



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

June 19, 2018

F/SER47:CC/pw

(Sent via Electronic Mail)

Lt. Col. Jeffrey Palazzini
Charleston District, Corps of Engineers
69A Hagood Avenue
Charleston, South Carolina 29403-5107

Attention: Courtney Stevens

Dear Lt. Colonel Palazzini:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAC-2015-00188 dated May 22, 2018, and supporting documentation provided by the applicant dated April 3, 2018. The Horizon Project Foundation, Inc., requests authorization from the Department of the Army to construct residential and mixed-use commercial, medical, and research facilities in Gadsden Creek, Charleston County. The applicant proposes to implement a Permittee-Responsible Mitigation project at an off-site location for impacts to essential fish habitat (EFH). The Charleston District's initial determination is the proposed action would have an adverse impact on EFH or federally managed fishery species, and the District has indicated it will provide a detailed EFH assessment in the future. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the NMFS provides the following initial comments and recommendations pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Description of the Proposed Project and Site History

The proposed work would impact 3.835 acres of tidal/critical area wetlands. In detail, the proposed project would include development of approximately 31.43 acres, including placement of fill material in 2.866 acres of tidal wetlands and impacts to 0.969 acre of tidal wetlands for the construction of an open water pond. The proposed impacts would allow for the construction of research facilities, housing, commercial areas, and structured parking. Project plans remain speculative in nature with only generic drawings provided. The applicant also states the project would improve existing stormwater and drainage infrastructure.

The proposed site was, until the early 1960s, an apparently fully functional tidal wetland system when the City of Charleston began using it as a dump. While the City of Charleston closed the dump in 1969, by then the wetlands had become a municipal landfill and the tidal creek running on the southeastern portion of the landfill was channelized. In the nearly 50 years since the closure of the landfill, Gadsden Creek has been functioning as EFH (Figure 1 and 2). Surface trash is visible within the marsh, likely deriving from its location within an urban setting (Figure 3), and there appears to be some locations within the site where the landfill cap has not been



maintained per the requirements of the Army Corps of Engineers Permit #71-02-15 issued on February 8, 1971 (Figure 4). Lack of proper maintenance of the cap, should not then be used to justify filling of EFH with no attempt at corrective action – enhancement or restoration – on site.

Essential Fish Habitat in the Project Area

The South Atlantic Fishery Management Council (SAFMC) identifies estuarine and marine emergent wetlands, tidal creeks, and sub-tidal and intertidal non-vegetated flats (unconsolidated bottom) as EFH for penaeid shrimp and estuarine-dependent species of the snapper-grouper complex. Furthermore, SAFMC identifies oyster/shell habitat as a Habitat Area of Particular Concern (HAPC) for the estuarine-dependent species of the snapper-grouper complex. In addition to serving as EFH and HAPC, these areas provide habitat for numerous species and their prey that have commercial or recreational importance, including red drum (*Sciaenops ocellatus*), southern flounder (*Paralichthys lethostigma*), spotted seatrout (*Cynoscion nebulosus*), spot (*Leiostomus xanthurus*), Atlantic croaker (*Micropogonias undulates*), and blue crab (*Callinectes sapidus*). Tidal creeks and their associated salt marshes are EFH because larvae and juveniles concentrate and feed extensively and shelter within these habitats. Consequently, growth rates are high and predation rates are low, which makes these habitats effective nursery areas. The SAFMC provides additional information on EFH and federally managed species in *Fishery Ecosystem Plan of the South Atlantic Region*¹ and the *Users Guide to Essential Fish Habitat Designations by the South Atlantic Fishery Management Council*².

Impacts to Essential Fish Habitat

A total of 3.835 acres of EFH and HAPC would be impacted by the project from physically disturbing habitat; placing fill in 2.866 acres of tidal wetlands and dredging of 0.969 acres of tidal wetlands. The proposed project would completely eliminate the tidal wetland habitat on site and result in complete loss of function. Gadsden Creek is located within a highly urbanized setting and, as noted above, the area's previous use as a municipal landfill in the 1960s presents challenges. However, given the recent history of many of our nation's municipalities seeking to restore, reclaim, or enhance tidal wetlands, in what were once municipal dumps and landfills, the disregard of the site history as a thriving salt marsh and tidal creek is concerning. Gadsden Creek is a heavily altered system, that will likely never be a pristine tidal wetland, but it does, and can continue, to provide EFH and HAPC services. Tidal wetlands, especially isolated wetlands in urban areas, may provide corridors of connectivity for migratory species as well as unique recreational and educational opportunities within an urban setting.

Avoidance and Minimization

The information provided by the applicant lacks a comprehensive assessment of on-site alternatives reflecting impact avoidance and minimization strategies for EFH and HAPC. Habitat conversion by dredging of tidal wetlands to create an open water pond is not an appropriate use of EFH and HAPC and is not an avoidance and minimization strategy.

