DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

January 31, 2020

Regulatory Division

Action ID No. SAW-2019-01155; Town of Sunset Beach Navigation Project-Maintenance Dredging of South Jinks Creek, the Bay Area, and the Feeder Channel

Mr. Hiram Marziano
Town of Sunset Beach
700 Sunset Boulevard
Sunset Beach, North Carolina 28468

Dear Mr. Marziano:

Please allow this letter to serve as notification to the Town of Sunset Beach of the opportunity to further respond to the comments received during our September 24, 2019 Public Notice announcing your request for Department of the Army (DA) authorization to perform navigational dredging of Canals A-D, the Feeder Channel, Bay Area and an area of South Jinks Creek on the east end of Sunset Beach with proposed dredged material placement on 1,600 linear feet of oceanfront beach in Sunset Beach, Brunswick County, North Carolina.

In response to the Public Notice dated September 24, 2019 and the abbreviated public notice from August 3, 2019, our office received comments from the following federal and state agencies and non-governmental organizations: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, North Carolina Division of Coastal Management, North Carolina Wildlife Resource Commission, North Carolina State Historic Preservation Office, and the North Carolina Coastal Federation. These comments, along with numerous individual citizen comments, have been provided to your Agent via e-mail over the 30 day period. Your Agent (Mr. Robert Neal of Moffatt & Nichol, Inc.) provided a summary response document on December 16, 2019 that attempted to address the over 200 comments received.

In addition to the comments received from outside agencies and the general public, as well as your Agent's summary response, this office seeks the following additional information:

- Purpose and Need: Please further define the purpose and need for the desired dredging depths and the proposed placement on the ocean front and further describe the avoidance and minimization measures taken to avoid these impacts as requested below. The need for placement of dredged material on the beach front has not been adequately demonstrated in your application, nor has it been satisfactorily described in the responses to comments. By all estimations and data provided from the application and the comments from the public notice, the proposed beach front placement site is not eroding (in fact it may be accreting) and is not in need of additional material to mitigate loss. Please provide additional data to support the claim of need for the beach front placement.

- Avoidance and Minimization: Your stated measures for avoidance, minimization, and compensation from the ENF Form 4345 (Standard Permit Application) were to:

  -Maintain buffers from coastal marsh and avoid channel areas with potential high concentrations of shellfish habitat;
  -Restrict dredging operations to between Nov 16 & March 31;
  -Coordinate with NCWRC for beach pipeline placement;
  -Abide by USFWS guidelines for avoiding West Indian manatee;
  -Follow NOAA recommendations for avoiding sea turtle and smalltooth sawfish potential impacts.

  The description of Avoidance, Minimization, and Compensation should provide an explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also, it should provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts. The avoidance and minimization descriptions provided in the application were insufficient for this office to determine that the proposed impacts from dredging and subsequent placement of the dredged material are unavoidable and have been minimized, or that compensatory mitigation would not be required at the proposed disposal area(s). Please also further describe why the slopes for the dredging footprint of Jinks Creek are proposed for a 5:1 slope, where the slopes for other dredge areas are proposed at 3:1.

- Alternatives Analysis: (33 CFR Part 325 Appendix B(7), 40 CFR 230.5(c) and 40 CFR 1502.14). An evaluation of alternatives is required under NEPA for all

jurisdictional activities. Please provide an evaluation of the proposed alternatives as required under the Section 404(b) (1) Guidelines for projects that include the discharge of dredged or fill material. NEPA requires discussion of a reasonable range of alternatives, including the no action alternative, and the potential effects of all alternatives (onsite disposal or offsite disposal). Under the Guidelines, practicability of alternatives is taken into consideration and no alternative may be permitted if there is a less environmentally damaging practicable alternative. In order to be practicable, an alternative must be available, achieve the overall project purpose (as defined by the Corps considered with the additional information to identify the purpose and need), and be practicable when considering cost, logistics, and existing technology. Please provide additional information regarding the off-site alternatives for disposal of dredged material (including beach compatible) and avoidance of impacts to the beachfront. One likely alternative would be to place all of the dredged material (both compatible and non-compatible) in the proposed upland disposal site or another site with capacity. The practicability of this alternative, along with others must be presented in order to determine that all alternatives were considered for environmental impacts and practicability.

Please also address the potential for reduction in dredging depths and dredging areas to meet the project purpose without significant impacts to the dredged areas, the beachfront, and other resources in the vicinity. Please detail the criteria reviewed and why they were deemed not practicable for this project. Please compare the costs, logistics and other factors, in detail, of the proposed project to the off-site alternatives of dredge placement. Most importantly, please describe why an alternative that includes solely the dredging of the feeder canals, the Bay Area channel and a smaller footprint of S. Jinks creek (and to a shallower depth with reduced removal volumes) does not meet the stated purpose of the project (navigation) with minimization of impacts to Jinks Creek proper and the oceanfront and nearshore resources.

