



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

Regulatory Branch
SAS-2011-00707

September 7, 2018

Mr. Hugh "Trip" Tollison
Savannah Harbor - Interstate 16 Corridor Joint Development Authority
131 Hutchinson Island Road, 4th Floor
Savannah, Georgia 31421

Dear Mr. Tollison:

I refer to the permit application dated June 14, 2018, requesting Department of the Army authorization to fill 92.6 acres of wetland, 17.56 acres of isolated, non-jurisdictional wetland, 833 linear feet of stream, and 0.62 acre of ditch to construct an Original Equipment Manufacturing (OEM) facility. The 1,944 acre project site contains waters and wetlands adjacent to Black Creek and is located south of the intersection of Georgia Highway 280 and Interstate 16, in Ellabell, Bryan County, Georgia (Latitude 32.1584, Longitude -81.4533). The application was submitted on your behalf by Resource and Land Consultants. This project has been assigned number SAS-2015-00235 and it is important that you refer to this number in all communication concerning this matter. The intent of this letter is to identify the basic and overall project purpose as well as additional information needed to move forward with our evaluation of your application.

On July 5, 2018, the U.S. Army Corps of Engineers (Corps) published a Joint Public Notice (JPN) advertising the proposed project. In response to the JPN, comments were received from the following agencies and organizations: U.S. Fish and Wildlife Service (USFWS); National Marine Fisheries Service, Habitat Conservation Division (NMFS, HCD); AA Shaw, LLC; Georgia L. Flanders, LLC; Georgia Environmental Restoration Association (GERA); Southern Environmental Law Center (SELC); Georgia Department of Natural Resources, Environmental Protection Division (Georgia EPD); Mr. Corde Wilson of Beacon New Homes; Mr. G. Forbes Buck; Mr. David Deason; Mr. Joseph Usher and Ms. Tracy Walden-Stafford (on behalf of the Whispering Pines Neighborhood). In accordance with our regulations governing the Regulatory Program, we are furnishing these comments to give you an opportunity to provide the District Commander a proposed resolution or rebuttal to objections prior to final action on the application (33 CFR 325.2(a)(3)).

Regarding the basic project purpose, on August 3, 2018, you provided an updated purpose and need statement. Specifically, you stated that the purpose and need for the proposed project is "to obtain a 404 permit to facilitate development of a site suitable to support an OEM auto manufacturing facility." According to the Section 404(b)(1) Guidelines of the Clean Water Act, the Corps must define the basic and overall project purpose based on the applicant's purpose and need statement. The basic purpose of the project must be known to determine if a given project is water dependent. If a project is not water dependent, alternatives, which do not involve impacts to special aquatic sites (wetlands) are presumed to be available to the applicant. The Corps has determined that the basic purpose of the proposed project is to construct an OEM auto facility, which is not a water dependent activity. Therefore, practicable alternatives that would potentially have a less adverse impact on the aquatic ecosystem may exist and need to be considered.

The overall project purpose is used to evaluate practicable alternatives under the Section 404(b)(1) Guidelines. The overall project purpose must be specific enough to define the applicant's needs, but not so restrictive as to preclude all discussion of alternatives. Defining the overall project purpose is the responsibility of the Corps; however, the applicant's needs are considered in the context of the desired geographic area of the development, and the type of project being proposed. Based on information contained in the application, the Corps has determined that the overall project purpose is to construct an OEM auto manufacturing facility within 50 miles of the Savannah Harbor. Regarding the off-site alternatives, please update the off-site alternative analysis to include the Georgia International Rail Park.

As stated above, please provide a response to the comments received during the JPN comment period and update the alternative analysis. Please note, the Corps has reviewed the report entitled, "Phase I Intensive Cultural Resources Survey and Phase II Archaeological Testing for the 1,411.7-acre Bryan County, OEM Site" dated August 2018. Based on the report, we have determined that the proposed project would have no adverse effects to cultural resources or historic properties and have requested concurrence from the Georgia Department of Natural Resources, State Historic Preservation Officer (Georgia SHPO) as well as the Tribal Historic Preservation Officers (THPO) for the following Federally recognized tribes: Alabama-Quassarte Tribal Town, Absentee-Shawnee Tribe of Oklahoma, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Thlopthlocco Tribal Town, Eastern Shawnee Tribe of Oklahoma, and the Shawnee Tribe. Should we receive additional comments from the above individuals, we will forward them on for a response.

A copy of this letter is being provided to the following party: Mr. Alton Brown, Jr., Resource and Land Consultants, 41 Park of Commerce Way, Suite 303, Savannah, Georgia 31405.

Thank you in advance for completing our Customer Survey Form. This can be accomplished by visiting our website at <http://per2.nwp.usace.army.mil/survey.html>, and completing the survey on-line. We value your comments and appreciate your taking the time to complete a survey each time you interact with our office.

If you have any questions, please call me at 912-652-5550.

Sincerely,



Sarah E. Wise
Team Lead, Coastal Section

Enclosures



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>

(Sent via Electronic Mail)

July 16, 2018

Colonel Daniel Hibner, Commander
USACE Savannah District
100 West Oglethorpe Avenue
Savannah, GA 31401-3604

Dear Colonel Hibner:

NOAA's National Marine Fisheries Service (NMFS) reviewed the projects described in the public notices listed below. Based on the information in the public notices, the proposed projects would **NOT** occur in the vicinity of essential fish habitat (EFH) designated by the South Atlantic Fishery Management Council, Mid-Atlantic Fishery Management Council, or the NMFS. Present staffing levels preclude further analysis of the proposed work and no further action is planned. This position is neither supportive of nor in opposition to authorization of the proposed work.

Notice No.	Applicant(s)	Notice Date	Comment Due Date
SAS-2010-00442	Soque River Conservation LLC	July 9, 2018	August 9, 2018
SAS-2015-00235	Savannah Harbor – Interstate 16 Corridor JDA	July 5, 2018	August 5, 2018

Please note these comments do not satisfy consultation responsibilities under section 7 of the Endangered Species Act of 1973, as amended. If an activity “may effect” listed species or critical habitat under the purview of the NMFS, please initiate consultation with the Protected Resources Division at the letterhead address.

Sincerely,

Pace Wilber for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division



From: [Wikoff, Bill](#)
To: [Wise, Sarah E CIV USARMY CESAS \(US\)](#)
Cc: [Donald Imm](#)
Subject: [Non-DoD Source] SAS-2015-00235 OEM site
Date: Wednesday, July 18, 2018 10:07:02 AM

Sarah,

The Corps requests information from the USFWS on whether any species listed or proposed for listing may be present in the area of the proposed project, SAS-2015-00235, to construct an Original Equipment Manufacturing (OEM) facility.

The consultant for the project, Resource & Land Consultants' (RLC) submitted substantial site information to the Corps as part of the Section 404 permit application. The information includes reports for the site that address all species that our IPaC (Information Planning and Conservation) system lists as occurring in the county. In 2015 RLC conducted surveys of the majority of the current site and John Palis conducted a site habitat assessment. These investigations covered 1,904 acres of the 1,944 acre site. The present site is generally the same 1,904 acres, with approximately 100 of those acres dropped and approximately 150 new adjacent acres added. These new acres were surveyed for species and reported on in the current site report. The project site has been referred to by several names through the years; Thor, Peach, Mega-site, and currently OEM project site.

John Palis' 2015 report summary states: 'Although the possibility of a waif eastern indigo snake passing through the property cannot be ruled out, the likelihood of a population of eastern indigo snakes inhabiting the fragmented and altered landscape that surrounds and includes the Bryan County Mega Site is low. Summary - Due to decades of on-site pine silviculture, development on surrounding properties, and the proximity of well-traversed roads, the Bryan County Mega Site is currently very unlikely to be inhabited by populations of frosted flatwoods salamanders, striped newts, gopher frogs, or eastern indigo snakes.'

The other 2015 survey and the 2018 survey of the newly added ~150 acres support Palis' conclusions. Although the last major site surveys for the eastern indigo snake were performed in 2015, there is no reasonable certainty of presence of the eastern indigo snake or any other federally listed species on the property now.

Recommendation:

I recommend that all gopher tortoises be relocated off the property. This should be done through coordination with John Jensen of the GADNR. The property should be thoroughly surveyed to be sure all gopher tortoise burrows are located for relocation. Relocation should occur in warm weather months when snakes are less likely to inhabit tortoise burrows. Burrows that tortoises are captured from should be scoped before considered them empty and collapsing them.

Please contact me with any questions or further discussion about this project.

Bill Wikoff fish and wildlife biologist

bill_wikoff@fws.gov <mailto:bill_wikoff@fws.gov>

U.S. Fish and Wildlife Service

Ecological Services - Coastal Georgia Sub Office

4980 Wildlife Drive, NE

Townsend, Georgia 31331

912-832-8739 ext.5, 912-832-8744 fax

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.



