



Public Notice # DHEC SAC CW-2023-0002

Public Notice Date: February 8, 2024

**NOTICE OF DEPARTMENT DECISION
CONSTRUCTION IN NAVIGABLE WATERS PERMIT**

The Department, acting on an application for Construction in Navigable Waters Permit pursuant to R. 19-450. et. Seq., 1976 SC Code of Laws has reached a proposed decision for the project described below.

Alan Shirey
US Army Corps of Engineers
Maintenance dredging and placement of activities
Atlantic Intracoastal Waterways
Beaufort County
SAC CW-2023-0002

After reviewing the project plans, Department Staff determined that there is a reasonable assurance that the proposed project will be conducted in a manner consistent with the permitting requirements of R. 19-450. et. Seq., 1976 SC Code of Laws. Accordingly, the Department proposes to permit the project with conditions as follows:

401 Water Quality Certification conditions:

1. The applicant must implement appropriate BMPs that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, tar, trash, debris, and other pollutants from entering the adjacent off-site areas, waters or wetlands.
3. All efforts must be made to protect existing native riparian vegetation in and along shoreline areas.
4. Compliance with all applicable requirements in the 2020 SARBO and USFWS's Biological and Conference Opinion dated September 8, 2023, including the Standard Manatee Construction Conditions.

5. Compliance with all recommended BMPs included in the 2023 Programmatic Essential Fish Habitat Consultation for United States Army Corps of Engineers Activities and Projects Regularly Undertaken in South Carolina.


The SC Department of Health and Environmental Control reserves the right to impose additional

conditions on this permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State standards.

A copy of plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water. Additional information about the technical aspects of this application is available from Haley Smarr, the project manager, at (803) 898-4243.

The final Construction in Navigable Waters Permit will be issued unless there is a timely request for review of the Department Decision based on water quality or water use impacts.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached appeal procedures for details.



Chuck Hightower, Manager
Water Quality Certification,
and Wetlands Section

STAFF ASSESSMENT
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (SCDHEC)
DIVISION OF WATER QUALITY
WATER QUALITY CERTIFICATION AND WETLANDS SECTION

I. Background Information

Applicants: U.S. Army Corps of Engineers (USACE) **P/N Number:** P/N SAC-CW-2023-0002

P/N Date: April 21, 2023 **Date Received:** April 21, 2023 **P/N Close:** May 21, 2023

Section of Applicable Federal Law: **Section 10** **Section 404** **Section 401**

Section of Applicable State Law: **Coastal Zone Consistency** **Construction in Navigable Waters**

Brief explanation and purpose of activity:

The proposed project consists of maintenance dredging and placement activities of the Atlantic Intracoastal Waterway (AIWW) from the North Carolina (NC)/South Carolina (SC) state line to Port Royal Sound in Beaufort County, SC. As stated by the USACE, the purpose of the project is to ensure safe and efficient navigation for commercial and recreational vessels. The USACE asserts, incorporating beneficial use (BU) projects can reduce the financial cost of dredged material placement while providing opportunities to increase shoreline resilience, improve and maintain habitat for sea turtles, shorebirds, and invertebrates, and protect coastal marsh resources from the effects of sea level rise.

Waterbody Name: AIWW

Water Classifications: SA, FW, SFH, ORW

Waterbody Location: The proposed project is located in the AIWW from the NC/SC state line to Port Royal Sound in Beaufort County, SC (Latitude: 32.7375°N, Longitude: -80.5598°W).

Waterbody on 2018 303(d) List or within an approved Total Maximum Daily Load (TMDL) watershed?

Yes, the AIWW is within several approved TMDL watersheds, including the AIWW/Waccamaw River TMDL for dissolved oxygen (D.O.), the South Santee Coastal TMDL for shellfish harvesting impairment due to fecal coliform (F.C.) bacteria, the Charleston Harbor/Ashley River TMDL for D.O., and the Beaufort River TMDL for D.O. The project should not contribute to D.O. levels or F.C. levels if the applicant uses best management practices (BMPs) during and after dredging and placement of dredged material (see Section II.H.).

