e) North Atlantic right whale: Report injured, dead, or entangled right whales to the USCG via VHF Channel 16.

**AP.9. Vessel Traffic and Construction Equipment:** All vessel operators must watch for and avoid collision with species protected under the ESA and MMPA. Vessel operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:

- a) *Construction Equipment:*
  - i) All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while operating in water depths where the draft of the vessel provides less than a 4-foot (ft) clearance from the bottom, and in all depths after a protected species has been observed in and has departed the area.
  - ii) All vessels will follow marked channels and/or routes using the maximum water depth whenever possible.
  - iii) Operation of any mechanical construction equipment, including vessels, shall cease immediately if a listed species is observed within a 50-ft radius of construction equipment and shall not resume until the species has departed the area of its own volition.

- iv) If the detection of species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
- b) *All Vessels:*
  - i) Sea turtles: Maintain a minimum distance of 150 ft.
  - ii) North Atlantic right whale: Maintain a minimum 1,500-ft distance (500 yards).
  - iii) Vessels 65 ft in length or longer must comply with the Right Whale Ship Strike Reduction Rule (50 CFR 224.105) which includes reducing speeds to 10 knots or less in Seasonal Management Areas (<http://www.fisheries.noaa.gov/pr/shipstrike/>).
  - iv) Mariners shall check various communication media for general information regarding avoiding ship strikes and specific information regarding right whale sightings in the area. These include NOAA weather radio, USCG NAVTEX broadcasts, and Notices to Mariners.
  - v) Marine mammals (i.e., dolphins, whales [other than North Atlantic right whales], and porpoises): Maintain a minimum distance of 300 ft.
  - vi) When these animals are sighted while the vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until they have left the area.
  - vii) Reduce speed to 10 knots or less when mother/calf pairs or groups of marine mammals are observed, when safety permits.

**AP.10. Turbidity Control Measures during Construction:** Turbidity must be monitored and controlled. Prior to initiating any of the work covered under this Opinion, the Permittee shall install turbidity curtains as described below. In some instances, the use of turbidity curtains may be waived by the USACE project manager if the project is deemed too minimal to generate turbidity (e.g., certain ATON installation, scientific survey device placement, marine debris removal) or if the current is too strong for the curtains to stay in place. Turbidity curtains specifications:

- a) Install floating turbidity barriers with weighted skirts that extend to within 1 ft of the bottom around all work areas that are in, or adjacent to, surface waters.
- b) Use these turbidity barriers throughout construction to control erosion and siltation and ensure that turbidity levels within the project area do not exceed background conditions.
- c) Position turbidity barriers in a way that does not block species' entry to or exit from designated critical habitat.
- d) Monitor and maintain turbidity barriers in place until the authorized work has been completed and the water quality in the project area has returned to background conditions.
- e) In the range of ESA-listed corals (St. Lucie Inlet, Martin County south to the Dry Tortugas and the U.S. Caribbean) and Johnson's seagrass (Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida):
  - Projects that include upland earth moving (e.g., grading to install a building or parking lot associated with a dock and seawall project), must install sediment control barriers to prevent any upland sediments from reaching estuarine or marine waters.
  - The turbidity curtain requirement cannot be waived for any project that moves or removes sediment (e.g., dredging, auger to create a pile, trenching to install a cable line). If turbidity curtains are not feasible in an area based on site conditions such as water current, high wave action, or stormy conditions, the project must undergo individual Section 7 consultation and is not covered under this Programmatic Opinion.

**AP.11. Entanglement:** All turbidity curtains and other in-water equipment must be properly secured with materials that reduce the risk of entanglement of marine species (described below). Turbidity curtains likewise must be made of materials that reduce the risk of entanglement of marine species.

- a) In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water.
- b) Turbidity curtains and other in-water equipment must be placed in a manner that does not entrap species within the construction area or block access for them to navigate around the construction area.

Note: **For projects authorized in reliance on this Opinion only**, the PDCs below supercede any other guidance documents otherwise applicable to reduce or avoid impacts to mangroves, seagrasses, and corals. This includes the NMFS's *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation, Marsh, or Mangrove Habitat* dated August 2001, and NMFS's *Key for Construction Conditions for Docks or Other Minor Structures Constructed in or over Johnson's Seagrass (Halophila johnsonii)*, dated October 2002. NMFS may still apply these guidance documents in other consultations, including consultations on Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act, as appropriate.

**AP.12. Mangroves**

- To qualify for coverage under this Opinion, all projects must be sited and designed to avoid or minimize impacts to mangroves.
  
- Mangrove removal must be conducted in a manner that avoids any unnecessary removal and is limited to the following instances:
  - Removal to install up to a 4-ft-wide walkway for a dock.
  - Removal to install up to an 8-ft-wide walkway for public docks, where the walkway is necessary to address compliance with the Americans with Disability Act (ADA).
  - Removal to install culverts necessary to improve water quality or restore hydrology between 2 water bodies. Such mangrove removal is limited to a maximum of 20 linear feet (lin ft) of shoreline per culvert opening.
  - Removal of mangroves above mean high water (MHW) provided that the tree does not have any prop roots that extend into the water below the MHWL.
  