HISTORIC PRESERVATION DIVISION

MARK WILLIAMS
COMMISSIONER

DR. DAVID CRASS
DIVISION DIRECTOR

July 25, 2018

Sarah E. Wise
Project Manager
Savannah District, Corps of Engineers
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640

**RE: SAS 2015-00235: Construct Industrial Park, Highway 280 and I-16, Ellabell
Bryan County, Georgia
HP-150402-001**

Dear Ms. Wise:

The Historic Preservation Division (HPD) has received the public notice for the above referenced project. Our comments are offered to assist the US Army Corps of Engineers (USACE) in complying with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA).

Thank you for notifying our office of this proposed project. We look forward to receiving Section 106 compliance documentation, including a current cultural resources survey, when it becomes available and working with you as this project progresses.

Please refer to project number **HP-150402-001** in future correspondence regarding this project. If we may be of further assistance, please do not hesitate to contact Emma Mason, Compliance Archaeologist at emma.mason@dnr.ga.gov or (770) 389-7877 or me at Jennifer.dixon@dnr.ga.gov or (770) 389-7851.

Sincerely,

Jennifer Dixon, MHP, LEED Green Associate
Program Manager
Environmental Review & Preservation Planning

cc: Rodney Parker, USACE
Lupita McClenning, Coastal Georgia Regional Commission

AA Shaw, LLC
1095 Honey Ridge Rd
Guyton, GA 31312



29 July 2018

U.S. Army Corps of Engineers
Attn: Ms. Sarah Wise
100 Oglethorpe Avenue
Savannah, Georgia 31401-3604

**Re: Original Equipment Manufacturing Public Comment Period
USACE Permit # SAS-2015-00235**

Dear Ms. Sarah Wise:

The AA Shaw Wetland Mitigation Bank (AA Shaw) wishes to comment on Department of the Army Permit # SAS-2015-00236 for the Interstate 16 Corridor Joint Development Authority's Original Equipment Manufacturing (OEM) Facility, Public Notice dated 5 July 2018. Specifically, AA Shaw would like to comment on the appropriateness of utilizing the In-Lieu Fee (ILF) Program, instead of the preferred avenue of purchasing credits through the appropriate Primary Service Area (PSA) and/or Secondary Service Areas (SSA). This topic is of interest to AA Shaw, given the fact that all banks have gone through the exhaustive effort and huge capital investment to providing appropriate mitigation for projects within their respective services areas. As you are aware, the service areas have been set up to prioritize mitigation compensation for approved projects and are preferred over the use of ILF or site-specific mitigation. The proposed OEM project suggests side stepping the process by not only disregarding the SSA credit availability, but also by requesting to purchase all mitigation credits via the ILF program.

The purpose of the *Savannah District's Guidelines to Evaluate Proposed Mitigation Bank Credit Purchases (Credit Purchase Guidelines)*, recently released as Appendix 11.1 within the *Savannah District's 2018 Standard Operating Procedure for Compensatory Mitigation (2018 SOP)* is to provide the applicant with the appropriate procedure for evaluating purchase of mitigation bank credits when multiple banks and/or service areas must be considered. In addition, it's secondary purpose is to provide aid to the U.S. Army Corps of Engineers (CE) when determining whether the proposed bank credits are appropriate compensation for the aquatic resource losses. AA Shaw believes the applicant's proposed method of compensation for the lost aquatic resources is inappropriate, especially taking into consideration the *2018 SOP Credit Purchase Guidelines*. Section IV (2), entitled *Procedural Steps*. This section goes through the recommended process, which first begins with assessing credits available within the Primary Service Area (PSA). According to it, for Individual Permit (IP) impacts, a watershed analysis should be conducted where preference is given to banks with similar resources (or habitats) that occur within the same 8-digit HUC and PSA, as opposed to outside the 8-digit HUC but within the PSA; while also taking into consideration the approximate distance from the bank to the proposed impact area. If it is determined, after thorough investigation of PSA credit availability, that appropriate replacement credits are not available within the PSA, the scope of analysis may be expanded to include the SSA. However, the *2018 SOP Credit Purchase Guidelines* clearly states that if credits are available and determined appropriate in the PSA, those credits **must** be used prior to considering potential credits within the SSA.

When a SSA is to be considered, the analysis should be consistent with the watershed approach, as described above for PSA, inclusive of consideration to resource type and distances to impacts. Near the end of this section, it is stated that:

"Note that if credits are available and determined appropriate in the PSA, those credits must be used before considering potential credits in a SSA."

and

"Compensation at a mitigation bank for impacts at a site that is not within either the PSA or SSA is not acceptable, unless approved by the entire Interagency Review Team (IRT)"

Within the DEM Public Notice section entitled "*Description of Work Subject to the Jurisdiction of U.S. Army Corps of Engineers*", it is detailed that a total of 721.52 wetland mitigation credits and 5,997.6 stream credits would be needed to off-set impacts. Also mentioned is the fact that only 666.85 out of the 721.52 wetland credits needed are currently available within the PSA of the Lower Ogeechee Watershed (HUC 03060202). This means there is currently a 54.94 credit deficit currently available within the PSA. Nowhere in the Public Notice does it mention or consider the available number of credits within the SSA, however it is worthy to note that AA Shaw's SSA accommodates the DEM project location and should therefore be included for consideration during the mitigation evaluation. Per the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS), as of 31 July 2018, AA Shaw currently has 430.65 mitigation credits available within the SSA, which also appear to match the proposed aquatic resource loses at the DEM Site. Therefore, it is evident that there are appropriate credits available in the SSA to make up for not only the 54.94 credit deficit, but also more credits if other PSA credits are deemed inappropriate based on the watershed approach. It is very concerning that consideration of SSA credit availability was not considered prior to release of the DEM Public Notice. Also concerning, is the fact that the applicant is proposing to purchase all credits via ILF, which would completely disregard the service area hierarchy. Regarding the use of ILF, it is very important to note the meaning of "all or any" within the final sentence in this Section of the Public Notice, as excerpted below:

"Depending on the number of wetland stream credits available at the time of purchase, the applicant is requesting approval to purchase all or any remaining wetland and/or stream credits through the Georgia Land Trust In-Lieu Fee Program."

It is interesting to note that the *2018 SDP Credit Purchase Guidelines* "do not address ILF or site-specific mitigation requirements", but rather defers approval of this type of mitigation to an IRT review. Considering the above-mentioned PSA and/or SSA hierarchical preference and credit availability, an ILF mitigation purchase should not even be considered. However, it is safe to assume that the CE was at least considering this approach seeing as it was including in the Public Notice. Theoretically speaking, if an ILF mitigation purchase were to be considered for the DEM impacts, it is interesting to note that when searching for available credits on RIBITS, using the DEM project lat/long provided within the Public Notice (32.1584, -81.4533), no ILF banks appear in the search. Furthermore, it appears that the only credits currently approved and available within the Savannah District ILF program, are from Applewood or Sharp Mountain Creek, both located in North Georgia, approximately 220-miles from the DEM impact site. In comparison, SSA credits are currently available at AA Shaw only 22-miles from the DEM impact site and would be a more similar resource type than the available ILF credits.

Considering the above paragraph and the direct quote above, regarding *2018 SDP Credit Purchase Guidelines*, AA Shaw believes that the CE should require the applicant to consider a watershed analysis, with a priority of first compensating impacts within the PSA, and then, once all PSA credits have been exhausted, move on to considering the SSA credit availability, which is consistent with the procedure to evaluate purchase of mitigation bank credits as outlined in the *2018 SDP Credit Purchase Guidelines*. According to these guidelines, it is completely inappropriate to allow the applicant to knowingly disregard SSA credit availability, when as it currently stands, this project will buy out all PSA credits. It is also completely inappropriate for all of the credits to be purchased through the Georgia Land Trust In-Lieu Fee Program, as proposed by the applicant. Allowing this applicant to proceed forward with their proposed credit purchase of "all or any" from an In-Lieu Fee Program, without any regard to the watershed analysis approach, will undoubtedly set a precedent of allowing applicants to propose ludicrous methods of compensatory mitigation, rather than following the appropriate watershed approach steps within the *2018 SDP*.

If the applicant contemplates establishing an In-Lieu Fee Program in the PSA (Lower Ogeechee Watershed) and/or SSA (Lower Savannah Watershed) that too would be contrary to the established hierarchy in § 332.3(b) [§ 230.93(b)] for selecting the type and location of compensatory mitigation with an explicit preference for mitigation bank credits over advance credits from in-lieu fee programs when appropriate bank credits are available for use. In addition to being contrary to the established hierarchy in § 332.3(b) [§ 230.93(b)] it would be contrary to the CE established practice. Furthermore, it would undoubtedly result in more temporal loss of resources than would result if existing credits were purchased from established mitigation banks in the PSA and the SSA. The proposal also fails to anticipate future releases of credits for existing banks, which will likely result in the total credits being available from banks within the PSA.

