

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN RE:

**CITY OF STARKE, FLORIDA,
a Florida municipality,**

OGC Case No. 19-0253

**PETITION FOR WAIVER
FROM RULE 62D-5.058, FLORIDA ADMINISTRATIVE CODE
FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM**

ORDER GRANTING PETITION FOR WAIVER

On March 27, 2019, the City of Starke, Florida (Petitioner), filed a petition for a waiver with the State of Florida Department of Environmental Protection (Department) under §120.542, Florida Statutes. See Exhibit 1. The petition requests a waiver from Rule 62D-5.058(7)(a), F.A.C., which gives a grantee three years to complete a project funded under the Florida Recreation Development Assistance Program (FRDAP). The Department published notice of receiving the petition in the Florida Administrative Register on March 28, 2019, but received no written comments in response.

FINDINGS OF FACT

1. Petitioner was awarded a FRDAP grant in February 2017 for the Edwards Park Unique Abilities Project (project UA7011). The funded facilities include a handicapped-accessible splash pad, an ADA compliant nature trail, ADA compliant picnic facilities, ADA-compliant restrooms, and associated amenities. By the terms of Rule 62D-5.058(7)(a), F.A.C., the facility was required to be complete by June 30, 2019.
2. During 2017 and 2018, Starke's City Clerk, whose duties include grant administration, was required to take extensive periods of medical leave, adversely impacting the Petitioner's ability to manage the grant process.

3. Hurricane Irma, in fall 2017, caused damage within the City of Starke and of necessity City staff focused on recovery and restoration efforts, further delaying progress on the grant.

4. Difficulties with engineering, bidding, and an encroachment discovered on the property all contributed to further delays in the project.

5. The project is now on track to be completed by the end of calendar year 2019 but after the end of fiscal year 2019.

CONCLUSIONS OF LAW

UNDERLYING PURPOSE OF THE STATUTES

6. Section 120.542(2), F.S. provides that an agency should grant a variance or waiver when the person subject to a rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and when application of the rule would create a substantial hardship or would violate principles of fairness. "Substantial hardship" is defined as a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

7. Rule 62D-5.058(7)(a), F.A.C., implements §375.075, F.S., which authorizes the Department to create a program providing grants to local governments to acquire or develop land for outdoor recreation.

8. Rule 62D-5.058(7)(a), F.A.C., provides, "The grantee will have up to three years from the start of the state's fiscal year in which funds are appropriated to complete the project. If the project is not completed within three years from the original contract date, the start of the state's year in which funds are appropriated, the contract shall be terminated and the project funds shall revert to the revenue fund from which they were appropriated."

9. This rule is intended to ensure the completion of grant projects within an acceptable timeframe. The Department finds that the Petitioner is on track to complete the project within an acceptable period.

10. Petitioner has demonstrated that the statutory purpose of requiring grant projects be completed in a timely manner will be achieved by alternative means even if the Department grants the rule waiver.

11. Petitioner has demonstrated that it will suffer substantial economic hardship if the Department terminates the grant agreement.

12. Consequently, the Department waives Rule 62D-5.058(7)(a), F.A.C., and grants Petitioner until June 30, 2020, to complete the project.

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 proceeding is timely filed pursuant to sections 120.569 and 120.57, F.S. 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 request for a variance or waiver.

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., the petition 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, telephone number, and any e-mail address of each petitioner or petitioner's representative, which shall be the address for service purposes during the course of the proceeding; the Department case identification number, and the county in which the subject matter or activity is located;

(c) A statement of how and when each petitioner received notice of the Department's action;

(d) A statement of how each petitioner's substantial interests are affected by the Department's action;

(e) A statement of the material facts disputed by the petitioner, if any. If there are none, the petition must so indicate;

(f) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the Department's action;

(g) A statement of specific rules or statutes the petitioner contends require reversal or modification of the Department's action, including an explanation of how the alleged facts relate to the specific rules or statutes;

(h) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the Department's proposed action.

The petition must be filed (received by the Department Clerk) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS 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., 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 under section 120.573, F.S., is not available in this proceeding.

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, MS 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.

DONE and ORDERED this 17th day of May, 2019, in Tallahassee, Florida.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Callie DeHaven
Director, Division of State Lands

Filed on this date, pursuant to §120.52,
F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Dea Crandall 5-17-19
Clerk Date

Copy furnished to:
Jody Lamar Finklea
2061-2 Delta Way
Tallahassee, Florida 32303

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF STARKE, FLORIDA,
a Florida municipality,

Petitioner,

-vs-

STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent.

FDEP Case No. _____

PETITION FOR WAIVER OF
RULE 62D-5.058, FLORIDA ADMINISTRATIVE CODE

Petitioner, CITY OF STARKE, FLORIDA, a Florida municipality ("the City"), hereby petitions Respondent, STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION ("FDEP"), for a waiver of rule 62D-5.058(7)(a) of the *Florida Administrative Code*, governing the time period permitted for the use of grant funds from the Florida Recreation Development Assistance Program, and which provides: "the grantee will have up to three years from the start of the state's fiscal year in which funds are appropriated to complete the project." In support, Petitioner states as follows:

I. PETITIONER

1. The name, address, email address, telephone number, and facsimile number of Petitioner and its qualified representative are:

City of Starke, Florida
209 North Thompson Street
Starke, Florida 32091
Telephone: (904) 964-5027
Facsimile: (904) 964-3998

Bob Milner
City Manager
bmilner@cityofstarke.org

2. The name, address, email address, telephone number, and facsimile number of Petitioner's counsel is:

Jody Lamar Finklea
2061-2 Delta Way
Tallahassee, Florida 32303
Telephone: (850) 297-2011
Facsimile: (850) 297-2014
jody.finklea@fmpa.com

II. THE RULE FROM WHICH WAIVER IS SOUGHT

3. Petitioner requests a waiver of rule 62D-5.058(7)(a), which provides: "the grantee will have up to three years from the start of the state's fiscal year in which funds are appropriated to complete the project."