- Mangrove Trimming. Mangrove trimming is regulated by FDEP, Puerto Rico Department of Natural and Environmental Resources, and U.S. Virgin Islands Department of Planning and Natural Resources. Consistent with those authorities, when used in this Opinion, mangrove trimming refers to the removal (using hand equipment such as chain saws and/or machetes) of lateral branches (i.e., no alteration of the trunk of the tree) in a manner that ensures survival of the tree. This Opinion does not limit or supersede any restrictions on mangrove removal required under any federal, state, or local law.
  - This Opinion only covers projects with associated mangrove trimming occurring waterward of MHW if such trimming (1) occurs within the area where the authorized structures are placed or will be placed (e.g., removal of branches that overhang a dock), (2) is necessary to provide temporary construction access, and (3) is conducted in a manner that avoids any unnecessary trimming.
  - The Opinion does not apply to projects proposing to remove red mangrove prop roots waterward of MHW, except for removal to install the dock walkways, as described above (up to a 4-ft walkway and up to a 8-ft ADA compliant walkway) and to install culverts necessary to improve water quality or restore hydrology between 2 water bodies.

**AP.13. Seagrass:**

- Pile-supported structures must follow the PDCs for *Docks or Other Minor Structures* (PDC A2.17, Section 2.2.2)

**Johnson's seagrass:**

- This Opinion does not apply to projects where Johnson's seagrass is found within the project footprint except for:
  - Installation of pile-supported structures that meet the PDCs for *Docks or Other Minor Structures* (PDC A2.17, Section 2.2.2).
  - Maintenance dredging of previously authorized areas. This is limited to the removal of no more than 0.1 acre (ac) (4,356 ft<sup>2</sup>) of Johnson's seagrass per year (Activity 3; see Section 2.2.3)
  - Transmission/utility line repairs within the same footprint of the lines being repaired (Activity 8; see Section 2.2.8).

**Non-listed seagrasses:**

- All impacts to non-ESA listed native, non-invasive seagrasses should be avoided and minimized to the extent practicable.
- This Opinion does not apply to projects located within the geographic boundary of U.S. Caribbean sea turtle critical habitat (hawksbill, leatherback, and the NA DPS of green sea turtle critical habitat identified in Section 2.1.1.5) if non-ESA listed, native, non-invasive seagrasses are found within the project footprint.

**AP.14. Coral and Hard Bottom Habitat**

- This Opinion does not apply to projects that may affect, directly or indirectly, ESA-listed corals.
- Projects occurring within in the Florida Keys National Marine Sanctuary (FKNMS) may require separate consultation or authorization from NOAA's FKNMS. Projects authorized to occur in the FKNMS shall comply with any measures NOAA FKNMS has developed to avoid, minimize, and/or mitigate any effects on non-listed corals. For projects occurring outside of the FKNMS, if non-listed corals are found within the project footprint, we recommend relocating all non-listed corals, when possible, in a manner that is protective of the corals.
- This Opinion does not apply to projects where hard bottom habitat is found within the project footprint, except for the temporary placement (up to 24 months) of scientific survey devices (Activity 5) that have a footprint of less than 1 square foot (ft<sup>2</sup>) per device and are installed in a manner that does not permanently alter the hardbottom (e.g., the devices are not installed by drilling). For this Opinion, we define hard bottom in 2 ways:
  - Natural consolidated hard substrate that is suitable to support corals, coral larval settlement, reattachment and recruitment of asexual coral fragments. These areas of hard bottom or dead coral skeleton must be free from fleshy or turf macroalgae cover and sediment cover.

- Nearshore and surf-zone, low-profile hard bottom outcroppings (e.g., worm-rock reef [sabellariid worm reefs] and eolianite, granodiorite). This habitat can be persistent or ephemeral, cycling through periods of exposure and cover by sand. The range of this hard bottom habitat extends along the southeastern coast of Florida from Cape Canaveral to Miami-Dade County and in the U.S. Caribbean. It is an important developmental habitat for juvenile hawksbill and green sea turtles, which use it for both foraging and refuge.

***Project Design Criteria***

**PDCs specific to Activity 3 (maintenance, minor, and muck dredging):**

A3.1. Activities covered by this Opinion include:

A3.1.1. Maintenance dredging of existing areas such as canals, channels, basins, berths, marinas, boat slips, and areas around intake and discharge structures. Maintenance dredging will be limited to the depth and width previously authorized by the USACE or other regulatory authority such as FDEP or water management districts. There is no size limit for maintenance dredging so long as it meets the previously authorized depth and width. If the previous authorized depth is unknown, dredging is limited to -7.0 ft MLW including any advanced maintenance or overdredge.

A3.1.2. Minor dredging (non-maintenance) dredging as follows:

A3.1.2.1. For dredging to accommodate vessel mooring at boat slips around docks and marinas, the size is limited to the minimum necessary to accommodate vessel mooring, not to exceed 5,000 ft<sup>2</sup>. The maximum allowed dredging depth (including overdredge) cannot exceed the depth of the adjacent navigational channel (i.e., controlling depth) or a maximum depth of -7 ft MLW. For projects located adjacent to federal channels (not within the dredged navigational channel), the dredging depth can exceed -7 ft MLW so long as it does not exceed the controlling depth of the federal channel.

A3.1.2.2. For treasure hunting and salvage operations that use blowers, propeller deflectors, and suctioning devices, the size is limited to a total of 5,000 ft<sup>2</sup> and is limited to sandy areas only.

A3.1.2.3. Minor dredging does not include dredging to create new navigational channels.