The In-Lieu Fee Program is designed to fill in the gaps in underserved PSA and SSAs. The subject PSA and SSA have long established banks. One of the first mitigation banks, if not the first bank, in the entire USA was in the SSA. We are aware of multiple banks in development or pending in the PSA and SSA. It is reasonable to anticipate approval of one or more of the banks that are in various stages of development in time to have an abundance of credits in the PSA and SSA for the subject project. The free enterprise private/public partnership has worked well in the PSA and SSA and there is no need for an In-Lieu Fee Program to serve either the PSA or the SSA.

We hope that you take the above-mentioned information into consideration prior to processing the permit application and approving the mitigation plan as proposed. We understand, as written within the *2018 SDP Credit Purchase Guidelines*, that the CE PM review period does not begin until the end of the 30-day Public Notice Period. We hope this is the case, seeing as we believe it would be a profound mistake for the CE to approve the proposed compensatory mitigation method as currently written within the OEM application. It is our good faith effort to abide by the regulations, as described within the newly released 2018 SDP, and hope that the CE can do the same and abide by the same regulations to which the general mitigation banking community is subject.

Sincerely,
AA Shaw, LLC

A handwritten signature in blue ink, appearing to be 'AA Shaw', is written over the typed name 'AA Shaw, LLC'.

David E Deason
1095 Honeyridge Rd.
Guyton, GA 31312

U.S. Army Corps of Engineers
Attn: Ms. Sarah Wise
100 Oglethorpe Avenue
Savannah, Georgia 31401-3604

David E Deason
1095 Honeyridge Rd.
Guyton, GA 31312

U.S. Army Corps of Engineers
Attn: Ms. Sarah Wise
100 Oglethorpe Avenue
Savannah, Georgia 31401-3604

Re: Original Equipment Manufacturing Public Comment Period
USACE Permit # SAS-2015-00235

Dear Ms. Sarah Wise:

The public notice states in part:

“A total of 721.52 wetland credit (for jurisdictional and non-jurisdictional impacts) and 5997.6 stream credits are required for project related impacts. Approximately 17,285.9 of stream credits and 666.58 wetland credits are currently available within the service area. Depending on the number of wetland and stream credits available at the time of purchase, the applicant is requesting approval to purchase all or any remaining wetland and/or stream credits through the Georgia Land Trust In-Lieu Fee Program.” (Emphasis added to all or any remaining)

The EPA website states in part:

“Partnerships with

Landowners, *All ethics so far evolved rest upon a single premise: that the individual is a member of a community of interdependent parts. His instincts prompt him to compete for his place in the community, but his ethics prompt him also to cooperate (perhaps in order that there may be a place to compete for). The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, animals, or collectively, the land. — Aldo Leopold, A Sand County Almanac”*

Under the regulations, there are three mechanisms for providing compensatory mitigation (**listed in order of preference** as established by the regulations): **mitigation banks**, **in-lieu fee programs**, and **permittee-responsible mitigation**.

Additionally, banking represents an increasingly important economic component of the environmental consulting sector, showcasing the synergies that can arise between effective environmental protection and economic expansion. Sixty two percent of the banks identified in ELI's 2002 study were privately-owned entrepreneurial mitigation banks; entrepreneurial providers of bank credits have emerged as a nationally-organized industry¹⁷ contributing hundreds of millions of dollars annually to the domestic product.”

(<https://www.epa.gov/cwa-404/partnerships-landowners>)

I recognize that in-lieu fee programs, serve a valuable purpose, where needed and when used in order of preference. The lower Ogeechee Watershed and/or Lower Savannah Watershed have no such need. To approve the use of the Georgia Land Trust In-Lieu Fee Program to side step bankers in either the primary or secondary watershed or to manage credit prices would simply be a breach of the USACE and greater Environmental Community's partnership agreement with land owners.

Proposed projects that are “absolutely going to happen”, come and go, frequently. Many of these promised projects promise to buy out all the credits of primary and secondary watersheds. Projects like Daimler Chrysler and Volvo come and go. They never happen or happen in another state. There are currently rumors of a big project in the Lower Savannah that will buy out all the credits of all the banks in the Lower Savannah and the Ogeechee. The above referenced project is one of those “promised” projects that may or may not happen. If it happens the credit needs will most likely be different that the original permit. If it does happen there will sufficient time between before construction begins for pending banks to be approved, for credits to be released, and possibly for new banks to be approved.

To approve a Georgia Land Trust In-Lieu Fee Program in the subject Primary Service Area or the Secondary Service Area would be in violation of established hierarchy in § 332.3(b) [§ 230.93(b)] and contrary to long standing practice. The approval of a new unneeded Georgia Land Trust In-Lieu Fee Program or the use of an existing out of watershed Georgia Land Trust In-Lieu Fee Program could also undermine the contractual obligations of the Government to private bankers and landowners. These bankers and landowners have millions of dollars invested in a system built on the reliability of the USACE and IRT following the spirit of the clean water act,

and related regulations and guidelines, which provide the framework for contractual or implied contractual obligation to exiting bankers.

If the Ogeechee bankers, or bankers in any watershed, have failed to produce enough credits to supply the needs of the watershed, it is because the financial incentives were inadequate to attract the capital to build more banks. That is the way free markets work. Credit prices in the subject primary watershed have long been much lower than much of the state of Georgia. That watershed has not been under served by bankers, but possibly over served. If demand were to increase in that watershed and if credit prices go up, private landowner's capital would be attracted. The credit needs of the watershed can be filled by for-profit-bankers, before they are needed, not after as would be the case in a Georgia Land Trust In-Lieu Fee Program. If a watershed with a high demand for credits is not producing an adequate supply of credits it seems illogical, to me, to try to solve that problem by introducing a non-for-profit competitor solution. This competitor, Georgia Land Trust, as easement holders for banks, is at least in part, funded and supported by the very for-profit-bankers with whom it might compete. That fact seems to also be an ethical conflict of interest. Also, I think it is generally accepted that Government banks are rarely effective. Non-for-profit banks are right there with Government banks, not very effective. It would seem to me to be a violation of the "*land ethic*" as described on the EPA website mentioned above. The approval of the use a Georgia Land Trust In-Lieu Fee Program simply contracts the "boundaries of the community". It seems to me that the Ogeechee bankers have suffered through years of over supply and rather than rewarding them, when demand MIGHT catch up with supply, this would penalize them by bringing in a new market participant with no invested capital. In fact, the In-Lieu Fee Program has a negative capital investment, they are getting paid beforehand for doing something they may never do. If permittee is attempting to use the In-Lieu Fee Program to manage credit prices in a market based on a free market concept that simply undermines the "*single premise*" on which mitigation banking is built. The synergies that have arisen between effective environmental protection and economic expansion would be reduced, if not stifled.

Thank you for any consideration you might give my comments.

Sincerely

A handwritten signature in black ink, appearing to read "David E Deason", written in a cursive style.

David E Deason

Joseph V. Usher
4 Marsh Harbor Drive North
Savannah, Georgia 31410

U.S. Army Corps of Engineers
Attn: Ms. Sarah Wise
100 Oglethorpe Avenue
Savannah, Georgia 31401-3604

Re: Original Equipment Manufacturing Public Comment Period
USACE Permit # SAS-2015-00235

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Additionally, banking represents an increasingly important economic component of the environmental consulting sector, showcasing the synergies that can arise between effective environmental protection and economic expansion....; entrepreneurial providers of bank credits have emerged as a nationally-organized industry contributing hundreds of millions of dollars annually to the domestic product.”

(<https://www.epa.gov/cwa-404/partnerships-landowners>)

I recognize that in-lieu fee programs, serve a valuable purpose, where needed in under-served watersheds, and when used in order of preference. The lower Ogeechee Watershed and/or Lower Savannah Watershed have no such need. To approve the use of the Georgia Land Trust In-Lieu Fee Program to side step banks in either the primary or secondary watershed, or to manage credit prices, or as a threat to manage prices, would simply be a breach of the USACE and greater Environmental Community’s partnership agreement with land owners.

Proposed projects that are “absolutely going to happen”, come and go, frequently. Many of these promised projects promise to buy out all the credits of primary and secondary watersheds. Projects like Daimler Chrysler and Volvo come and go. They never happen or happen in another state. There are currently rumors of a big project in the Lower Savannah that will buy out all the credits of all the banks in the Lower Savannah and the Ogeechee. The above referenced project is one such “promised” projects that may or may not happen. If it happens the credit needs will most likely be different than the original permit and the supply will be different. If it does happen there will sufficient time between before construction begins for credits to be released, for pending banks to be approved, and possibly for new banks to be approved.

To approve a Georgia Land Trust In-Lieu Fee Program in the subject Primary Service Area or the Secondary Service Area would be in violation of established hierarchy in § 332.3(b) [§ 230.93(b)] and contrary to long standing practice. The approval of a new unneeded Georgia Land Trust In-Lieu Fee Program or the use of an existing out of watershed Georgia Land Trust In-Lieu Fee Program could also undermine the contractual obligations of the regulators, and the Government at large, to private bankers and landowners. These bankers and landowners have millions of dollars invested in a system built on the reliability of the USACE and other IRT members following the spirit of the clean water act, and related regulations and guidelines, which provide the framework for contractual or implied contractual obligations to exiting bankers.

If the Ogeechee bankers, or bankers in any watershed, have failed to produce enough credits to supply the needs of the watershed, it is because the financial incentives were inadequate to attract

the capital to build more banks. The capital and the suitable mitigation land are available in abundance in both the Primary or Secondary Watershed. That is the way free markets work. Credit prices in the subject primary watershed have long been much lower than much of the state of Georgia. That watershed has not been under served by bankers, but possibly over served. If demand were to increase in that watershed and if credit prices go up, private landowner's capital would be attracted. The credit needs of the watershed can be filled by for-profit-bankers, before they are needed, not after, as would be the case in a Georgia Land Trust In-Lieu Fee Program. If a watershed with a high demand for credits is not producing an adequate supply of credits it seems illogical, to me, to try to solve that short-term potential problem by introducing a non-for-profit competitor solution. This competitor, Georgia Land Trust, as easement holders for wetland mitigation banks, is at least in part, funded and supported by the very for-profit-bankers with whom it might compete. That fact seems to also be an ethical conflict of interest. Also, I think it is generally accepted that Government banks are rarely effective. Non-for-profit banks are right there with Government banks, not very effective. It would seem to me to be a violation of the "land ethic" as described on the EPA website mentioned above. The approval of the use a Georgia Land Trust In-Lieu Fee Program simply contracts the "boundaries of the community". It seems to me that the Ogeechee bankers have suffered through years of over supply and rather than rewarding them, when demand MIGHT catch up with supply, this would penalize them by bringing in a new market participant with no invested capital. In fact, the In-Lieu Fee Program has a negative capital investment, they are getting paid beforehand for doing something they may never do. If permittee is attempting to use the In-Lieu Fee Program to manage credit prices in a market based on a free market concept that simply undermines the "single premise" on which entrepreneurial mitigation banking is built. The synergies that have arisen between effective environmental protection and economic expansion would be reduced, if not stifled.

Wetlands bankers are willing to take financial risks in the hope of making profits. We are willing to operate in a competitive entrepreneurship ecosystem. The introduction of a competitor who is free to set prices without regard to cost of capital is an unfair playing field. As banker I am perfectly willing to compete on a level playing field where all participants follow the same rules we follow and are subject to the same market forces as us. This proposal would disrupt the entrepreneurship ecosystem into which we bankers were enticed. My instincts prompt me to compete for my place in the ecosystem marketplace community, and my ethics prompt me to cooperate with anything reasonable, but my ethics also prompt me to speak out against unfair practices, such as this one.

Thank you for any consideration you might give my comments.

Sincerely,



Joseph V. Usher

From: [Brandon Smith](#)
To: [Wise, Sarah E CIV USARMY CESAS \(US\)](#)
Cc: [Alton Brown](#)
Subject: [Non-DoD Source] SAS-2015-00235: Savannah Harbor - I16 Corridor JDA
Date: Thursday, August 2, 2018 7:05:58 PM
Attachments: [image004.png](#)

Sarah,

On behalf of the owners of Yam Grandy Mitigation Bank (Georgia L. Flanders, LLC), I offer the following brief comments relating to the Savannah Harbor – Interstate 16 Corridor Joint Development Authority project (SAS-2015-00235) in Ellabell, Bryan County, GA. Overall we are very much in favor of the development and the growth it would bring to the entire coastal Georgia region. However, in the JPN for this project the following language was used in the proposed mitigation portion of the JPN (second full paragraph, page 2):

“A total of 721.52 wetland credit (for jurisdictional and non-jurisdictional impacts) and 5997.6 stream credits are required for project related impacts. Approximately 17,285.9 of stream credits and 666.58 wetland credits are currently available within the service area. Depending on the number of wetland and stream credits available at the time of purchase, the applicant is requesting approval to purchase all or any remaining wetland and/or stream credits through the Georgia Land Trust In-Lieu Fee Program.”

Of particular concern to the Yam Grandy owners is the use of “...all or any remaining wetland and/or stream credits through the GLT ILF program.” To our knowledge the GLT is not approved for operations in the Ogeechee Basin service area. Furthermore, the ILF program is primarily for use in basins where credit supplies are severely depleted and/or limited and banks cannot supply the affiliated service area with an adequate number of credits. As a bank that has been open in this basin since 2012, I can state with certainty that is not the case in the Ogeechee service area. Competition for wetland credits is high and prices are relatively low. Furthermore, there are five currently operating freshwater wetland mitigation banks and approximately 2,480 wetland mitigation credits yet to be released within this service area. Establishing an ILF in the Ogeechee River basin is not warranted nor a good use of your resources.

In consideration of the historic adequacy of supply for wetland mitigation credits in the Ogeechee basin, I would propose that any shortfall of credits that may be incurred by the applicant be made up for by using secondary service area providers. Secondary service area providers have large inventories of wetland credits currently available, approximately 4,880 wetland credits ready for sale right now. Why are secondary service areas even established if they are not going to be used in the exact situation that they were set up for? For the record and for full disclosure, Yam Grandy currently has a Phase I completion of construction credit release request for 205 wetland credits pending with the USACE, if received prior to applicants' purchase timeline, the primary service area would more than likely be able to satisfy all the mitigation obligations for this project and the service area would not be wiped out of wetland credit supply for any amount of time. Thereby allowing other applicants to use primary service area providers for their projects as well.

The exact language as proposed in the JPN could be construed that the “all or any remaining mitigation credits” could be procured from an ILF program that is not even approved in the project areas’ applicable service area basin and most importantly bypass primary and secondary service area providers altogether. This would fly in the face of the 2008 Mitigation Rule, the 2010 Savannah District Bank Credit Purchase Guidelines, and most disturbingly would violate the implied contract the USACE has with its’ supposed mitigation banking partners. It is our contention that this project should follow the same mitigation hierarchy that every other applicant has to abide by: 1) primary service area banks; and 2) if inadequate supply in primary, secondary service area banks. For this particular project, given the supplies for wetland credits available in the primary and secondary service areas, outlining the possible use of ILF or permittee responsible mitigation is not necessary at all in this case.

The owners of the Yam Grandy Mitigation Bank are simply requesting that the USACE follow their own rules and guidelines, no more no less. I understand that the use of primary service area providers to the fullest possible extent may be actual plan of the applicant and all of this is about semantics of the JPN. If that is the case, we concur and appreciate that the rules and regulations of the Savannah District are being followed. However, without knowing what is going on in the background and the language in the JPN leaving the door open for other options, the owners of Yam Grandy had to offer these comments for the record due to the precedent it may set counter to existing mitigation bank owners and the entire mitigation banking industry going forward in the Savannah District.

On behalf of the owners of Yam Grandy, we appreciate the opportunity to comment on this project. If you should have any questions or concerns, or would like to follow-up about anything included herein, please do not hesitate to contact me at (912) 298-0230 or bsmith@hhnt.com.

BRANDON SMITH, PWS

Senior Environmental Consultant

Hodges, Harbin, Newberry & Tribble, Inc.

