



**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>

July 21, 2015

F/SER47:JD/pw

(Sent via Electronic Mail)

Lt. Col. Matthew Luzzatto, Commander  
Charleston District, Corps of Engineers  
69A Hagood Avenue  
Charleston, South Carolina 29403-5107

Attention: Tracy Sanders

Dear Colonel Luzzatto:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice 2015-00110-1T, dated July 7, 2015. Cypress Acquisitions, LLC, requests authorization from the Department of the Army to fill 3.14 acres of freshwater wetlands associated with the Ashley River to construct a commercial retail space in Dorchester County. As compensatory mitigation, the applicant proposes to purchase 29.9 credits from the Congaree-Carton Mitigation Bank. The Charleston District's initial determination is the filling of wetlands would not have substantial individual or cumulative adverse impacts on essential fish habitat (EFH) or federally managed fishery species. 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).

*Proposed Project Description*

Cypress Acquisitions proposes to clear and grade a 7.78-acre site to accommodate a neighborhood retail center. The applicant would place 4000 cubic yards of fill in 3.14 acres of freshwater wetlands to construct a retail center, fueling station, parking areas, entrances, and two stormwater ponds. A 25-foot wetland buffer would surround the northern and a portion of the eastern site boundary.

*Essential Fish Habitat near the Project Area*

The site of the proposed project does not include EFH; however, nearby receiving waters include estuarine emergent wetlands (salt marsh) and tidal creeks associated with the Ashley River. The South Atlantic Fishery Management Council (SAFMC) identifies salt marsh as EFH for penaeid shrimp, including white shrimp (*Litopenaeus setiferus*) and brown shrimp (*Farfantepenaeus aztecus*). Salt marshes are EFH because larvae and juveniles concentrate and feed extensively and shelter within these habitats. As a consequence, growth rates are high and predation rates are low, which makes these habitats effective nursery areas. The SAFMC also identifies salt marsh and tidal creeks as EFH for estuarine-dependent species of the snapper-grouper complex.



The SAFMC provides additional information on EFH and its support of federally managed species in Volume IV of the *Fishery Ecosystem Plan of the South Atlantic Region*<sup>1</sup>.

The waters of the Ashley River, the tidal creeks connected to it, and the surrounding coastal marsh 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*

No direct impacts to EFH would occur from the filling; however, indirect impacts could occur because the filled wetlands provide organic matter and water quality services to downstream habitats, including tidal creeks and salt marsh. The proposed project would result in the loss of headwater freshwater wetlands associated with the Ashley River. Sections of the Ashley River near the project site are listed as impaired by the South Carolina Department of Health and Environmental Control for dissolved oxygen, fecal coliform, and turbidity. The loss of freshwater wetlands within the Ashley River watershed could contribute to these impairments.

#### *Avoidance, Minimization, and Mitigation*

The applicant has not avoided and minimized impacts to the maximum extent practicable. The application states the stormwater ponds provide a measure of impact minimization and the large pond in the northern portion of the site constitutes a majority of the wetland impact. NMFS disagrees. The retail center, roads, parking, and turn-around area appear to constitute the majority of fill impacts and are not water dependent under 40 CFR 230.1(c) and 40 CFR 230.10(a)(3). To avoid and minimize impacts to the maximum extent practicable, the applicant should reconfigure the site to limit headwater wetland impacts, utilize pervious surfaces and bioswales to retain stormwater on site (potentially minimizing pond size), and assess off-site alternatives that do not impact wetlands. Finally, the applicant proposes to purchase credits from the Congaree-Carton Mitigation Bank to fulfill compensatory mitigation requirements. The Congaree-Carton Mitigation Bank is not within the same watershed as the project site. If the Four Hole Swamp Mitigation Bank is approved prior to permit issuance, the NMFS recommends the permit require credits from this bank because it is in the same watershed as the project.

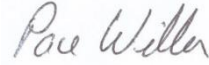
In accordance with section 7 of the Endangered Species Act of 1973, as amended, it is the responsibility of the Charleston District to review and identify any proposed activity that may affect endangered or threatened species and their designated critical habitat. Determinations involving species under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

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<sup>1</sup> Available at [safmc.net/EcosystemLibrary/FEPVolumeIV](http://safmc.net/EcosystemLibrary/FEPVolumeIV)

The 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](mailto:Jaclyn.Daly@noaa.gov).

Sincerely,



/ for

Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

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