A3.1.2.4. Minor dredging includes dredging to accommodate the placement of shoreline stabilization, outfall structures; boat ramps; upland cut boat ramps and basins; temporary platforms, fill, and cofferdams; and placement of erosion and scour control-measures. This type of dredging is usually required to embed materials and/or to allow smooth transition of the work to the natural surrounding elevation.

A3.1.3. Muck Dredging, or removing accumulated organic to restore natural habitats and for water quality enhancement, as follows:

A3.1.3.1. Muck dredging cannot be used to increase water depths to support navigation, access, or vessel mooring.

A3.1.3.2. Dredging depths are limited to only that necessary to remove the muck layer down to natural sediments.

**The following PDCs apply to all the activities described in PDC A3.1 above:**

A3.2. This Opinion does not cover hopper dredging.

A3.3. With respect to the dredged material, all dredged material must be placed in an USACE-verified upland disposal site, EPA or USACE-designated open water disposal site, USACE Dredged Material Management Area, or USACE-approved beneficial use sites for mitigation or restoration, as long as it meets PDC A3.3.1-A3.3.3 below.

A3.3.1. The disposal sites shall employ erosion control measures such as upland erosion control, such as filtration or berms, or in-water turbidity curtains.

A3.3.2. Handling and storage of dredged material must be completed in a manner that prevents sedimentation, erosion, and turbidity during dewatering, overflow, transferring, and storage of the dredged material. For example, the overwater transfer of dredge material should either contain the dredged material and any water to prevent sedimentation or employ other methods, such as turbidity curtains in the marine environment, to ensure that any turbidity generated as the water is returned to the marine environment is contained. If the applicant conducts sediment testing voluntarily or in compliance with other law, and such testing indicates high levels of contaminants in the sediments to be dredged, water from dewatering should not be released back into the marine environment.

A3.3.3. This Opinion does not cover the use of in-water disposal sites (e.g., beneficial use sites or ocean disposal sites) unless the use of the in-water disposal sites has previously undergone ESA-Section 7 consultation with NMFS for disposal of material at these locations. If the applicant is seeking disposal in an in-water disposal location not previously consulted on by NMFS, then the entire project (both dredging and disposal) must be consulted on separately and is not covered under this Opinion.

A3.3.4. This Opinion applies to upland disposal of beach quality sand on beaches if placed above the existing MHW, if the grain size analysis indicates that the dredged sand is compatible with the existing beach sand, and if the sand placement does not change the existing waterward extension of the beach. Placement of beach sand on nesting beaches above MHW that may affect ESA-listed species is under the jurisdiction of the USFWS.

A3.4. This Opinion does not cover dredging within the mapped and authorized federal navigational channels (e.g., ICW, AIWW, GIWW, or harbors [e.g., Port Canaveral]). Dredging outside of the mapped channel in the surrounding waters is covered.

**Additional PDCs for Activity 3 applicable in critical habitat:**

*In addition to the PDCs above, the project must be designed to meet the following PDCs if the project occurs in the critical habitat as described below.*

A3.5. Smalltooth sawfish critical habitat:

A3.5.1. Maintenance dredging of canals in smalltooth sawfish critical habitat is covered under this Opinion as long as it is within the previously authorized dredge footprint and to the previously USACE authorized depth.

A3.5.2. For minor dredging: If only the shallow euryhaline (MHWL to -3 ft MLLW) water essential feature is present (i.e., no red mangroves), dredged depths are limited to a maximum depth of -3 ft MLLW. If red mangroves are present,

dredging, excavation, or disposal is not allowed within 5 ft of all red mangrove prop roots.

A3.5.3. Muck dredging, as defined in PDC A3.1.3, is not allowed in shallow, euryhaline habitat (MHWL to -3 ft MLLW)

A3.5.4. Dredging and disposal activities are not allowed in areas identified as smalltooth sawfish limited exclusion zones, defined in Section 2.1.1.1.

A3.6. Gulf sturgeon critical habitat: No treasure hunting or muck dredging is allowed in Gulf sturgeon critical habitat at any time of year. No maintenance or minor dredging is allowed in Gulf sturgeon critical habitat between September and March, when sturgeon are likely to be present in these areas. When allowed, maintenance and minor dredging activities shall be conducted according to the PDCs above for all dredging activities.

A3.7. *Acropora* critical habitat and the U.S. Caribbean: This Opinion does not cover dredging (maintenance, minor, or muck) and disposal in *Acropora* critical habitat where the essential features are present or within the U.S. Caribbean. This Opinion does not cover projects requiring penetrating or removing underlying hard substrate (e.g., bedrock, hardbottom) using any methods including blasting or fracturing. Treasure hunting is not allowed in *Acropora* critical habitat or the U.S. Caribbean.

A3.8. Johnson's seagrass critical habitat: Treasure hunting is not allowed in waters less than 12 ft (4 m) deep. Muck dredging is not allowed if the essential features are present. All other dredging is covered if conducted according to the PDCs above for all dredging activities.

A3.9. U.S. Caribbean sea turtle critical habitat (hawksbill, leatherback, and the NA DPS of green sea turtle critical habitat) and loggerhead sea turtle critical habitat: Dredging consistent with the PDCs above can occur in these critical habitat areas.

# OLD PELICAN BAY CHANNEL MAINTENANCE DREDGING PERMIT PLAN SET

PREPARED FOR:  
**LEE COUNTY**



**LOCATION MAP**  
N.T.S.

**INDEX:**

1. COVER SHEET
2. PROPOSED DREDGE PLAN
3. DREDGE CROSS SECTIONS
4. DREDGE CROSS SECTIONS
5. DREDGE CROSS SECTIONS
6. DREDGE CROSS SECTIONS
7. DISPOSAL SITE DETAILS

**NOTES:**

1. BATHYMETRIC SURVEY CONDUCTED BY COASTAL ENGINEERING CONSULTANTS, INC. FEBRUARY 23, 2023.
2. CHANNEL MARKERS LOCATED BY COASTAL ENGINEERING CONSULTANTS, INC. FEBRUARY 23, 2023.
3. ELEVATIONS SHOWN HEREON ARE IN FEET AND TENTHS AND BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
4. PLANE COORDINATES ARE BASED ON THE TRANSVERSE MERCATOR PROJECTION FOR THE WEST ZONE OF FLORIDA AND REFERENCED TO THE NORTH AMERICAN DATUM OF 1983 (NAD83).
5. TIDAL REDUCTIONS WERE OBTAINED UTILIZING REAL-TIME KINEMATIC GPS AND REFERENCED TO NAVD88.
6. SURVEY ACCURACY STANDARDS, QUALITY CONTROL, AND QUALITY ASSURANCE REQUIREMENTS WERE FOLLOWED DURING THIS SURVEY IN ACCORDANCE WITH USACE EM 1110-2-1003, HYDROGRAPHIC SURVEYING MANUAL, 1 JAN 02.
7. THE INFORMATION SHOWN HEREON REFLECTS CONDITIONS AS THEY EXISTED ON THE SURVEY DATES SHOWN AND CAN ONLY BE CONSIDERED INDICATIVE OF CONDITIONS AT THAT TIME.
8. AERIAL PHOTOGRAPHY OBTAINED FROM NOAA, DATED OCTOBER 2022.

FOR PERMITTING  
PURPOSES ONLY.  
NOT TO BE USED FOR  
CONSTRUCTION.

**LEGEND**

- ▲ = EXISTING CHANNEL MARKERS
- 0+00 = CHANNEL STATION

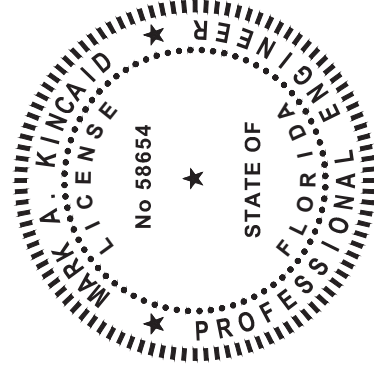
**PUBLISHED TIDAL INFORMATION**

TIDAL DATUMS AT MATANZAS PASS, ESTERO ISLAND, FLORIDA ARE BASED ON FLORIDA 872 5366

- PUBLISHED = 1/23/2004
- TIME PERIOD = JUNE 1973 - JUNE 1973
- TIDAL EPOCH = 1983 - 2001
- CONTROL TIDE STATION = NAPLES, GULF OF MEXICO (872 5110)

ELEVATIONS OF TIDAL DATUMS ARE REFERENCED IN NAVD 1988.

- MEAN HIGHER HIGH WATER (MHHW) = +0.42 FT NAVD
- MEAN HIGH WATER (MHW) = +0.16 FT NAVD
- MEAN LOW WATER (MLW) = -1.64 FT NAVD
- MEAN LOWER LOW WATER (MLLW) = -2.18 FT NAVD

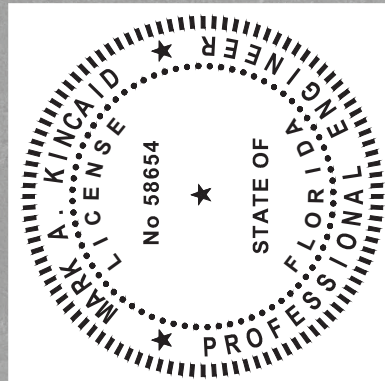
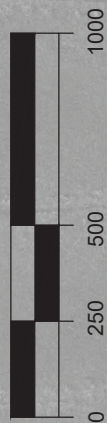


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BONITA SPRINGS, FLORIDA 34135

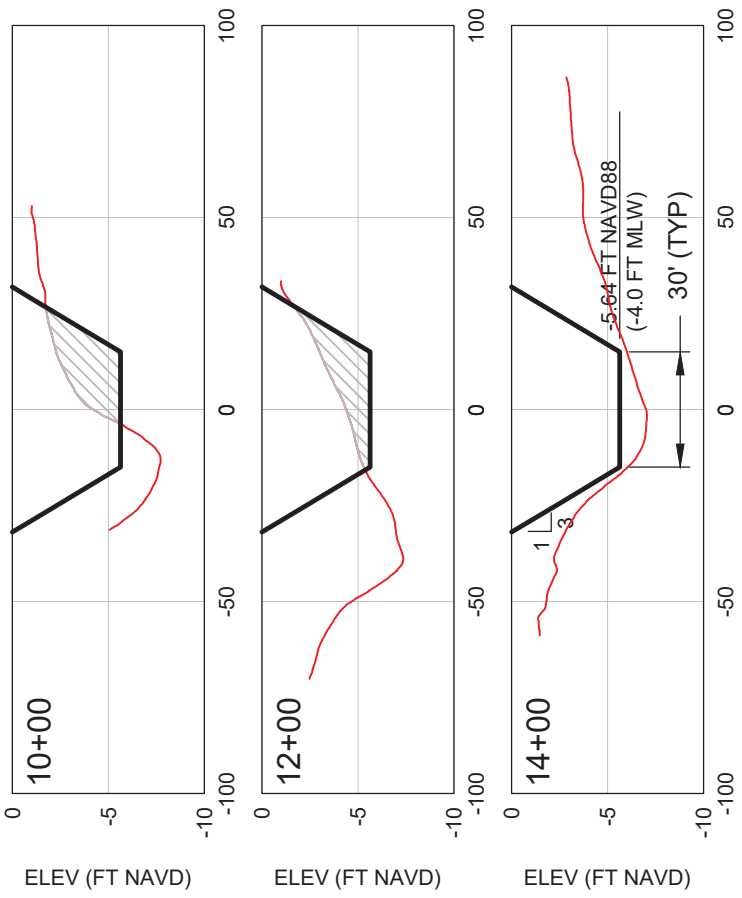
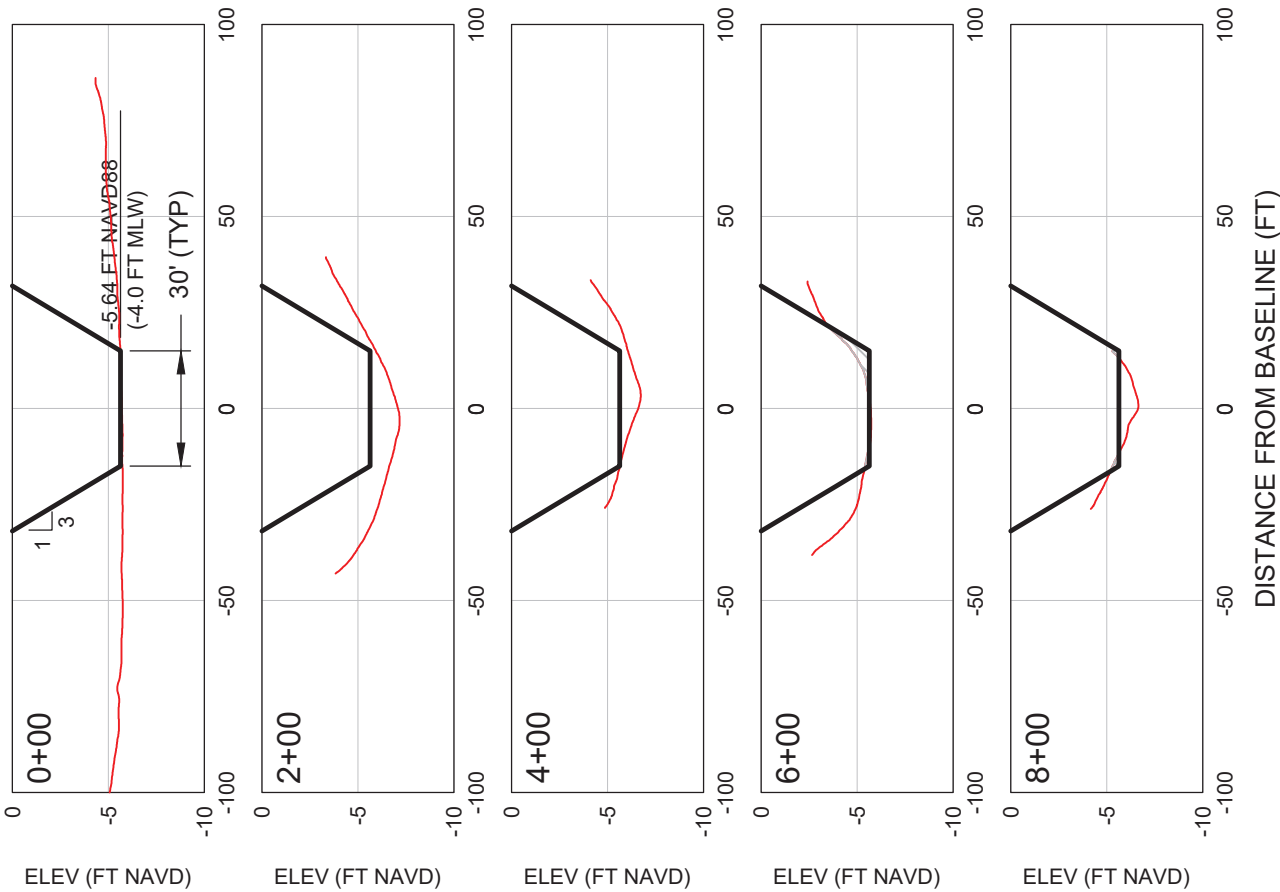
CLIENT: CIVIL ENGINEERING SURVEY & MAPPING COASTAL ENGINEERING ENVIRONMENTAL PLANNING SERVICES  
PHONE: (239)643-2324  
FAX: (239)643-1143  
www.coastalengineering.com  
E-Mail: info@ceefl.com

SHEET 1  
FILE NO.: 22312-P-1

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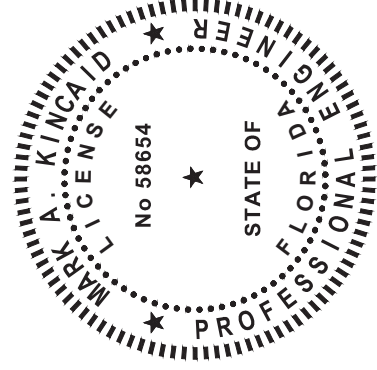


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CIVIL ENGINEERING SURVEY & MAPPING COASTAL ENGINEERING ENVIRONMENTAL PLANNING SERVICES PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@ceefl.com	SEC: TWP.	ACAD NO.: 22312-OPB-P.dwg	REF. NO.: 22.312
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REVISION DESCRIPTION	NO.	DATE	BY

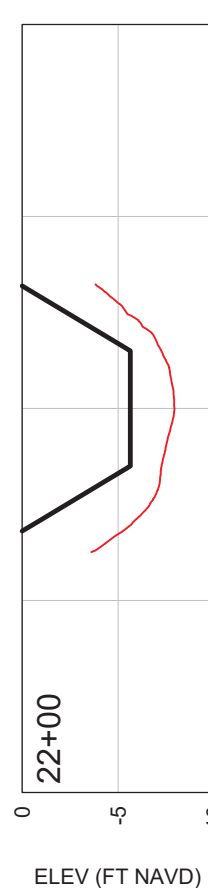
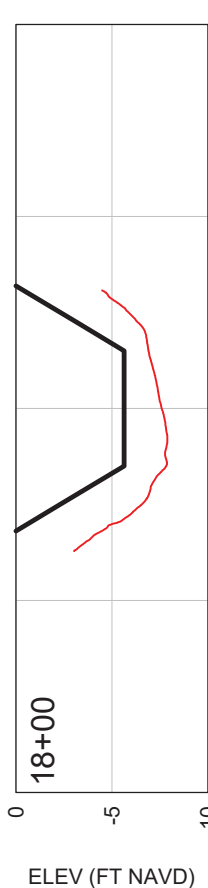
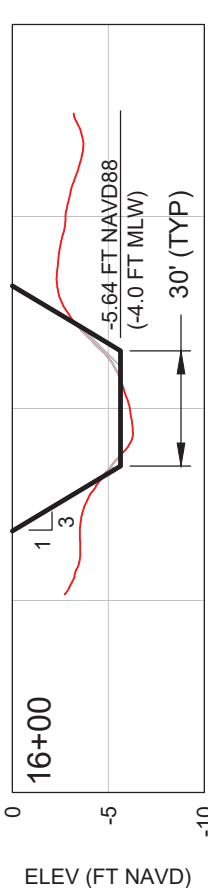
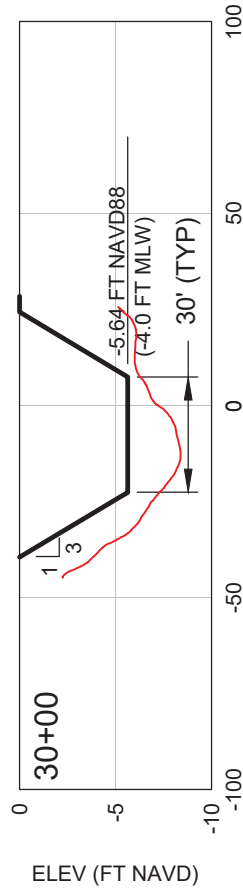
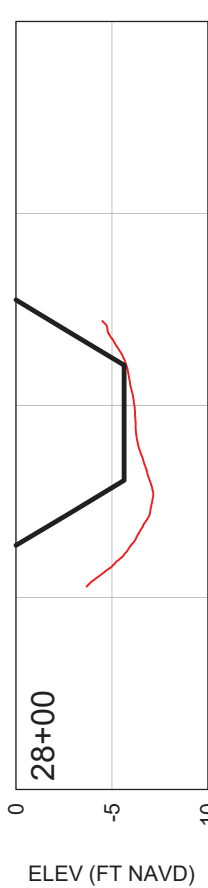
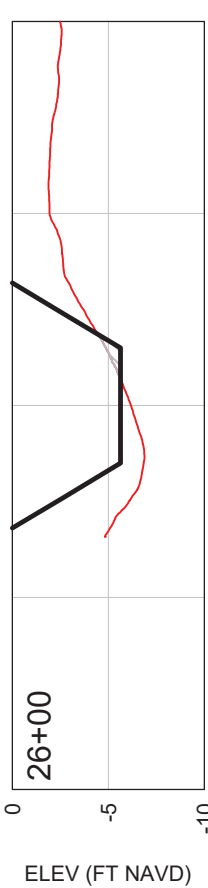


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 ▨ = PROPOSED DREDGE AREA

**SCALE:**  
 HOR. 1" = 50'  
 VERT. 1" = 10'



<b>COASTAL ENGINEERING CONSULTANTS INC.</b> Serving Florida Since 1977 28421 BONITA CROSSINGS BLVD BONITA SPRINGS, FLORIDA 34135	<b>LEE COUNTY</b> OLD PELICAN BAY CHANNEL DREDGE CROSS SECTIONS		DATE: 3/2/2023 DRAWN: GVT CHECKED: MAK SEC: TWP ACAD NO.: 22312-OPB-F.dwg REF. NO.: 22.312
	CIVIL ENGINEERING SURVEY & MAPPING COASTAL ENGINEERING ENVIRONMENTAL PLANNING SERVICES PHONE: (239)643-2324 FAX: (239)643-1143 www.coastalengineering.com E-Mail: info@ceefl.com	CLIENT: TITLE:	SCALE: AS NOTED GVT MAK RING



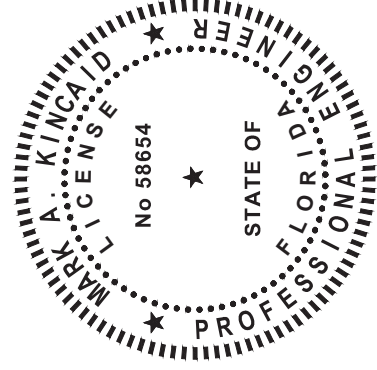
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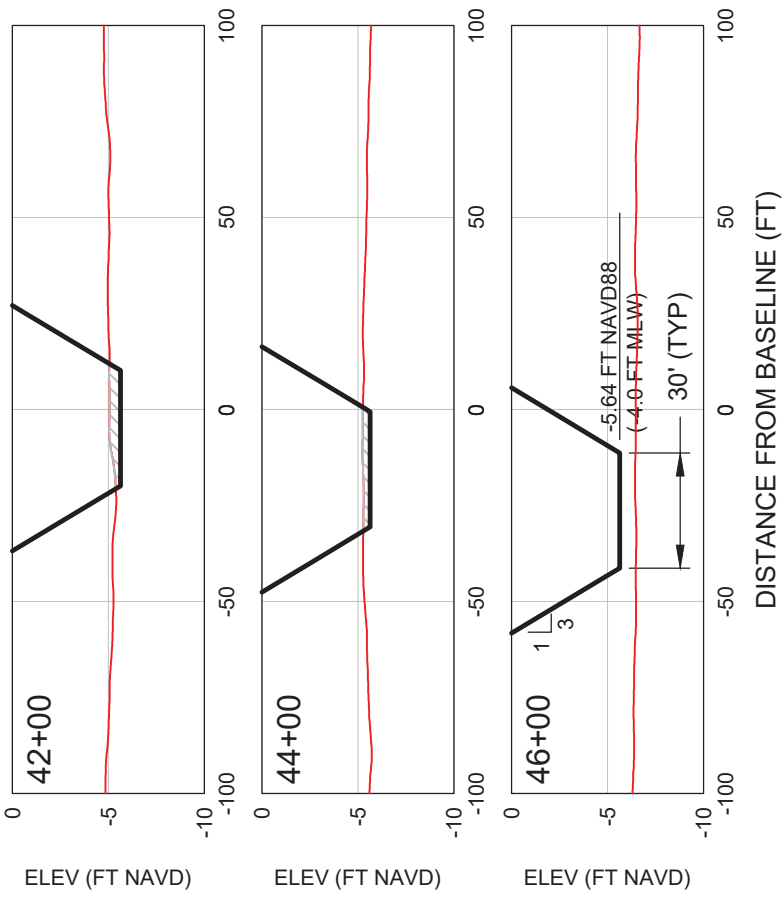
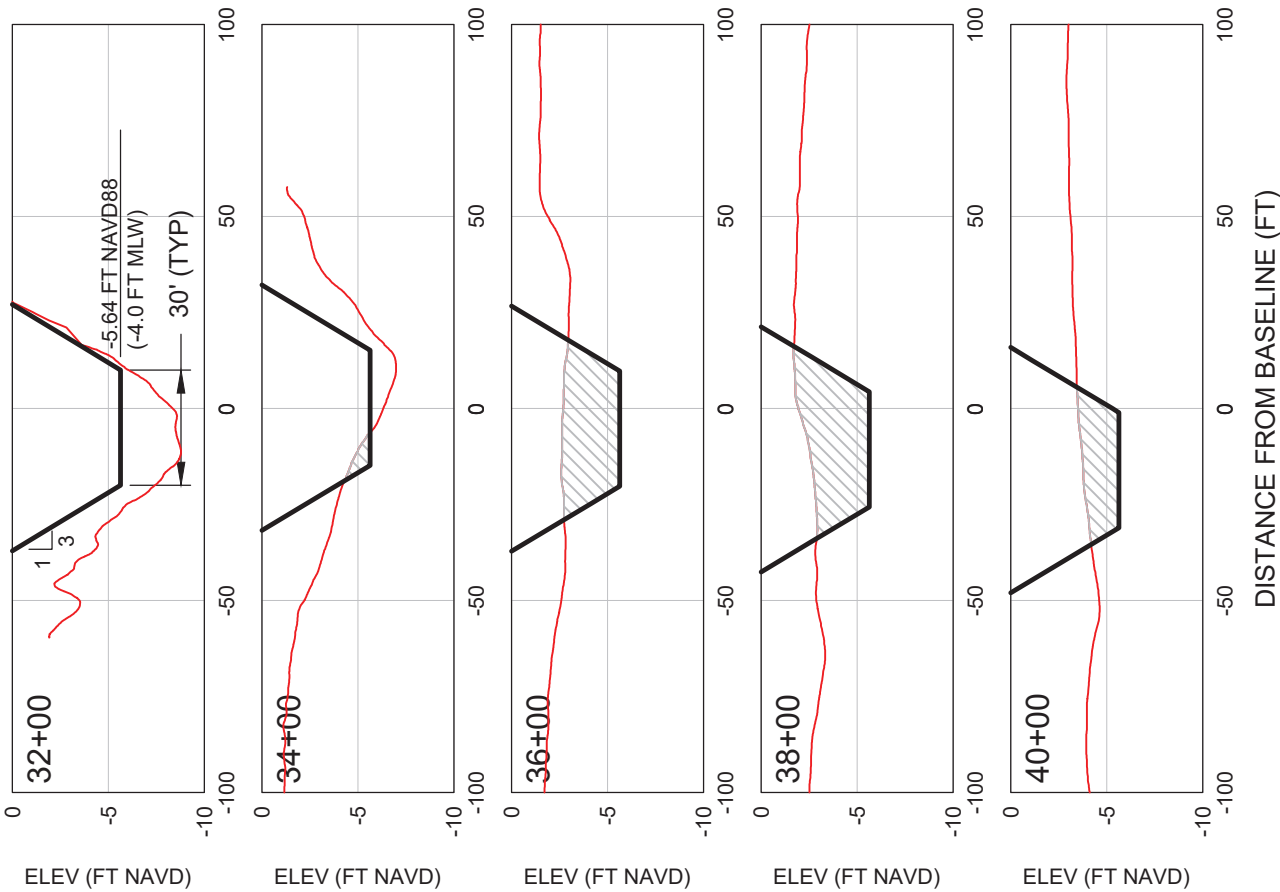
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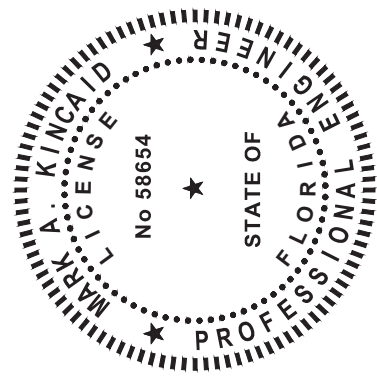


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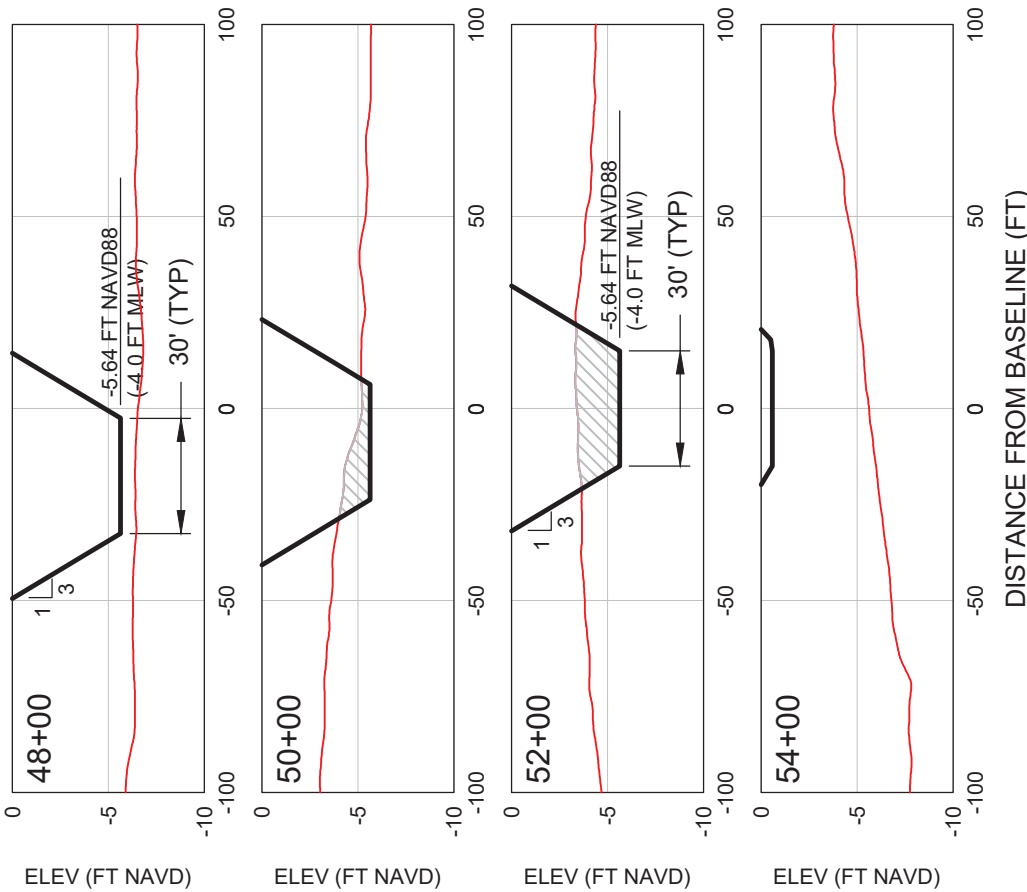


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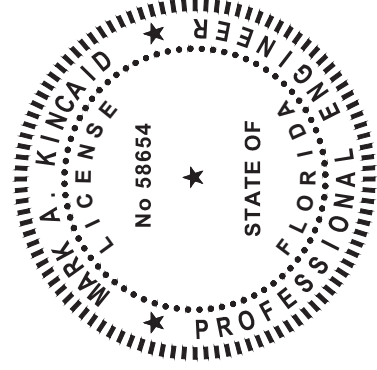


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