



Florida Department of Environmental Protection

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September 9, 2016

U.S. Army Corps of Engineers
Environmental Branch
Jacksonville District
Post Office Box 4970
Jacksonville, Florida 32232-0019

Permit Modification No. 0183817-008-JN
Permit No. 0183817-001-JC
AIWW Vicinity of Volusia County

Dear Mr. Karch:

Your request to modify Permit No. 0183817-001-JC was received on July 19, 2016, and has been reviewed by Florida Department of Environmental Protection (Department) staff. The proposed permit modification is to extend the permit expiration date by an additional three years to allow for the maximum 15-year duration afforded by Rule 62B-49.011(5), Florida Administrative Code (F.A.C.) to continue periodic dredging within the Atlantic Intracoastal Waterway (AIWW) in Volusia County.

On January 18, 2005, the Department issued Permit No. 0183817-001-JC to the U.S. Corps of Engineers (Corps) authorizing 5 years of periodic maintenance dredging along the AIWW in Volusia County. Dredging included cuts V-22, north of Ponce de Leon Inlet, to cut V-40, south of the Mosquito Lagoon Aquatic Preserve. Three wideners located in cuts V-23, V-24, V-26 (labeled as "sediment basins") were also included in the dredge plan. The dredged material was to be placed in the Upland Disposal Site V26, as authorized in St. John's River Water Management District Permit No. 4-127-65055-1, or in the nearshore disposal site authorized in the Department's Permit No. 0177220-001-JC.

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. 0183817-001-JC at the following website:

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[ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/volusia/issued/0183817_AIWW_Vicinity_of_Volusia_County/001-JC/Intent%20to%20Issue%20\(07-30-04\)/Intent%20to%20Issue%20\(07-30-04\)/Intent%20to%20Issue%20\(07-30-04\).pdf](ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/volusia/issued/0183817_AIWW_Vicinity_of_Volusia_County/001-JC/Intent%20to%20Issue%20(07-30-04)/Intent%20to%20Issue%20(07-30-04)/Intent%20to%20Issue%20(07-30-04).pdf)

On July 31, 2002, the Permittee requested a variance for an expanded mixing zone (Variance No. 0183817-002-EV), but this application was ultimately withdrawn on February 25, 2004.

On April 3, 2007, the Department issued Modification No. 0183817-003-EM, to include an additional upland disposal site for Permit No. 0183817-001-JC. This allowed the placement of material dredged from Cuts V-22 and V-23 of the AIWW into Dredged Material Management Area (DMMA) 434C, an upland disposal site, in addition to the originally permitted upland disposal site, V-26.

The activities proposed in File Nos. 0183817-004-EM and 0183817-005-EM were originally submitted as one application for a permit modification, but were subsequently split into two separate applications. In File No. 0183817-004-EM, the Corps requested a permit modification to include dredging in the north and south channels leading from Ponce de Leon Inlet to the adjacent AIWW. In File No. 0183817-005-EM, the Corps requested a modification to transfer the permit from the Corps to Volusia County. Both applications were withdrawn on September 18, 2008.

On July 27, 2009, the Department issued Modification No. 0183817-006-BN to extend the expiration date of Permit No. 0183817-001-JC by five years, from January 18, 2010, to January 18, 2015.

On July 29, 2014, the Department extended the expiration date of Permit No. 0183817-001-JC by issuing Modification No. 0183817-007-JN. That modification implemented the provisions of House Bill 7023, which authorized two-year extensions of Joint Coastal Permits under Part IV of Chapter 373, F.S. The new expiration date of January 18, 2017, provided a total permit duration of 12 years.

Staff Assessment

The five-year permit to perform maintenance dredging within the AIWW was issued on January 18, 2005, and was set to expire on January 18, 2010. When the permit was issued, the duration of a Joint Coastal Permit (JCP) was limited to a maximum of 10 years. Therefore, Modification No. 0183817-006-BN could only extend the permit duration by five additional years. Under the statutory time extension, Modification No. 0183817-007-JN could only extend the permit duration by 2 additional years, for a total of 12 years. On November 19, 2015, Rule 62B-49, F.A.C., was revised to allow the Department to extend the duration of an active JCP for up to 15 years. Therefore, by Rule, the permit is eligible for an additional three-year extension.

After thorough review of your application, staff finds that the proposed modification is not

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expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval extends the expiration date of the permit from January 18, 2017, to **January 18, 2020**. This letter 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 Rule 28-106.201, 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, any email address, any facsimile number, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

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- (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. 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 must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication. The 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, before the applicable deadline for 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.

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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 Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact Bobby Halbert by email at Robert.Halbert@dep.state.fl.us or by telephone at (850) 245-7667.

Sincerely,



Lainie Edwards, Ph.D.
Program Administrator
Beaches, Inlets and Ports Program
Division of Water Resource Management

cc: Paul Karch, USACE
Jessica Winterwerp, Volusia County
Bobby Halbert, DEP
JCP Compliance

Marty Seeling, DEP
Greg Garis, DEP
Tom Edwards, DEP
BIPP File