No

II. Project Description

A. Description of Work

The proposed project consists of maintenance dredging 212 miles of the AIWW channel that is 12 ft. deep and 90 ft. wide and extends from the NC/SC state line to Port Royal Sound in Beaufort County, SC. Maintenance dredging has been ongoing since construction was completed in 1940. Maintenance dredging of the AIWW would be performed by hydraulic cutterhead dredge. The majority of sediments dredged from the waterway would be transported via pipeline to 90 existing upland disposal areas (DMMAs) located adjacent to the channel and two existing in-water disposal areas. The Dewees Inlet in-water placement site is approximately 15.1 acres in size and 80 ft. deep. The N. Edisto River in-water placement site is approximately 20.4 acres in size and 26 ft. deep. Use of the N. Edisto River

in-water placement site requires that no material may be discharged at depths above 20 ft. mean lower-low water (MLLW).

In addition, the USACE proposes BU placement along the nearshore and beach areas of Sullivan’s Island and Isle of Palms. Materials used for BU placement could be dredged directly from the waterway or extracted from 5 existing upland placement areas and piped to the BU locations. Sediments removed from upland placement areas would be tested to ensure compatibility with beach sands. Materials dredged directly from the waterway would utilize hydraulic cutterhead dredge with pipelines to transport the dredged materials to the beach and nearshore areas. Materials extracted from existing upland areas (rehandling) may be accomplished by methods deemed appropriate by the contract bidders. Potential options include but are not limited to, 1) excavation of material using traditional land-based equipment, loading material onto barges and hydraulic pumping of the material out to the nearshore; 2) excavation of material via small hydraulic cutterhead dredge inside of placement areas with pipeline transportation to the nearshore. Water from the AIWW would need to be pumped into the barge for option 1 to turn the material back into a slurry to be discharged into the nearshore. Likewise, for option 2, water would need to be pumped from the AIWW into the placement area in order for the sand to be hydraulically pumped by the dredge. The USACE states, BU placement options would depend on the conditions of the beaches at the time of dredging, budget, and potential cost sharing opportunities. Beach placement would include earthmoving equipment on the beach. Placement in the surf zone may require minimal land-based equipment while relying heavily on nature to organize the sediment. Placement in the nearshore would involve no land-based equipment and entirely rely on nature to move and organize the sediments.

The USACE mentions other associated activities with the proposed project, specifically, potential channel realignment and stabilization measures. Channel realignment refers to routing the federal channel to follow the natural thalweg or deepest location to reduce dredging requirements. Any future channel realignments would be coordinated with Federal and State agencies prior to implementation. Maintenance strategies typically involve stabilization measures intended to maintain the integrity of dikes within the placement areas and to minimize erosion and improve slope stability along the shoreline. Stabilization methods are dependent on the location and timing of the maintenance but could include revetments and/or living shorelines, as appropriate.

B. Fill

1. Is fill required?

Yes

Amount	cubic yards	acres
Total		
Wetlands		
Open Waters of U. S.		

No. If no, proceed to Section II. C.

2. Is the fill temporary?

Yes

No

C. Dredging

1. Is dredging required?

Yes

Amount	cubic yards	acres
Total	3.38 million cy	
Wetlands		
Open Waters of U. S.	3.38 million cy	

No. If no, proceed to Section II. D.

2. Is dredge spoil site adequately sized for the amount of material?

Yes

No

N/A

D. Other Impacts:

Yes

Mechanically cleared wetlands

Flooding wetlands

Navigation

No

E. Project Modification

Was the project modified from the original public notice?

Yes

No

F. Compensatory Mitigation

Is compensation required by SCDHEC?

Yes

No, the USACE proposes no mitigation for the project. The action is maintenance dredging of a federal channel with placement in existing upland and in-water placement sites, and BU placement along the beaches and nearshore of Sullivan's Island and Isle of Palms, SC.

N/A

G. Remediation

Is remediation required?

Yes

No

H. Nonpoint Source Concerns

1. Are water quality impacts from nonpoint sources expected?

Yes

Temporary, water quality impacts from nonpoint sources will be minimized through the implementation of appropriately designed erosion and sediment control BMPs to ensure the associated activities do not adversely impact the water resources.

No

2. Are any enforceable nonpoint controls required by SCDHEC?

Yes, water quality impacts from nonpoint sources will be minimized and should not contravene the water quality standards or existing and classified uses of the involved waterbodies, if the applicant adheres to the conditions in Section VIII of this staff assessment during and after the project.