III. STATUTE IMPLEMENTED

4. Rule 62D-5.058 implements section 375.075, Florida Statutes, which established and provides for the administration of the Florida Recreation Development Assistance Program ("FRDAP").

IV. ACTION REQUESTED

5. Petitioner requests a waiver of rule 62D-5.058(7)(a) to provide a six month extension of time.

V. JUSTIFICATION FOR GRANTING RULE WAIVER AND REASONS SUCH A WAIVER SERVES THE PURPOSES OF THE UNDERLYING STATUTE

6. In February 2017, the City was awarded an FRDAP grant in the amount of \$500,000 for its Edwards Park Unique Abilities Project (FRDAP UA Project U7011) for the development of an accessible splash pad, ADA-compliant nature trail, new ADA-compliant picnic facilities, ADA-compliant restrooms, and other associated amenities to serve families and children in and around the City, a community of predominately lower income families, many of whom have recognized disabilities (the "Project").

7. However, progress on completion of the Project has been impaired by several hardships and, as is evident from the facts provided in this petition, failure to grant the requested rule waiver would violate principles of fairness, needlessly denying the City's community with the benefits of the Project. *See* § 120.542(2), Fla. Stat (2018) ("Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.")

8. Hurricane Irma struck the City in the fall of 2017, knocking out power to more than 80% of Bradford County and dropping more than 11 inches of rain in some areas around the City of Starke. The impact on the City's electric and other utility systems was substantial and widespread. Due to the small staff size of the City and the magnitude of necessary restoration and recovery work to be done following the storm, Hurricane Irma delayed the City by at least three months in moving the Project forward.

9. The current City Manager and City Clerk (who is separately elected and handles documentation related to grants and grant administration) also suffered numerous difficulties in the progress of the Project in 2017 and 2018. The current City Manager started employment with the City in March 2017, after award of the Project's grant. During the period of March 2017 to January 2019, the City Clerk was forced to take periods of extended medical leave, undergoing several surgeries and periods of rehabilitation. In the fall of 2018, the City Manager was made aware of the lack of progress on the Project to that point, and he immediately took steps to begin work on the Project with the selection of an engineering design firm.

10. An engineering firm was selected near the end of 2018, but it was determined that there were no acceptable "as-builts" for existing facilities at the Project site. A private property encroachment issue was also discovered at the site after a survey was completed. These matters took several additional months to adequately resolve.

11. Then, the construction bid process had to be conducted twice to obtain proposals. The first construction bid process received no responses. After a second construction bid process, two proposals were received. However, they were much higher than the City's anticipated budget for the Project. This necessitated changes to the Project scope and process (including the City's direct purchase of certain materials and other modifications), before the successful selection of a construction contractor.

12. Despite these setbacks, the City has attempted to move the Project forward to completion. The City is working hard to complete the Project in a timeframe that does not bring it any further than necessary beyond the three year limit set forth in rule 62D-5.058(7)(a). However, given the delays and difficulties encountered, it is now evident that an extension of the three year time period is necessary.

13. The requested rule waiver furthers the underlying purpose of the FRDAP and the Project, to provide outdoor recreation activities, in partnership with the City, in a disability-friendly manner for the families and children living in and around the City of Starke. The requested waiver will permit the purposes of FRDAP to be achieved for the Project and for the people that the Project will positively impact.

14. At this point, the City believes the contractor can begin work by April 1, and a six month extension of the three year time period will be sufficient to complete the Project.

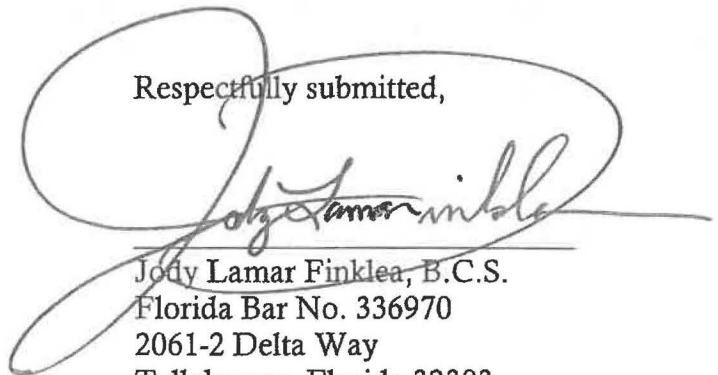
VI. WAIVER IS PERMANENT

15. For the Project, the requested sixth month extension and associated waiver of rule 62D-5.058(7)(a) is permanent.

CONCLUSION

16. For the reasons set forth in this petition, the City respectfully requests that FDEP (i) grant the requested six month extension and associated waiver of rule 62D-5.058(7)(a); (ii) grant this petition and all relief requested herein; and (iii) grant such other and further relief as it may deem appropriate.

Respectfully submitted,



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Attorney for the City of Starke, Florida

March 20, 2019