



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
ANTILLES OFFICE
ANNEX BUILDING, FUNDACION ANGEL RAMOS
2ND FLOOR, SUITE 202
FRANKLIN DELANO ROOSEVELT AVE. #383
SAN JUAN, PUERTO RICO 00918

July 11, 2016

Regulatory Division
South Permits Branch
Antilles Permits Section
SAJ-2015-02488 (LP-JMS)

Mr. Howard A. Forbes
Division of Environmental Enforcement, USVI DPNR
8100 Lindberg Bay Street #61, Cyril E. King Airport
Christiansted, VI 00820

Dear Mr. Forbes:

This is in reference to your request for a Department of the Army (DA) permit to perform work in or affecting waters of the United States. If you determine the permit provided is acceptable in its entirety and you have chosen to proceed with the authorized activity, then upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), you are authorized under a Letter of Permission to remove the existing unserviceable docks and the 18 remaining and deteriorated pilings. The dock and the pilings would be removed from the sea using a crane with a clamshell bucket on a barge. The pilings would be pulled straight out of the water using the crane. No excavation or dredging would be conducted to remove the pilings and dock remnants. The pilings and other dock materials and debris removed from the water would be unloaded from the barge at an existing concrete abutment and would be temporarily stored in uplands in a dumpster at the adjacent DEE property. The dumpster would then be transported in trucks to the Bovoni Landfill for appropriate final disposal of the materials. Furthermore, the permittee is authorized to construct 2 new docks, Dock # 1 would consist of a 13.25 ft long section connected perpendicularly to the shoreline, and a 64 ft long "L" section parallel to the shoreline. Both sections of Dock #1 would be 6 ft wide. The wooden decking and framing of Dock # 1 would be supported by 11 steel pilings (12" in diameter) with concrete pile caps. Dock # 1 would be connected to an existing concrete abutment at the shoreline. Dock # 2 would consist of a 48 ft long section connected perpendicularly to the shoreline, and an 84 ft long section parallel to the shoreline. Both sections of Dock # 2 would be 6 ft wide. The wooden decking and framing of Dock # 2 would be supported by 20 steel pilings (12" in diameter) with concrete pile caps. Dock # 2 would be connected to existing concrete pavement at the shoreline. The total footprint of the proposed docks would cover an area of 1255.5 square feet of marine bottom (Dock #1 - 463.5 ft²; Dock # - 2792 ft². No discharge of fill material, excavation or dredging would be required for the construction of the proposed docks. The project is located in navigable waters of Krum Bay, adjacent to the DEE base at Parcel No. 138, Estate Krum Bay, near the Virgin Island Waters and Power Authority plant, St. Thomas, U.S. Virgin Islands.

Geographic Position: Latitude: 18.332567° Longitude: -64.960608°

The project must be completed in accordance with the 6 enclosed construction drawings, Attachment 1, and the general and special conditions which are incorporated in, and made a part of, the permit.

Special Conditions:

- 1) This permit does not authorize the discharge of dredged or fill material into waters of the United States.
- 2) This permit does not authorize the take of an endangered species, in particular the Federally listed endangered Hawksbill (*Eretmochelys imbricata*) and Leatherback (*Dermochelys coriacea*) sea turtles, the Federally listed threatened Green sea turtle (*Chelonia mydas*), or the Federally listed threatened Elkhorn (*Acropora palmata*) and Staghorn Coral. In order to legally take a listed species, separate authorization under the ESA (e.g., an ESA section 10 permit, or a Biological Opinion under ESA section 7, with "incidental take" provisions with which you must comply) is required.
- 3) The Permittee shall comply with National Marine Fisheries Service's "Sea Turtle and Smalltooth Sawfish Construction Conditions" dated March 23, 2006, (Attachment 2).
- 4) The Permittee shall comply with NMFS Southeast Region Vessel Strike Avoidance Measures and Reporting for Mariners; revised February 2008, (Attachment 3).
- 5) This verification does not authorize any impacts to waters of the United States, including wetlands, associated with return waters from dewatering material.
- 6) All work will be conducted during daylight time.
- 7) A dedicated marine observer shall be present during all construction work to monitor the potential presence of sea turtles in the vicinity of the project site. All in-water construction activities shall stop if a sea turtle is observed within 100 m from the project site.
- 8) The permit authorizes the debris removal inside a 0.25 acres adjacent to the DEE property. Debris removal activities will be conducted by hand, and no mechanized equipment will be used for this activity.
- 9) This permit does not authorize dredging activities in association with the construction of the 2 docks or the debris removal activities.
- 10) The permittee will employ best management practices for sediment and turbidity control and shall be implemented and maintained at all times. Turbidity barriers shall be used around work areas to minimize turbidity and sediment transport to adjacent aquatic environments including wetlands. Turbidity and sediment control devices shall be left and maintained in place until all work is completed.