No

III. Environmental Assessment

A. Is the proposed activity water dependent?

- Yes
 No

B. Are there feasible alternatives to the proposed activity?

- Yes
 No

The final alternatives analysis evaluated the following actions:

1. No Action Alternative
2. Alternative Dredging/Placement Methods
3. Proposed Avoidance and Minimization Measures

No Action Alternative

The No Action Alternative is indicated as Alternative A in the USACE Draft Environmental Assessment (EA) dated August 2023. According to the USACE, the No Action Alternative is the most probable future condition if no action is taken. Under this alternative, maintenance dredging of the AIWW by USACE would cease. This alternative would also exclude the placement of dredged material from the AIWW into existing DMMA's and in-water placement areas, and maintenance strategies would no longer be conducted. The Draft EA states, sediment could continue to accumulate in shoaling locations in the waterway, restricting commercial and recreational vessel traffic, leading the waterway to become impassable for larger vessels. Additionally noted by USACE, bank erosion along the shoreline adjacent to existing DMMA's would continue and could eventually result in dike failures with large quantities of dredge spoil spilling into the waterway.

Alternative Dredging/Placement Methods

Below is a summarization of the alternative methods evaluated by the USACE.

Alternative B – Existing Operation and Maintenance (O&M) Activities: This alternative would continue Operation and Maintenance (O&M) activities for the AIWW including maintenance dredging of the waterway with dredged material placement into existing confined (DMMA's) and unconfined (in-water) placement sites. USACE Maintenance dredging would occur by means of a hydraulic cutterhead dredge that would transport dredged materials through a pipeline to be discharged as a slurry.

Alternative C – Beneficial Use Placement (Proposed Action): Alternative C is similar to Alternative B but also includes BU placement of dredged sediments along the beaches and nearshore areas at Sullivan's Island and Isle of Palms (Figure 7). Under Alternative C, sand provided for beach or nearshore placement would either come from (1) the approximately 500,000 yd³ of shoaling identified for dredging in the Breach Inlet reach of the AIWW; or (2) 200,000-400,000 yd³ of material derived from dredged sediments previously placed at Breach Inlet DMMA's. The USACE states the expected frequency of dredging cycles for Breach Inlet is every 2 years and material would be placed similarly in future cycles depending on dredged sediment composition, placement area (beach or nearshore), DMMA capacity, equipment and contractor availability, and availability of funding. Sediment dredged from Breach Inlet that is beach-quality sand (i.e., sediment containing ≥80% sand for the purposes of this project) would be used for beach placement. Sediment not considered beach-quality sand but composed of 60-79% of sand may be used for nearshore placement. Any dredged sediment consisting of <60% sand would not be suitable for beach or nearshore placement.

Sediments dredged from the waterway would be transported via pipeline to the beach and nearshore areas. The Draft EA notes, if it is deemed necessary to utilize pipelines placed on the sea floor for transport, they must either be of sufficient weight to remain in place or be anchored or weighted. Floating pipelines are typically anchored to the sea floor and may require booster pumps if the length of the pipeline is too long for the dredge

to push the material to the placement location. Pipelines are typically placed in the same pipeline corridor for each recurring event to minimize potential damage to resources in the area.

According to the USACE, in 2021, twenty composite sediment samples were collected at various shoaling locations along the waterway. Sediment composition analyses performed on samples obtained from Breach Inlet shoaling areas show higher proportions of sand in subsamples from the western half of the shoaling area, and progressively more fines in eastern portions. As the cutterhead dredge moves eastward along the shoal, visual observation, in addition to sediment sampling information, will determine when sediment placement will shift from beach to nearshore.

Sand derived from dredged sediments previously placed at existing Breach Inlet DMMA's would be 17 extracted from one of five existing sites (re-handling): 1006S W-C, 1028S W-C, 1056S W-C, 1088S W-C, and 1110S W-C. The USACE asserts rehandling may be accomplished by methods bidders deem appropriate. Potential options include but are not limited to: (1) excavation of material in the DMMA using traditional land-based equipment, loading material onto barges, and hydraulic pumping to the nearshore; and (2) excavation of material via small hydraulic cutterhead dredge inside of placement areas with pipeline transportation to the nearshore. Water would be pumped from the AIWW into the barge for option 1 to turn the material back into a slurry to be discharged into the nearshore. Likewise, for option 2, water would be pumped from the AIWW into the placement area for the sand to be hydraulically pumped by the dredge.