17 Park of Commerce Boulevard, Suite 110 | Savannah, GA 31405

Phone: (912) 298-0230 | Cell: (912) 596-3743 | Fax: (912) 298-0234

Email: bsmith@hhnt.com <<mailto:bsmith@hhnt.com>>

Blockedwww.hhnt.com <Blockedhttp://www.hhnt.com/>

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SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

TEN 10TH STREET NW, SUITE 1050
ATLANTA, GA 30309-3848

Facsimile 404-521-9909

August 3, 2018

Colonel Daniel H. Hibner
U.S. Army Corps of Engineers
Regulation Division
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640
Attention: Sarah E. Wise

Re: Bryan County OEM Site (SAS-2015-00235)

Dear Colonel Hibner:

The Southern Environmental Law Center is submitting this letter on behalf of the Ogeechee Riverkeeper to urge the Savannah District to deny the application filed by the Savannah-Harbor Interstate 16 Corridor Joint Development Authority (the Applicant) for a Clean Water Act (CWA) Section 404 permit. The Applicant seeks a Section 404 permit to develop a 1,944-acre tract in Ellabell, Bryan County, Georgia. According to the joint public notice for the proposed project, the Applicant is seeking permission to fill 92.6 acres of jurisdictional wetlands, 17.56 acres non-jurisdictional waters, 833 feet of stream and .62 linear feet of ditch. According to the Applicant, the OEM site would consist of the following elements/components:

(1) commercial (corporate offices, visitors' center, customer service experience, training center, etc.); (2) manufacturing (press, fabrication, paint, product completion and special products buildings); (3) distribution (train, truck and completed product yards); (4) employee services (cafeteria, medical center, employee parking, training center and central office); (5) storage yards; and (6) quality control facilities. The project would also require the construction of a rail spur to connect the site to an existing rail line.

In short, the OEM site is being designed to house a major industrial facility. However, the Applicant has not identified a potential tenant that might, sometime in the future, decide to purchase the site. This site was formerly assembled to attract the Volvo plant that ultimately located in South Carolina in 2015. As the Applicant reports in its application, the Applicant does not want to let another prospective tenant get away. App. 1. In essence, the Applicant would be using the Corps permit as bait to lure potential tenants to the site.

The application is not clear as to what the Applicant would do with the permit if it were granted by the Corps. In all likelihood, it would obtain the authorization and transfer it to a tenant if the Applicant was successful in attracting one. The tenant would then perform the site preparation, which would include filling in certain wetlands on the site. Under the alternative approach, the Applicant would conduct site preparations on the site as soon as it was authorized to do so by the Corps. Neither of these approaches is legal.

The Permit Application is Premature

The Applicant is applying for a Section 404 permit prematurely. The Corps took this stance in 2015 when the Applicant sought a Section 404 permit for the site because Volvo was interested in locating an assembly facility at the site. After Volvo decided to build the facility in South Carolina, the Corps stopped work on the Applicant's 2015 application. The Applicant wanted the Corps to continue processing the permit even though there were no prospective tenants involved. The Corps declined to do so concluding that without a tenant, the project purpose would be "unrealistically speculative." App. 1. The Corps should find the present application "unrealistically speculative" as well.

Although it does not help their cause, the Applicant has tried to tighten up its project purpose by tying it to nine criteria. These criteria are ones that the Applicant has identified as criteria that a potential tenant of the site would desire. A permit application cannot be based on a hypothetical tenant. If that were the case an Applicant could apply criteria that would only apply to its preferred site and thus eliminate from consideration all other alternatives. Any criteria established must come from the tenant that is going to impact the waters and occupy the site. As the Corps regulations provide, "[t]he application must be signed by the person who desires to undertake the proposed activity (i.e., the applicant) or by a duly authorized agent."¹ Thus, unless the Applicant intends to bulldoze the site and fill the wetlands on the site, for this and other reasons, the Corps cannot issue a permit. The Corps must wait until the Applicant attracts a potential tenant.

This "permit it and they shall come" approach makes permit analysis all but impossible for the Corps and the public. How can one do avoidance and minimization, cumulative impacts, and alternatives analyses if there is no concrete plan to consider? What the applicant is asking the Corps and the public to do is assume that any future tenant would build its facility with the same footprint as the fictional plan included in the application. It is one thing to analyze a proposed project where there is a potential tenant that has made some commitment to building on the site. It is entirely another thing to seek approval for a permit when there is no potential tenant considering the site.

In the *Alliance for Legal Action v. U.S. Army Corps of Engineers*, the United States District Court for the Middle District of North Carolina wrestled with a related issue. 314 F. Supp. 2d 534 (2004). In that case, an airport authority applied for a Corps permit so that it could extend one of its runways. *Id.* at 536. FedEx was very interested in establishing a hub at that airport. Working with the Federal Aviation Administration, the authority applied for a Section 404 permit using plans supplied by FedEx. The Court held that it was acceptable for the authority to serve as the applicant. The reason why this case is instructive for the present application is that the authority used the FedEx plans in the application. It is also instructive that another federal agency, the FAA, was involved in the permit application. In contrast, here we

¹ 33 CFR § 325.1(d)(8). If the Applicant were to do the work itself, prior to attracting a tenant, that would be problematic. Applicants cannot fill wetlands in anticipation of attracting tenants.

have a development authority seeking a Section 404 permit based on an application that does not reflect the needs of any tenant and for a site that it does not even own.

As in *Alliance*, the permit application must be based on a clearly defined project. In *Alliance*, the Corps and the public knew exactly what waters the project would impact, how it would impact them, and when they would be impacted. With this application we do not know any of this information. It is also instructive that we could find no cases in which the Corps issued a permit based solely on a hypothetical or generic applicant.

If the Applicant is intent on securing a permit for the site, it must first identify a tenant that has a specific plan to use the site.

It is not possible to analyze a premature application.

A. By using a fictional project, the Applicant cannot comply with the first Corps Application requirement.

As the Corps regulations provide, “(1) The application must include a complete description of the proposed activity including necessary drawings, sketches, or plans sufficient for public notice (detailed engineering plans and specifications are not required); the location, purpose and need for the proposed activity.”² Although the Applicant’s application does include many drawings, sketches, and plans, they do not discuss any activity that might happen on the site. They describe a fictional rendition of an OEM facility that has been drawn to fit on the property. That is not what the Corps means when it says a “complete description of the proposed activity.” The fictional OEM plan will never get built whether the permit is granted or not.

B. Because the Applicant submitted a premature application, the Corps and the public cannot determine whether wetland impacts could be avoided or minimized.

If the Applicant provides nothing more than a fictional rendition of a generic facility, there is no way that the Corps or the public can determine whether wetland impacts can be avoided or minimized. According to the Applicant, a suitable site can be no smaller than 1,500 acres. App. 7. The application site is over 1,944 acres. The proposed wetlands impact to the site is 92 acres. It is difficult to believe that in the 444 extra acres, the Applicant could not carve out 92 acres of wetlands and thus avoid destroying them. The 404(b)(1) Guidelines require as much.³

² 33 C.F.R. § 325.1(d)(1).

³ The 404(b)(1) Guidelines 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.” 40 C.F.R. §230.10(d). 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. 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).

Furthermore, if a specified plan were available, a more refined analysis could be performed to determine whether any additional avoidance or minimization could be done. But since the fictional rendition is not based on reality, there is no way that the public or the Corps can discuss any beneficial tailoring of the site plan. If the plan were real, the Corps and the public could suggest changes to the proposed site plan. For instance, could the tenant include some multistory building and thus decrease the footprint of the facility? Here such discussions would be fruitless since any agreements made now could simply be undone with a future permit modification if a tenant did locate on the site. Unless the Applicant performs a genuine avoidance and minimization analysis, which it cannot in the current situation, the Corps cannot issue this permit.

Moreover, a careful examination of the fictional rendition shows that many of the wetlands impacted on the site could be protected if building footprints, parking lots, and rail spurs were realigned. But again, how can one have a useful conversation about such realignments? Ultimately, any future tenant's facility may look much different than the facility included in the application.

The suggested approach has another flaw. It is in the interest of the Applicant to seek authorization to fill as many wetlands on site as possible. By doing so, the Applicant can provide greater flexibility to any future tenant. The tenant may decide to spread out its facility if it already has authorization to fill wetlands that would otherwise have gotten in the way. In this way, a future tenant could, in effect, circumvent avoidance and minimization.

Also, it is not clear whether storm water discharged into wetlands would be sufficiently treated by any storm water ponds on the site. Such discharges could have a highly detrimental impact on these wetlands. Oil, grease, pesticides, and fertilizers could flow into the wetlands from the roofs, lawns, roads, and driveways throughout the site. Because many of the wetlands are connected to the marsh, the contaminated storm water would also flow into the marsh. These wetlands impacts must be considered in the permit process and avoided and minimized if possible. Because the project plan is fictional, there is no storm water plan that can be analyzed. Thus, the Corps cannot consider the indirect impacts of storm water on any wetlands or other waters on the site. In light of this, the Corps cannot issue this permit.

C. Because the Applicant submitted a premature application, the Corps and the public cannot determine cumulative impacts.

The Applicant does not sufficiently discuss cumulative impacts in its application. This is not surprising considering that the application does not contain a definite plan. In preparing its cumulative impact analysis, the Applicant must consider impacts to waters that have happened in the past, at present, and that could reasonably happen in the future. The proposed fill of this project cannot be viewed in isolation: the incremental impacts of this action must be considered in concert with the impacts of previous action on neighboring property, in addition to reasonably foreseeable future actions. See *Am. Canoe Ass'n v. White*, 277 F. Supp. 2d 1244, 1256 (N.D. Ala. 2003). In addition, the application does not address the cumulative impacts of development in

this location on the watershed and habitat corridors that extend from the site downstream to the Ogeechee River. Thus, the Corps cannot issue this permit.