Compensatory Mitigation

Compensatory mitigation exists, as described in 33 CFR Parts 325 and 332 *Compensatory Mitigation for Losses of Aquatic Resources: Final Rule*, "to offset environmental losses from

¹ Available at <http://safmc.net/>

² Available at http://safmc.net/download/SAFMCFHUsersGuideFinalRevAug17_2.pdf

unavoidable impacts.” Given the lack of an EFH Assessment and avoidance and minimization strategies it is not possible to assess the applicant’s proposed compensatory mitigation plan. The NMFS may provide future comments or conservation recommendations on the applicant’s plan after additional information is provided. Based on the general information provide thus far, the NMFS notes that while the King’s Grant Site has enhancement/restoration potential to compensate for EFH losses in the tidal portions of the Ashley River, salinity differences between the project area and mitigation site may result in different ecological services lost at the impact site than those from the mitigation site.

Additionally, the applicant utilized the North Carolina Wetland Assessment Method to determine level of function of wetland types within the project boundaries. Based on this method the applicant determined the site was “impaired.” The NMFS, along with representatives from other resource agencies, participated in a site visit on June 14, 2018. During the site visit, the NMFS noted the applicant incorrectly treated the entire assessment area at “brackish/salt marsh.” Gadsden Creek should have been subdivided into two assessment areas – “brackish/salt marsh” on the northern end and “estuarine woody wetland” on the southern end – to properly assess condition using this rapid assessment method and to capture the sub-functions of the lower Gadsden Creek “estuarine woody wetland” portion. The NMFS believes the marsh and creek proposed for fill is “fully functional” using the criteria in the Charleston District’s 2010

Guidelines for Preparing a Compensatory Mitigation Plan:

- Tidal hydrology throughout the site is neither impaired nor restricted.
- Dense marsh vegetation, including the important nursery species *Spartina alterniflora*, occurs within the site.
- Presence of oysters, a Habitat Area of Particular Concern (Figure 5).
- Presence of mud crabs, fiddler crabs, and baitfish within the site (Figure 6).
- All of these indicators point to a fully functional habitat including fishery, bird, and small mammal habitat, nutrient and pollution absorption, organic matter source that feeds fish and other coastal organisms, and carbon sequestration.

EFH Conservation Recommendation

The NMFS finds the proposed filling and dredging of salt marsh and intertidal habitat would adversely affect EFH and HAPC. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely affect EFH. The NMFS may provide additional EFH conservation recommendations in the future after reviewing the EFH Assessment for the proposed project. Based on this requirement, and the existing information made available to the NMFS for review, the NMFS provides the following:

- The Charleston District should hold the permit in abeyance until such time as the applicant can incorporate avoidance and minimization strategies to reduce tidal wetland impacts, and an enhanced EFH Assessment is completed and reviewed.

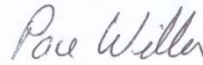
Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Charleston District to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, an interim response should be provided. A detailed response then must be provided ten

days prior to final approval of the action. The detailed response must include a description of measures proposed by the Charleston District to avoid, mitigate, or offset the adverse impacts of the activity. If the response is inconsistent with an EFH conservation recommendation, a substantive discussion justifying the reasons for not following the recommendation must be provided.

In accordance with section 7 of the Endangered Species Act of 1973, as amended, it is the responsibility of the Charleston District to review and identify whether a proposed activity may affect endangered or threatened species and their designated critical habitat. Determinations involving species under the jurisdiction of the NMFS should be reported to the NMFS Protected Resources Division at the letterhead address.

NMFS appreciates the opportunity to provide these comments. Please direct related correspondence to the attention of Cindy Cooksey at our Charleston Area Office. She may be reached at (843) 460-9922 or by e-mail at Cynthia.Cooksey@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc: COE, Courtney.M.Stevens@usace.army.mil
DHEC, trumbumt@dhec.sc.gov
SCDNR, DavisS@dnr.sc.gov
SCDNR, CroweS@dnr.sc.gov
SAFMC, Roger.Pugliese@safmc.net
EPA, Laycock.Kelly@epa.gov
FWS, Karen_McGee@fws.gov
F/SER4, David.Dale@noaa.gov
F/SER47, Cynthia.Cooksey@noaa.gov



Figure 1. Northern end of Gadsden Creek.



Figure 2. Southern end of Gadsden Creek.



Figure 3. Surface trash present in Gadsden Creek (fire extinguisher).



Figure 4. Erosion of municipal landfill cap in Gadsden Creek.



Figure 5. Oysters in Gadsden Creek.



Figure 6. Crab burrows in Gadsden Creek.