- Pg. 3 Tab E of the submitted application states that all the proposed work areas have previously been dredged in the 1970's for S. Jinks Creek. According to all accounts provided by your Agent and included in the original application (including the pictorial atlas images showing before and after dredging from 1966 and 1974), the most recent maintenance dredging for the Finger Canals occurred in 2002, and the initial dredging of the Feeder Channel, Bay Area, and South Jinks Creek occurred in early 1970s. Due to the length of time since the initial dredging event (over 50 years) several commenters, including the NC Coastal

Federation, commented that the proposed project will potentially result in adverse impacts to the Jinks Creek system and other adjacent systems and environmentally sensitive areas that have reestablished into a natural condition. In response to the comments on these direct effects, you provided the following response: *"The project will not affect the tidal prism entering through Tubbs Inlet or the AIWW confluence. Therefore, the project will not increase the flooding potential as tidal velocities or quantities will not be affected by this project."*

This response does not provide sufficient data to ensure that direct adverse effects from the proposal have been evaluated with any modeling or quantitative analysis to support such a conclusion. Please provide additional data to support the comments response you provided above and describe, in detail, the factors that were used in determining that "The project will not affect the tidal prism" nor cause significant environmental impacts the aquatic environments located within the proposed dredging footprint and beach placement areas.

- Cumulative Impacts: (40 CFR 230.11(g) and 40 CFR 1508.7, RGL 84-9) Cumulative impacts are impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future. Cumulative impacts can result from individually minor direct and indirect but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider how the direct and indirect environmental effects caused by the proposed activity requiring DA authorization (i.e., the incremental impact of the action) contribute to cumulative effects, and whether that incremental contribution is significant or not. To this end, please provide additional information regarding the potential direct, indirect, and cumulative effects of the dredging and placement proposals on the affected environment. In response to multiple commenters, you provided the following information: *"The project will not affect the tidal prism entering through Tubbs Inlet or the AIWW confluence. Therefore, the project will not increase the flooding potential as tidal velocities or quantities will not be affected by this project." And "The applicant understands all development poses potential environmental impacts and has worked with the resource agencies to avoid and minimize this potential. The applicant has agreed to follow all agency recommendations to accomplish this and will continue to work towards a beneficial project for all."* and finally *"The applicant has not provided any tidal velocity estimates in support of the project. The project will not affect the tidal prism entering through Tubbs Inlet or the AIWW confluence. Therefore, the project will not increase the flooding potential as tidal velocities or quantities will not be affected by this project."*

These responses, without appropriate data to justify, are insufficient in ensuring that direct, indirect and cumulative effects are either significant or not. Please provide additional information to support the claims that the project will not affect the tidal prism, nor cause significant environmental impacts to affected resources in proximity to the proposed dredging and beach placement areas (North Jinks Creek, Tubbs Inlet and the west end of Ocean Isle Beach).

- Many commenters voiced concerns over the environmental and resource impacts of beach placement of the dredged material. The response you provided for all comments regarding this concern is: *"The applicant understands the concerns of beach placement on Sunset Beach and will negotiate with the riparian owners during the easement acquisition process."*

  This response lacks sufficient detail to allow us to assess the magnitude of impacts to the nearshore area resulting from the disposal of the dredged material. Please provide additional information to include relevant data addressing the concerns related to potential impacts associated with beach placement. Additionally, please provide the rationale (as described in an alternatives analysis) that this proposal is the least environmentally damaging and practicable alternative.

- Responses to the public notice also included comments and questions as to the determination of depths based on MLW and the potential impacts from flooding and erosion to the Northern section of Jinks Creek from the proposal, as well as questioning the need for dredging based on navigable capacity that currently exists. You provided the following response to the comments and questions: "*The applicant understands all development poses potential environmental impacts and has worked with the resource agencies to avoid and minimize this potential. The applicant has agreed to follow all agency recommendations to accomplish this and will continue to work towards a beneficial project for all.*"

  This response does not provide adequate information to substantiate the conclusion that potential impacts have been appropriately avoided and minimized to North Jinks Creek which will result from the proposed dredging, nor does it adequately address the manner in which the depth measurements were obtained for justification of need for further dredging and navigability to the depths proposed (as requested in the Purpose and Need and Avoidance and Minimization sections above).

- Please provide further information regarding the potential for the presence of waters of the U.S. at the proposed disposal site. Has a delineation of waters on the disposal site been conducted? How is the material to be handled in order to preclude impacts to onsite or adjacent waters, including return water impacts from dewatering activities?

It is the policy of the Corps to provide an applicant the opportunity to furnish a proposed resolution or rebuttal to all objections from government agencies and the public before a final decision is made on a proposed project. I bring this to your attention to allow you the opportunity to modify your project plan to reflect an alternative that would have less impact on the aquatic resources documented at the site or to add to our record whatever additional information you feel is relevant to our review process.

Further evaluation of your application will be held in abeyance for 30 days pending receipt of your response. If no response is received within this time frame, we will close our record and a final decision will be made. You should be aware that based on the information we possess at this time it is unlikely a favorable decision would be made on your proposal.

If you have questions or comments, please contact Mr. Tyler Crumbley at (910) 251-4170 or by email at: Tyler.A.Crumbley@usace.army.mil.

Sincerely,

Tyler Crumbley
Deputy Chief, Regulatory Division

Electronic Copies Furnished:

Moffitt and Nichol; Mr. Robert Neal
NCDEQ-DCM; Ms. Tara McPherson
NCDEQ-DWR; Mr. Mac Haupt