D. Because the Applicant submitted a premature application, the Corps and the public cannot evaluate the practicable alternatives of the proposed project.

Without a definite plan for any future tenant, the Corps cannot evaluate the practical alternatives for that hypothetical tenant. Such a tenant may not require a rail spur or a nearby airport. If these, or other “requirements,” were not specified in the application, many other alternative sites with fewer environmental impacts may be identified. By listing specific criteria for potential future tenants, the Applicant has artificially constricted the sites that would ultimately be available to potential tenants.

Furthermore, the Applicant appears to be painting itself in a corner. Several potential tenants have rejected the site. Instead of trying to attract smaller facilities to the site, the Applicant is applying for a permit that could lock the Applicant in to providing space for very large prospective tenants only, such as auto manufactures. If the permit were granted, it would be based on the needs of such a tenant. If a smaller tenant wanted space that had a different overall project purpose, the permit authorization could not be used. One reason for this is that a smaller tenant could more easily use smaller sites in the area. The practical alternatives analysis would differ dramatically from the practicable alternatives provided in the application.

The site fails the 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*.”⁴ In making the public interest evaluation, the Corps balances the benefits that are reasonably expected to be generated by the proposal against the reasonably foreseeable costs.⁵ 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.

The Corps must specifically take into account wetlands in conducting the public interest review. As the Corps regulations provide, “most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.”⁶ The regulations go on to state that no proposed discharges into wetlands can survive the public interest test unless the benefits of the proposed alteration outweigh the damage to the resource.⁷

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

⁵ *Id.*

⁶ 33 C.F.R. §320.4(b)(1).

⁷ 33 C.F.R. §320.4(b)(4).

Until the Applicant can demonstrate that there is a specific and identifiable need for the wetlands and other waters on this 1,944-acre site to be destroyed, the Corps cannot grant the permit. It is contrary to the public interest to have another unfinished development site on the landscape. Even more, it is contrary to the public interest to allow a development authority to obtain a speculative Section 404 permit. At present, the public does not know what, if anything, would be built on the proposed site.

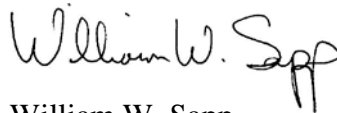
A National Environmental Policy Act Review would not be possible for the site.

Finally, the Corps would have to comply with the National Environmental Policy Act (NEPA) if it were to issue this permit. The Corps would have to prepare an environmental impact statement to comply with this Act. The EIS would have to discuss fully the environmental impacts associated with any future use of the site. In light of the fact that the Application is for a speculative use, the Corps cannot adequately discuss the environmental impacts associated with that use. Once the wetlands are filled, if the development authority were to fill them, there is little to stop the development authority from allowing a landfill, racetrack, or any other activity that requires a large footprint. Until the development attracts a tenant that can identify the specific project that would be built on the site, the Corps cannot prepare any acceptable NEPA documents.

Conclusion

In short, the Corps cannot issue a permit for this site, because it cannot perform the analyses required by the Clean Water Act. Even if it could, as a matter of policy, the Corps would be unwise to grant a permit for a speculative project such as this one. The Corps should not commit resources to process a fictional project that may never have a tenant. Should you have any questions concerning these comments, please contact me at 404-521-9900.

Sincerely,



William W. Sapp
Senior Attorney

cc: Simona Perry, Ogeechee Riverkeeper (simona@ogeecheeriverkeeper.org)
Megan Desrosiers, One Hundred Miles (megan@onehundredmiles.org)
Alton Brown, Resource and Land Consultants (abrown@rlandc.com)



August 3, 2018

Mrs. Sarah E. Wise
100 W. Oglethorpe Avenue
Savannah, Georgia 31401-3604
Savannah District
U.S. Army Corps of Engineers

Subject: Response to Public Notice for SAS-2015-00235

Dear Mrs. Wise:

The Georgia Environmental Restoration Association (GERA) is an association of bankers, non-bankers (consultants and other professionals), non-profits, and friends-in-government who are active in the mitigation marketplace in the State of Georgia.

Please allow this letter to serve as official comments from the Georgia Environmental Restoration Association (GERA) for the permit application SAS-2015-00235 that went on public notice July 5th, 2018.

GERA takes no position regarding the proposed development of the property in Bryan County associated with this permit application. However, with respect to its proposed mitigation plan to offset impacts to aquatic resources we would note the following:

- **The applicant proposes use of Primary Service Area mitigation banks to offset its impacts first and foremost.**
 - GERA supports this component of the proposal since mitigation banks are the preferred mitigation alternative under the 2008 Final Rule and offer many benefits to permittees, including streamlining of permitting processes and transfer of mitigation liabilities from the permittee to the mitigation banker. Mitigation banks also offer many

benefits to the Corps, including larger more ecologically significant mitigation sites and more certainty with respect to the implementation and ultimate success of the mitigation site (banks are implemented in advance of the vast majority of the impacts for which they mitigate).

- This component of the proposal is also consistent with the Savannah District’s 2010 Bank Credit Purchase Guidelines.
- We would note, however, that in order for this component of the mitigation plan to be consistent with the 2018 Savannah District SOP, that Statements of Credit Availability should be obtained from each bank that the applicant intends to purchase credits from and provided to the Corps prior to the issuance of a permit.
- **The applicant also proposes to purchase “all or any remaining wetland and/or stream credits through the Georgia Land Trust In-Lieu Fee Program” depending on how many credits are available at the time of purchase.**
 - GERA finds this component of the mitigation plan unclear. This statement could be read to mean the applicant may purchase credits from the ILF Program instead of Primary Service Area mitigation banks (“all or any”), or it could be read to mean the applicant would purchase credits only from the ILF Program to the degree they are not available from Primary Service Area mitigation banks.
 - Under either scenario, GERA would note that this would be inconsistent with both the standard hierarchy found in the 2008 Final Rule and the Savannah District’s 2010 Bank Credit Purchase Guidelines. The scenario that is documented as environmentally preferable under these regulations is purchase of credits in the following order:
 - Mitigation Banks
 - Primary Service Area Banks
 - Secondary Service Area Banks
 - ILF Program Credits
 - Permittee-Responsible Mitigation
 - GERA is aware that the District Engineer has the ability to modify the hierarchy at its discretion based on a number of considerations.

However, it is the policy of the Savannah District that permit applicants propose mitigation plans to the District and the District provides a “yes or no” determination on the appropriateness of the mitigation plan. In other words, it is not the policy of the Savannah District that it proposes mitigation plans to permit applicants. Therefore, under this scenario the question becomes whether or not the Savannah District would essentially entertain a proposal that departs from the standard mitigation hierarchy as proposed by a permit applicant. GERA’s position is that permit applicants typically depart from the standard mitigation hierarchy for reasons of cost, not for reasons of environmental preference. This is evidenced by the fact that the permit applicant’s interest in the Savannah District program is limited to that of obtaining a permit for its project, not to ensuring environmental outcomes or equitable management of the mitigation market place by the Corps.

- GERA would suggest that the Savannah District not entertain mitigation plan proposals that depart from the standard mitigation hierarchy, unless the permit applicant can demonstrate significant financial hardship from the cost of mitigation generated by utilizing the standard hierarchy. Based on feedback from our members that are experienced in obtaining permits for impacts to aquatic resources, GERA understands that 404 mitigation costs are typically a small percentage of the overall project cost (in almost all cases <10%). However, there may be a limited number of cases where the cost of mitigation generated by the standard hierarchy does create significant financial hardship and the preamble to the 2008 Final Rule describes scenarios where the Corps can take cost into consideration in these instances:
 - “Cost considerations may be used to evaluate whether the proposed compensatory mitigation requirement for a DA permit is practicable. However, the ecological success of the compensatory mitigation project and its effectiveness at offsetting the permitted impacts are also important considerations.”