- 11) The permittee, prior to the initiation of any work, will install double floating turbidity barriers with weighted skirts that extend to within 1 ft of the bottom around all work areas in or adjacent to surface waters. The turbidity barriers shall remain in place and be maintained until the work has been completed and all erodible materials have been stabilized.
- 12) Siltation and turbidity curtains shall be made of material in which sea turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid entanglement or entrapment of any animals.
- 13) All excess material/debris resulting from the project and cleanup activity shall be adequately discarded in an authorized upland site.
- 14) The permittee will place staging area for equipment, material or debris outside waters of the United States, including wetlands.
- 15) 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 the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native cultures or early colonial or Spanish settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Virgin Islands State Historic Preservation Officer (VISHPO) to assess the significance of the discovery and devise appropriate actions.
 - 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 VISHPO 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.
- 16) Within 60 days of completion of the work authorized, the attached Self-Certification Statement of Compliance must be completed and submitted to the U.S. Army Corps

of Engineers. Mail the completed form to the Regulatory Enforcement, Special Projects and Enforcement Branch, 4400 PGA Blvd., Suite 500, Palm Beach Gardens, FL 33410.

- 17) 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.

If the work authorized is not completed on or before **July 11, 2021**, authorization, if not previously revoked or specifically extended, shall cease and be null and void.

Instructions for Objecting to Permit Terms and Conditions: This letter contains an initial proffered permit for your proposed project/permit application. If you object to certain terms and conditions contained within the permit, you may request that the permit be modified. Enclosed you will find a Notification of Administrative Appeal Options and Process fact sheet and Request for Appeal (RFA) form. If you choose to object to certain terms and conditions of the permit, you must follow the directions provided in Section 1, Part A and submit the completed RFA form to the letterhead address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria under 33 CFR Part 331.5, and that it has been received by the District office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the letterhead address by **September 11, 2016**.

This letter also contains an approved jurisdictional determination. Enclosed you will find the approved jurisdictional determination form and a Notification of Appeal Process fact sheet and Request for Appeal (RFA) form. If you object to this determination, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. If you request to appeal this determination, you must submit a completed RFA form to the South Atlantic Division Office at the following address:

Mr. Jason Steele
South Atlantic Division
U.S. Army Corps of Engineers
CESAD-CM-CO-R, Room 9M15
60 Forsyth St., SW.
Atlanta, Georgia 30303-8801.

Mr. Steele can be reached by telephone number at 404-562-5137, or by facsimile at 404-562-5138.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the above address by **September 11, 2016**.

Should you have any questions regarding this letter, please contact the project manager Johann M. Sasso in writing the letterhead address, by telephone at 787-729-6860, or by email at johann.m.sasso@usace.army.mil.

The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey and complete our automated Customer Service Survey. Your input is appreciated – favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

for Jason A. Kirk, P.E.
Colonel, U.S. Army
District Commander

Enclosures

Copy Furnished:

CESAJ-RD-PE (w/ enclosures) via email

REQUEST PERMIT TRANSFER: PERMIT NUMBER: SAJ-2015-02488 (LOP-JMS)

When the structures or work verified 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. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, the present permittee and the transferee should sign and date below. This document must then be provided to the U.S. Army Corps of Engineers, Regulatory Division, Post Office Box 4970, Jacksonville, Florida 32232-0019.

(TRANSFEREE SIGNATURE)

(DATE)

(Name - Printed)

Lot/Block of site

(Street Address)

(City, State, and Zip Code)

Flood Plain Information:

This Department of the Army permit does not give absolute authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions. You should contact the local office in your area that issues building permits to determine if your site is located in a flood-prone or floodway area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program. If your local office cannot provide you the necessary information, you may request a flood hazard evaluation of the site by providing this office with a letter and a small scale map showing the location of the site. The request should be addressed to the **Chief, Flood Control and Floodplain Management Branch, Jacksonville District, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019**. Phone inquiries may be made at 904-232-2515.

GENERAL CONDITIONS
33 CFR PART 320-330
PUBLISHED FR DATED 13 NOVEMBER 1986

1. The time limit for completing the work authorized ends on **the date noted in the permit letter**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
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 in the space provided and forward a copy of the permit 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. For your convenience, a copy of the certification is attached if it contains such conditions.
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.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Howard A. Forbes		File Number: SAJ-2015-02488	Date: July 11, 2016
Attached is:		See Section below	
<input checked="" type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/>	PERMIT DENIAL	C	
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D	
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Project Manager as noted in letter

If you have questions regarding the appeal process you may contact:

Jason W. Steele
Administrative Appeals Review Officer
USACE – South Atlantic Division
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801
(404) 562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: