



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>

May 12, 2015

F/SER47:JD/pw

(Sent via Electronic Mail)

Col. Thomas J. Tickner, Commander
Savannah District Corps of Engineers
100 W. Oglethorpe Avenue
Savannah, Georgia 31402-0889

Attention: Shaun Blocker

Dear Colonel Tickner:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAS-2015-00235 and SAS-2005-01381, dated April 23, 2015. The Savannah Harbor – Interstate 16 Corridor Joint Development Authority requests authorization from the Department of the Army to fill 142.69 acres of freshwater wetlands and 5,647 linear feet of freshwater streams and canals to construct a manufacturing facility in Bryan County. The wetlands proposed for impact drain to Mill Creek and Black Creek, eventually discharging into the tidally influenced freshwater of the Ogeechee River. As compensatory mitigation, the applicant proposes purchase of wetland credits from an approved mitigation bank and/or contribution to the Georgia Land Trust In-Lieu Fee Program. The Savannah District did not provide a determination on the project's impacts to essential fish habitat (EFH), presumably because no direct impacts to EFH are proposed. It is not clear if the Savannah District considered potential indirect impacts to EFH, which also may be subject to EFH consultation. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are provided 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

Figure 4 of the public notice indicates the project site is 1,907.7 acres currently used as a pine plantation, including 179 acres of managed longleaf pine. The proposed work includes filling 125.13 acres of jurisdictional wetlands, 17.56 acres of non-jurisdictional wetlands, 2,631 linear feet of stream, and 3,016 linear feet (0.62 acres) of a jurisdictional ditch to construct parking areas, warehouses, support buildings, roads, a railroad, and eight stormwater ponds. The majority of the fill would be placed on the periphery of wetlands except for the railroad on the southeastern portion of the site, which crosses wetlands. Because the Savannah District is currently processing a jurisdictional determination for the site, the wetlands impact acreages may change.



Essential Fish Habitat in the Project Area

The site of the proposed project does not include EFH; however, the tidally influenced freshwater portion of the Ogeechee River is located approximately 1.12 miles from the eastern site boundary. The South Atlantic Fishery Management Council (SAFMC) identifies tidal freshwater wetlands as EFH for penaeid shrimp, including white shrimp (*Litopenaeus setiferus*). Although tides dominate the rise and fall of the water in freshwater tidal wetlands, the wetlands themselves are typically not salty with a salinity range of 0.0 to 0.5 parts per thousand. The brackish and estuarine downstream waters of the Ogeechee River, the tidal creeks connected to it, and the surrounding coastal marsh are designated EFH for a number of federally managed fisheries, including penaeid shrimp and estuarine-dependent species of the snapper grouper complex. The SAFMC provides additional information on EFH for federally managed species in Volume IV of the *Fishery Ecosystem Plan of the South Atlantic Region*¹.

The salt marshes of the Ogeechee River also serve as nursery and forage habitat for other species, such as red drum (*Sciaenops ocellatus*), black drum (*Pogonias cromis*), Atlantic menhaden (*Brevoortia tyrannus*), and blue crab (*Callinectes sapidus*). Many of these species are prey for fish managed under the Magnuson-Stevens Act, such as mackerels, snappers, groupers, billfish, and sharks. Red drum is an important state-managed fishery, and estuarine wetlands within the project area provide habitat for all life stages of red drum.

Impacts to Essential Fish Habitat

The proposed project may impact EFH indirectly. An 11-mile segment of Mill Creek, to which the project site currently drains, is listed on the Environmental Protection Agency 303(d) list as impaired for dissolved oxygen. The amount of impervious surface and associated manufacturing chemicals associated with site development and operations may further impair waterbodies connecting to the Ogeechee River.

To minimize the potential degradation of water quality, the NMFS recommends the applicant incorporate low-impact design principles into the project plans. Examples include vegetated bioretention areas and pervious pavements to control hydrology through infiltration and/or evapotranspiration. These practices are consistent with recommendations the Georgia Department of Natural Resources, Environmental Protection Division, provides in the 2009 *Coastal Stormwater Supplement to the Georgia Stormwater Management Manual*. NMFS also recommends the railroad bed include culverts to minimize restriction of hydrologic flow of the wetland system the railroad bed will bifurcate.

Mitigation

As compensatory mitigation for impacts to freshwater wetlands, the applicant proposes to purchase available wetland and stream mitigation credits from a bank with a primary service area that includes the lower Ogeechee River. The public notice does not provide the mitigation credit worksheets; however, it does state not enough credits are available to satisfy mitigation needs. Therefore, the applicant is also proposing to purchase credits through the Georgia Land Trust In-Lieu Fee Program, which also does not have credits available for the lower Ogeechee River watershed. Given the two mitigation sources lack sufficient credits and this one project would deplete all credits within the Lower Ogeechee watershed, NMFS recommends the applicant

¹ Available at safmc.net/EcosystemLibrary/FEPVolumeIV

pursue permittee-responsible mitigation within the lower Ogeechee watershed, preferably by restoring or enhancing wetlands along the Ogeechee River.

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

NMFS appreciates the opportunity to provide these comments. Please direct related correspondence to the attention of Ms. Jaclyn Daly-Fuchs at our Charleston Area Office. She may be reached at (843) 762-8610 or by e-mail at Jaclyn.Daly@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc: COE, Shaun.L.Blocker@usace.army.mil
GADNR CRD, Karl.Burgess@gadnr.org
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May 19, 2015

Colonel Thomas J. Tickner
U. S. Army Corps of Engineers
Regulatory Division
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640
Attention: Shaun Blocker

Re: USFWS File Number 2015-0579

Dear Colonel Tickner:

The U. S. Fish and Wildlife Service has reviewed Joint Public Notice SAS-2005-01381 – SAS-2015-00235 (JPN), regarding the proposed impacts to 125.13 acres of jurisdictional wetlands, 2,631 linear feet of stream, 0.62 acre of jurisdictional ditch, and 17.56 acres of non-jurisdictional wetland on a 1,904.5 acre project site for the purpose of construction of a mega-site manufacturing facility, in Ellabelle, Bryan County, Georgia. The proposed impacts are associated with the general site development and railroad access. The applicant states that due to the very large footprint of the manufacturing plant there is little flexibility in plant layout and design. This report is submitted in accordance with provisions of the Endangered Species Act of 1973 (ESA), as amended; (16 U.S.C. 1531 et seq.).

Endangered Species Act Comments

The JPN requests information on whether any species listed or proposed for listing may be present in the area. The gopher tortoise (*Gopherus polyphemus*), a federal candidate species, is known to inhabit the study area. The applicant intends to undertake voluntary relocation efforts for all gopher tortoises on site in conjunction with state and federal agencies prior to development. The U. S. Army Corps of Engineers has determined that the proposed project would not affect any federally listed species. Based on available information, no currently federally listed species are likely to occur on the project site.

General Comments

The Service questions the purpose and need for the proposed project's stream and wetland impacts, and the entire permit application. The stated purpose of was to construct a mega-site manufacturing

facility. There is no known manufacturer who requires this site and the specific wetland impacts requested in the permit application.

We appreciate the opportunity to comment during the planning stages of your project. If you have any further questions, please contact our Coastal Georgia Sub Office staff biologist, Bill Wikoff, at 912-832-8739 extension 5.

Sincerely,



Strant T. Colwell
Coastal Georgia Supervisor

cc: John Jensen, GADNR, Forsyth, Georgia
Bradley Smith, GGDNR-EPD, Brunswick, Georgia
Eric Somerville, USEPA, Athens, Georgia
Jaclyn Daly, NMFS, Charleston, South Carolina

SOUTHERN ENVIRONMENTAL LAW CENTER

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May 22, 2015

Colonel Thomas J. Tickner
U.S. Army Corps of Engineers
Regulation Division
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640
Attention: Shaun Blocker

Re: Mega Site: Joint Public Notice (JPN) SAS-2005-01381, SAS-2015-00235

Dear Colonel Tickner:

The Southern Environmental Law Center is submitting this letter on behalf of the Ogeechee Riverkeeper and One Hundred Miles to urge the Savannah District to halt any further action on the applications referenced above. It is our understanding that the applications pertain to a site that was being prepared for a Volvo manufacturing plant. It is our further understanding that the Volvo manufacturing plant will be located in South Carolina. Because that plant will not be built in on the site in Georgia, the applications before the Savannah District are no longer viable and should be terminated.

Section 404(b)(1) Guidelines

The Corps cannot issue a Section 404 permit unless the Applicant satisfies the criteria set forth in the Section 404(b)(1) Guidelines.¹ The EPA promulgated these Guidelines in conjunction with the Corps,² and they serve as binding substantive rules.³ Although all waters of the United States are protected under the Guidelines, wetlands are subject to greater protection as “special aquatic sites” because of the special role they play in “the general overall environmental health or vitality of the entire ecosystem of a region.”⁴

The Guidelines require that the Corps examine the practicable alternatives to any proposal. The presumption is that there is a practicable upland alternative to filling waters of the United States. For discharges that cannot be avoided, the Guidelines require the discharges to be minimized. If discharges remain, under the Guidelines, they must be mitigated.

¹ 33 C.F.R. §323.6.

² 45 Fed. Reg. 85336 (1980).

³ See *Buttrey v. United States*, 690 F.2d 1170, 1180 (5th Cir. 1982).

⁴ 40 C.F.R. §240.41 (1992).

Specifically, the 404(b)(1) Guidelines state that:

[N]o discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.⁵

The burden to overcome this test is difficult.⁶ To do so an applicant must demonstrate that there are no upland areas that can accommodate, or are available for, the project purpose.

Because the proposed project no longer has a project purpose, considering that the Volvo plant will be built in South Carolina, there is no way for the Corps to evaluate practicable alternatives. The application was prepared with a specific manufacturing plant in mind. That plant is no longer available, so the Savannah District could not perform the practicable alternatives analysis.

The 404(b)(1) Guidelines also provide that:

[N]o discharges of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.⁷

This provision was later interpreted in a memorandum of agreement between the EPA and the Corps to require applicants to first avoid discharges to the extent practical, then minimize any impacts left, and then mitigate for any impacts that could not be minimized.⁸

Because the size and shape of any building that might be built on the site is now unclear, it would be impossible for the Savannah District to determine if more avoidance would be possible to achieve.

Public Interest Review

In addition to the criteria in the 404(b)(1) Guidelines, the Corps also bases its decision to issue Section 404 permits on an evaluation involving the following criteria: "the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the *public interest*."⁹ In making the public interest evaluation, the Corps balances the benefits that

⁵ 40 C.F.R. § 230.10(a).

⁶ See *Bersani v. U.S. Environmental Protection Agency*, 850 F.2d 36 (2d Cir. 1988).

⁷ 40 C.F.R. §230.10(d).

⁸ Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines, (1990).

⁹ 33 C.F.R. §320.4(a)(1992)(emphasis added).

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are reasonably expected to be generated by the proposal against the reasonably foreseeable costs.¹⁰ The district engineers must examine a number of factors in making this analysis including: water quality, wetlands, historic properties, land use, fish and wildlife, and conservation.

Again, without knowing what type of building would be constructed on the site, the Savannah District would not be able to apply the relevant public interest tests. Until the Applicant can demonstrate that there is a need for this 1,900-acre site, the Savannah District should not grant the permit. It is contrary to the public interest to have another unfinished development on the landscape.

National Environmental Policy Act

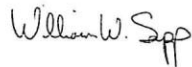
Finally, until a specific building design is selected with a definite footprint, the Corps cannot process the permit because the Corps would not be able to compare alternatives under the National Environmental Policy Act.

In short, the applicant is asking the Corps to process a permit based on speculation. But the Corps is precluded from doing so because the applicant has not provided a project purpose or need for the site.

Because these permit applications are unusual and evolving, we reserve the right to supplement these comments.

Should you have any questions concerning these comments, please contact me at 404-521-9900.

Sincerely,



William W. Sapp
Senior Attorney

cc: Emily Markesteyn, Ogeechee Riverkeeper
Megan Desrosiers, One Hundred Miles

¹⁰ *Id.*