- “If the costs of purchasing credits from a mitigation bank are too high, the district engineer should take that into account and allow other off-site or out-of-kind mitigation.”
- “District engineers will take costs into account when evaluating compensatory mitigation options, since practicability is one consideration when determining compensatory mitigation requirements for DA permits.”
- Should a permit applicant be able to demonstrate significant financial hardship under the standard mitigation hierarchy, there are of course a number of scenarios that the Corps may consider to be sufficient with regard to environmental preference. GERA would suggest, though, that there might be additional options within the mitigation bank category without jumping straight to ILF credits or Permittee-Responsible mitigation. For example, the Corps may determine that credits from either Primary or Secondary Service Area mitigation banks are appropriate based on both cost and environmental preference considerations, as it did with the Savannah Airport Project (SAS-2010-00289). It may also determine that credits from banks that are “out of service area” may be appropriate based on their landscape/eco-region position and likelihood of providing “in-kind” mitigation for the permitted impacts.
- If a permit applicant attempts to demonstrate financial hardship, it should provide actual quotes from all primary and secondary service area mitigation banks that are capable of mitigating for the impacts. These quotes should contemplate delivering the credits to the permit applicant in whatever manner is agreed upon by the banker and the permit applicant, as evidenced by the issuance of a Statement of Credit Availability letter(s) prior to permit approval. It should also provide a detailed estimate of the total project cost. The total project cost should be commensurate with the total amount of capital investment required to achieve the stated project purpose.
- GERA’s believes that the Corps’ discretion to modify the standard mitigation hierarchy should be used only in extremely limited circumstances where permit applicants can demonstrate a clear and significant financial hardship and where the alternative mitigation

options are as likely to provide successful mitigation as the standard mitigation hierarchy would. These determinations should only be made in consultation with the Mitigation Liaison in order to ensure consistent application of its use across the District and equitable treatment to the mitigation industry as a stakeholder in the management of the mitigation marketplace.

It is our hope that these comments provide clarity and transparency on GERA's position regarding these issues in a way that is respectful and allows for future collaboration and progress towards an even better banking program in Georgia. We also hope that these comments would enable the Corps to pursue policies that are consistent with these positions knowing that they would have the full support of GERA. We respectfully request your serious consideration of the concerns and suggestions provided by these comments.

Sincerely,



Trey Evans, President and Regulatory Chair
Georgia Environmental Restoration Association, Inc.
(404) 308-0662
trey@mitigationcredits.com



August 3, 2018

U.S. Army Corps of Engineers
Savannah District
Attn: Mrs. Sarah E. Wise
100 W. Oglethorpe Avenue
Savannah, Georgia 31401-3604

Subject: Original Equipment Manufacturing (OEM) Public Notice
Department of the Army Permit No. SAS-2015-00235

Dear Ms. Wise,

I am writing in response to the Joint Public Notice dated July 5, 2018, for Application Number SAS-2015-00235 for the 1,944-acre project containing the Original Equipment Manufacturing (OEM) facility. The applicant proposes, in one option, to offset wetland and stream impacts by purchasing available credits from six mitigation banks located within the Primary Service Area (PSA) of the Lower Ogeechee Watershed. These six banks include Black Creek, Margin Bay, Old Thorn Pond, Yam Grandy, Ogeechee River, and Wilhelmina Morgan. The applicant also proposes, depending on the number of credits available at the time, to purchase all or any mitigation credits from the Georgia Land Trust In-Lieu Fee (ILF) Program.

I would like to comment on the appropriateness of allowing the applicant to purchase via ILF, with complete disregard of available credits within the Secondary Service Area (SSA). According to the Savannah District's Credit Purchase Guidelines (Appendix 11.1 within the 2018 Standard Operating Procedure), an applicant must prioritize compensating for impacts within the PSA, but also consider SSA credit availability. This hierarchy preference should also include considering the distance to impact and aquatic resource type and can even lead to a determination that SSA credits are more appropriate than PSA, depending on the specific project and bank details. Only after analyzing the above-mentioned hierarchical preference, then can an applicant consider use of ILF or permittee responsible mitigation (PRM). Upon which, the Interagency Review Team (IRT) would have final review and approval of any ILF or PRM decision.

It has come to my attention that the Corps may be taking into consideration the potential affect that completely "selling out" a basin for one project would have on the watershed as a whole and to future projects therein. Obviously, I understand it could create logistical challenges for permit processing if there was a temporary shortage of credits or even possibly have no credits available

for purchase within an entire service area. Theoretically speaking, if OEM were approved to purchase the currently available 666.58 credits within the PSA of the Lower Ogeechee Watershed, the basin would then be completely sold out of credits. However, it should be noted that if OEM proceeds with purchasing credits in this manner, this “sell-out” or shortage would likely be very short-lived, as future credit releases within the Service Area are made.

Supporting this conclusion is the fact that you can use RIBITS to quantify the released credits and potential credits for any bank, including the above mentioned six banks within the PSA. Crunching these numbers for banks within the Lower Ogeechee prove that there is a substantial amount of credits to be released in the near future. Within the Lower Ogeechee Service Area, there are three banks that show to have reached their full potential credit releases; these are Old Thorn Pond, Black Creek, and Ogeechee River. Although 50% of banks within the Service Area have no more potential releases, the three remaining banks should continue to be awarded credit releases. These potential releases, consisting of 161.9 credits from Wilhelmina Morgan, 243.3 credits from Margin Bay, and 2,074.8 credits from Yam Grandy, could account for a total of 2,261 potential credits released for the Lower Ogeechee Service Area. This surplus of future credit availability, does not even consider the chance of a new bank being proposed within the Service Area, which could increase potential credit availability within the Lower Ogeechee Basin even further. Considering the above-mentioned potential of 2,261 credits to be released within the Lower Ogeechee in the near future, selling out the watershed should not be much of a concern when assessing the appropriateness of OEM purchasing any or all of their mitigation via ILF, instead of PSA or SSA mitigation bank credits.

In conclusion, I believe the mitigation purchase methodology currently proposed by OEM is not consistent with the hierarchical preference of prioritizing use of PSA and SSA areas, instead of ILF or PRM. If the reasoning behind considering an ILF purchase instead of PSA and SSA is due to the threat of selling out the PSA, I believe this threat is small, considering future potential releases within that Service Area. I hope you take these viewpoints into consideration before processing the permit and approving the OEM mitigation purchase as currently proposed. Thank you for your time and consideration in reading this letter.

Respectfully,



G. Forbes Buck



ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Watershed Protection Branch

7 Martin Luther King, Jr. Drive
Suite 450
Atlanta, Georgia 30334
404-463-1511

SENT VIA ELECTRONIC MAIL

August 3, 2018

U.S. Army Corps of Engineers
Savannah District
Regulatory Division
Attn: Ms. Sarah Wise
100 W. Oglethorpe Avenue
Savannah, Georgia 31401-3640

Subject: Original Equipment Manufacturing Facility, SAS-2015-00235
Ellabell, Georgia (Bryan County)

Dear Ms. Wise:

The Georgia Environmental Protection Division (EPD) has reviewed the above-referenced public notice, dated July 5, 2018, which announces a Clean Water Act (CWA) Section 404 permit application by the Savannah Harbor – Interstate 16 Corridor Joint Development Authority to construct an Original Equipment Manufacturing (OEM) facility on an approximately 1,944-acre property in Ellabell, GA. The project site is located immediately south of the intersection of I-16 and US Highway 280, with the drainageway lowlands of Black Creek extending approximately 2.5 miles along the southwestern border of the project site. The proposed site contains 292.72 acres of jurisdictional wetlands, 17.56 acres of isolated non-jurisdictional wetlands and 2,631 linear feet of stream. The project as currently proposed entails impacts to 92.6 acres of jurisdictional freshwater wetland, 17.56 acres of isolated non-jurisdictional freshwater wetland, 833 linear feet of stream, and 0.62 acre of ditch.

The applicant is proposing to purchase 580.96 wetland mitigation credits to offset wetland impacts, 140.56 wetland mitigation credits to offset non-jurisdictional impacts, and 5997.6 stream credits. Of the 721.52 wetland credits required to offset the impacts, only 666.58 wetland credits are currently available within the projects primary service area. The applicant is proposing to purchase the additional credits through the Georgia Land Trust In-Lieu Fee Program. With the need for such a large wetland mitigation credit purchase, and understanding that the cost of wetland mitigation credits is escalating, would it possibly benefit the applicant to investigate the areas generally south of the proposed rail spur alignment to see if there might be any upland zones still available for alignment shifts/refinement, even if different/additional property purchase would be required? We do understand that there may be property and geometric alignment constraints in this area, but we want to suggest this as an avenue of investigation that may possibly financially pay for itself if any notable lessening of wetland mitigation costs could be achieved.

As concerns the railbed to be constructed for this railroad spur, whatever alignment is finally decided upon, we suggest and request that culverts/underpasses be employed in order to benefit wildlife passage and wetland hydrologic connectivity over this rather lengthy approximately 6000 foot wetland crossing.

Thank you for the opportunity to provide these comments. If you have any questions or concerns, please contact Mr. Bradley Smith at (912) 262-3196, or me at (404) 452-5060.

