

HEI-26830



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON SOUTH CAROLINA 29403-5107

February 14, 2020

Regulatory Division

Palmetto Railways
C/O Jeff McWhorter
540 East Bay Street
Charleston SC 29403

Dear Mr. McWhorter:

**PLEASE READ THIS LETTER CAREFULLY AND
COMPLY WITH ITS PROVISIONS**

This is in response to your February 11, 2020 letter, requesting a modification to Department of the Army (DA) permit SAC 2016-01395, issued in May of 2019 for the construction of an industrial rail line. The project consists of a corridor that is 22.7 miles long varying in width, connecting the CSXT Cross Subdivision near the Santee Cooper Cross Generating Station and the Camp Hall Commerce Park in Berkeley County, South Carolina (Begin: Latitude: 33.40422 °N, Longitude: 80.09814 °W; End Camp Hall Track: Latitude: 33.14241 °N, Longitude: 80.25723 °W, End Volvo Lead Track: Latitude: 33.14160 °N, Longitude: 80.23976 °W).

Your request for a modification is granted. Modifications to the previously authorized permit include changing the source of the 80 required wetland mitigation credits from the Swallow Savannah Mitigation Bank to the Beidler Forest Spring Branch Mitigation Bank. The modified Special Condition 6 now states:

- a. That as compensatory mitigation for impacts to aquatic resources, the permittee agrees to purchase a total of 80 credits from the Beidler Forest Spring Branch Mitigation Bank. At least one half of the required credits [40 credits] must be restoration/non-buffer enhancement credits.

This letter must be attached to your copy of the signed permit. This permit was issued under provision of Federal laws for the protection and preservation of the navigable waters of the United States. In accordance with these laws, once a DA Permit authorizing the proposed work is issued,

**IT SHALL NOT BE LAWFUL TO DEVIATE FROM SUCH PLANS EITHER
BEFORE OR AFTER COMPLETION OF THE WORK,**

unless modification of said plans has previously been submitted to and received the approval of the Department of the Army. All other conditions to which the work is made subject remain in full force and effect. Note also that this work appears subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, and you should contact that agency to ascertain their requirements.

In all future correspondence, please refer to file number SAC 2016-01395. If you have any questions, please contact Elizabeth Williams, at 843-329-8099.

FOR THE DISTRICT ENGINEER:

Sincerely,



Date: 2020.02.14

08:29:16 -05'00'

Amanda L. Heath
Chief, Special Projects

Copies Furnished:

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**ALSO ADMITTED IN WASHINGTON, D.C.
***ALSO ADMITTED IN CALIFORNIA
****ALSO ADMITTED IN NORTH CAROLINA

February 11, 2020

VIA ELECTRONIC AND U.S. MAIL

Elizabeth Williams
Project Manager, Regulatory Division
U.S. Army Corps of Engineers, Charleston District
69-A Hagood Avenue
Charleston, SC 29403
Elizabeth.G.Williams@usace.army.mil

RE: Palmetto Railways: Camp Hall Rail Line
Department of the Army Permit No. SAC-2016-01395

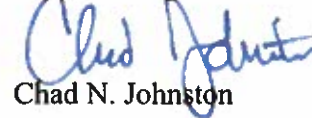
Dear Elizabeth:

Enclosed for your consideration, please find Palmetto Railways' request and justification for minor modification of the Special Condition 6.a of Department of the Army Permit No. SAC-2016-01395, issued May 7, 2019, related to the designation of the mitigation bank specified for purchase of compensatory mitigation credits required by the Permit for authorized freshwater impacts.

If you should have any questions or need additional information, please do not hesitate to contact me at your convenience. With best regards, I am

Very truly yours,

WILLOUGHBY & HOEFER, P.A.



Chad N. Johnston

Enclosures.

cc: Diana Wood (via Electronic Mail only)
James Choate, Esquire (via Electronic Mail only)

OFFICES

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SAC-2016-01395 – Palmetto Railways Modification Request Justification – Mitigation Bank

Consistent with 33 C.F.R. 325.7, Palmetto Railways provides the following written justification for its modification request to Department of the Army Permit No. SAC-2016-01395:

Palmetto Railways proposes a modification by mutual agreement of Department of the Army Permit No. SAC-2016-01395 (Permit) Special Condition 6.a, to reflect a change in the specified mitigation bank used for the purchase of compensatory mitigation credits required by the Permit for authorized freshwater impacts. The requested change is consistent with and requires no change to the approved permittee-responsible mitigation plan entitled, “FAIRLAWN C-1 FINAL PERMITTEE-RESPONSIBLE MITIGATION PLAN BERKELEY AND CHARLESTON COUNTIED [SIC],¹ SOUTH CAROLINA” (PRM Plan).

The approved PRM Plan proposed to offset impacts caused by the Camp Hall Rail Line Project (Project) to freshwater wetlands with the purchase 80 credits from the “Beidler Forest Mitigation Bank” (Beidler). However, the PRM Plan noted that Beidler was a pending mitigation bank which had not yet been approved by the Corps. The pendency of Beidler was also noted in the Draft Environmental Assessment for the Project, issued jointly by the Corps and Surface Transportation Board’s Office of Environmental Analysis, which stated that, if Beidler had not been approved with credits available prior to the issuance of the Permit, the Corps would designate the purchase of the 80 credits from an approved bank with credits available.

At the time of the Permit’s issuance on May 7, 2019, Beidler remained a pending mitigation bank under consideration by the Corps. Accordingly, Special Condition 6.a of the Permit specified that Palmetto Railways must utilize Swallow Savannah Wetland Mitigation Bank (Swallow) to fulfill its mitigation credit requirement. Currently, the Project is still in the final design phase; therefore, construction and impacts to areas authorized under the Permit have not yet begun. In the interim, and according to the Corps’ Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS), on or about January 7, 2020, Beidler was approved by the Corps with an authorized initial credit release under Department of the Army Permit No. SAC-2018-00208.²

The purpose of this request is to modify Special Condition 6.a to reflect the Corps’ approval of Palmetto Railways’ purchase of mitigation credits required by the Permit from Beidler, instead of Swallow. The requested modification would also reflect the original intent of Palmetto Railways’ proposed mitigation and would not necessitate modification of the approved PRM Plan, as the modification would be consistent with the PRM Plan’s express terms. Palmetto Railways respectfully submits that this modification is justified under 33 C.F.R. 325.7, given that no impacts to authorized areas have occurred, the intervening change in circumstances related to credit availability at the specific bank identified in the approved PRM Plan, and that public interest would be served through modification of the Permit to allow for purchase of credits from Beidler in light of its location in close proximity to the Project and within the Project’s primary service area. Further, the requested modification does not involve a change in scope of the Project at all. *See* 33 C.F.R. 325.7(a).

¹ Special Condition 6.c contains a non-substantive scrivener’s error in the recitation of the word “Counties” within the name of the approved permittee-responsible mitigation plan.

² According to RIBITS, the official name of the approved mitigation bank is the “Beidler Forest Spring Branch Mitigation Bank.”