Sincerely,

Stephen C. Wiedl
Wetlands Unit Manager

cc: Mr. Bradley Smith, EPD
Ms. Kelie Moore, GaDNR-CRD
Ms. Sarah Wise, Corps
Mr. Eric Somerville, USEPA
Mr. Donald Imm, USFWS
Mr. Bill Wikoff, USFWS



August 1, 2018

U. S. Army Corps of Engineers
Savannah District
Attn: Mrs. Sarah E. Wise
100 W. Oglethorpe Avenue
Savannah, GA 31401-3604

c.c. Trip Tollison

Dear Mrs. Wise

I am writing in regard to application SAS-2015-00235 by Trip Tollison and Alton Brown. I have concerns about the scope of the request as both an adjacent land owner and as a residential developer in North Bryan County, Effingham County, and Chatham County.

The permit will require the purchase of 721.52 wetland credits from the 666.58 wetland credits that are currently available in the Ogeechee River Basin. That obviously creates its own problem of not enough available credits and leaves other developers in the Basin with no other options than the GA Land Trust in lieu fee program. I am not sure how those costs compare nor am I aware of the availability.

I have reached out to Mr. Tollison about the idea of running the rail spur on my family's property along Interstate 16. There is an existing road bed and any wetland impacts would be minimal. This should also all but eliminate the need for any stream credits at all for the project. Mr. Tollison has been very receptive to our proposal and is in the process of arranging meetings to discuss. This routing of the rail spur will also provide better access for the existing Bryan County Industrial Park. Based on the information above, I am requesting a public hearing for this application.

Thank you for your kind attention to this matter.

Corde Wilson

Beacon New Homes
Martin Family Land Trust

RECEIVED
AUG 06 2018
CESAS-RD

07/29/2018

From: Tracy Walden-Stafford, on behalf of the Whispering Pines Neighborhood, Aspen Lane residents

50 Aspen Lane,
Ellabell, GA. 31308

**To: Commander, U.S. Army Corps of Engineers, Savannah District
100 Oglethorpe Avenue, Savannah, Ga. 31401-3604**

Attn: Mrs. Sarah E. Wise

RE: Public Notice- SAS-2015-00235 (SEW)


**Applicant: Mr. Hugh "Trip" Tollison, I-16 Corridor Joint Director
131 Hutchison Island Road, 4th Floor
Savannah, Ga. 31421**

**Agent: Mr. Alton Brown, Jr.
Resource Land Consultants
41 Park of Commerce Way, Suite 303
Savannah, GA. 31405**

Dear Mrs. Wise

Residents within our neighborhood, which consists of nine (9) houses on Aspen Lane, recently received notice of proposed major development around our neighborhood.

After reviewing the proposal, the residents of Aspen Lane feel that our neighborhood will be one of the most impacted by this development. We are not necessarily against this proposal, but still have quite a few questions for the developers. Therefor we are formally, and respectfully, requesting a public hearing to address our questions and concerns.

RECEIVED
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CESAS-RD. 

07/29/2018

Some of these concerns are as follows:

- Increased traffic volume on Hwy 280
- Increased danger for our residents entering and leaving the neighborhood with the proposed entrance at the top of a hill approximately 1000 ft from our road.
- Effect on water pressure and quality on our community well
- Noise from possible tractor trailer traffic in and out of the development
- Noise from the proposed rail spur
- Impact on wildlife around the Whispering Pines neighborhood

We do not wish to come to this public hearing in a negative manner, simply to better understand what exactly this means to us, and to hopefully have a positive discussion on how to be good stewards to the land, and reciprocated good neighbors.

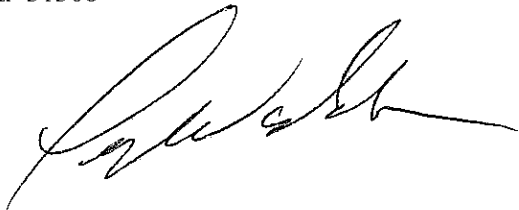
Your assistance with this is appreciated. Should you have any questions please contact me at 912-661-2360. Attached please find the list of signatures from the Whispering Pines residents.

Respectfully,

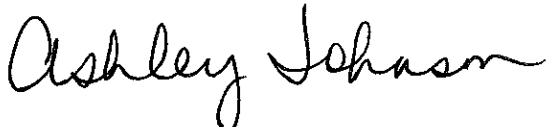
Tracy Walden-Stafford

Residents of Whispering Pines Neighborhood


Aspen Lane, Ellabell, GA. 31308

Tracy & Lisa Stafford 
50 Aspen Lane


Reece & Kelly Williams 
40 Aspen Lane

Joe + Ashley Johnson 
20 Aspen Lane

Bran Miles 
35 Aspen Ln

Joey & Cecile Brazzell 
10 Aspen Lane

ROBERT + TAMMIE COOCH
15 ASPEN LANE


Tammie Cooch
Dean Bray

Dean + Christy Bray
45 Aspen Lane



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

July 5, 2018

Regulatory Branch
SAS-2015-00235

JOINT PUBLIC NOTICE
Savannah District/State of Georgia

The Savannah District has received an application for a Department of the Army (DA) Permit, pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344), as follows:

Application Number: SAS-2015-00235

Applicant: Mr. Hugh "Trip" Tollison
Savannah Harbor - Interstate 16 Corridor Joint Development Authority
131 Hutchinson Island Road, 4th Floor
Savannah, Georgia 31421

Agent: Mr. Alton Brown, Jr.
Resource and Land Consultants
41 Park of Commerce Way, Suite 303
Savannah, Georgia 31405

Location of Proposed Work: The 1,944 acre project site contains waters and wetlands adjacent to Black Creek and is located south of the intersection of Georgia Highway 280 and Interstate 16, in Ellabell, Bryan County, Georgia (Latitude 32.1584, Longitude -81.4533).

Description of Work Subject to the Jurisdiction of the U.S. Army Corps of Engineers: The applicant has requested DA authorization to fill 92.6 acres of wetland, 17.56 acres of isolated, non-jurisdictional wetland, 833 linear feet of stream and 0.62 acre of ditch to construct an Original Equipment Manufacturing (OEM) facility. The OEM site would consist of the following elements/components: (1) commercial (corporate offices, visitors' center, customer service experience, training center, etc.); (2) manufacturing (press, fabrication, paint, product completion and special products buildings); (3) distribution (train, truck and completed product yards); (4) employee services (cafeteria, medical center, employee parking, training center and central office); (5) storage yards; and (6) quality control facilities. The project would also require the construction of a rail spur to connect the site to an existing rail line.

Joseph V. Usher
4 Marsh Harbor Drive North
Savannah, Georgia 31410

August 3, 2018

U.S. Army Corps of Engineers
Attn: Ms. Sarah Wise
100 Oglethorpe Avenue
Savannah, Georgia 31401-3604

**Re: Original Equipment Manufacturing Public Comment Period
USACE Permit # SAS-2015-00235**

Dear Ms. Sarah Wise:

The above referenced public notice states in part:

“A total of 721.52 wetland credit (for jurisdictional and non-jurisdictional impacts) and 5997.6 stream credits are required for project related impacts. Approximately 17,285.9 of stream credits and 666.58 wetland credits are currently available within the service area. Depending on the number of wetland and stream credits available at the time of purchase, the applicant is requesting approval to purchase **all or any remaining** wetland and/or stream credits through the Georgia Land Trust In-Lieu Fee Program.” (Emphasis added to **all or any remaining**)

The applicant is making a proposal to fix a non-existent problem. While it might be true that if the credits were needed at the time they filed the public notice, there might have been a shortage of 55 credits. If that were the case, the applicant itself could make up the shortage with credits they have already generated on other projects. In addition, RIBITS shows there are 366 credit releases pending for the primary watershed’s existing banks. Rather than spending your time on this proposal, just process the releases. Problem solved!

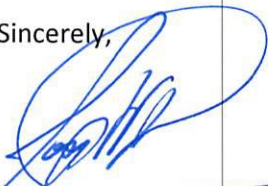
In addition to current pending releases, some portion of the 2,000 plus future releases from existing banks will likely be available before the credits are needed for this project. Of course, there are pending sales and the number of available credits change day to day. Even though the credits available fluctuate day to day, the inescapable conclusion is that when the credits for this project will be needed, the existing primary service area banks will be able to supply their needs if releases are processed on a timely basis. Also, inescapable conclusion is the applicant has their own credits they could use on this

project if they so desired. Consequently, there is no need for a Georgia Land Trust In-Lieu Fee Program in the subject area.

The bigger question is, what is the real motive for this proposal, and who might be in a position to benefit from a Georgia Land Trust In-Lieu Fee Program being established in the Primary or Secondary watershed?

Thank you for any consideration you might give my comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joseph V. Usher', is written over a large, light blue circular scribble. The signature is fluid and cursive.

Joseph V. Usher