The Draft EA states, in 2023, 13 composite sediment samples each were collected from the 5 Breach Inlet DMMA's. The physical analysis of these samples indicates that 4 of the 5 DMMA's contain predominately fine sand that is suitable for beach or nearshore placement.

The BU options being pursued at this time by the USACE involve nearshore and beach placement options. In the future, should the opportunity to implement other BU options become available, USACE would coordinate these activities with federal and state agencies, and the National Environmental Policy Act (NEPA) document would be updated, as appropriate.

Alternatives considered but eliminated by the USACE include use of a hopper dredge or mechanical dredge, transport via hopper dredge or barge, and ocean disposal of dredged material. Hopper dredges are self-propelled, typically ocean-going vessels and are not suitable for dredging shallow depths. Cutterhead dredges can operate uninterrupted, offer precise control, can handle a wide range of materials, and are more suitable for waterways. According to the USACE, the controlling depths of the AIWW could limit accessibility by a seagoing barge so placement of dredged material offshore would require use of a hopper barge to move dredge material from the AIWW to the seagoing barge for transport to the authorized ocean dredged material disposal site (ODMDS), which would be costly and time-consuming. The existing upland and in-water placement sites are adjacent to the waterway, making pipeline transport the most cost-efficient method. The USACE also notes, placement of all dredged material in the ODMDS would preclude all BU placement options, including the nearshore and beach placement options being pursued at this time.

Proposed Avoidance and Minimization Measures

USACE states, the proposed action would not result in significant impacts to water quality, benthic organisms, federally threatened and endangered (T&E) species, or essential fish habitat (EFH). The proposed action could increase water turbidity and suspend sediments during dredging and dredge placement activities; however, these effects would be temporary, and localized and turbidity levels should return to normal once activities cease. According to the Draft EA, the present and future actions are required to adhere to local, state, and federal regulations and BMPs, which are designed to limit negative impacts to water quality. Compliance of present and future projects with these regulations, combined with implementation of BMPs for the proposed action, would minimize any potential for adverse cumulative impacts.

Regarding benthic organisms, the USACE states, dredging and beach placement activities would result in temporary, localized impacts to benthic communities with recovery expected within 6 months. In-water placement activities are expected to result in minimal disturbance to benthic macrofauna. Minimization measures by the USACE would include conducting activities during late fall/early winter, as practical, when benthic recruitment is low, and placement of beach quality sand for beach nourishment activities. As noted in the Draft EA regarding federally listed T&E species, the proposed project may affect some listed species that could be present in the project area; however, all dredging and placement activities would be performed in compliance with applicable laws and would follow the terms and conditions resulting from Endangered Species Act (ESA) consultation. USACE would also implement standard manatee safety guidelines during construction to reduce the risk of vessel strikes. As stated by the USACE, maintenance dredging and placement activities, including beneficial use activities, are covered under the 2020 South Atlantic Regional Biological Opinion (SARBO). USACE intends to adhere to all applicable project design criteria per the 2020 SARBO; therefore, additional consultation with National Marine Fisheries Service (NMFS) under ESA is not required.

Regarding EFH, the USACE intends to follow recommended BMPs included in the 2023 *Programmatic Essential Fish Habitat Consultation for United States Army Corps of Engineers Activities and Projects Regularly Undertaken in South Carolina* to avoid significant individual or cumulative adverse effects on EFH or living marine resources under the jurisdiction of NMFS. A separate EFH assessment was submitted to NMFS on April 24, 2023. To the extent practicable, USACE will implement NMFS conservation recommendations resulting from the consultation.

C. Navigability Assessment

Does the activity affect the Navigability of the waterbody?

- Yes
 No

D. Water Quality Assessment

Numeric Standards Contraventions?

- Yes
 No
 Temporary, the proposed work may cause a temporary increase in turbidity levels, but ambient conditions should resume once the work is completed. Potential adverse impacts to water quality also can be minimized through the use of best management practices (see previous Section II. H., and the conditions described in Section VIII. of this staff assessment).

IV. Comments Received and Summary of Comments

A. SC Department of Natural Resources

Date: October 2, 2023

- Does not object to project provided the applicant adheres to the conditions in Section VIII.**
 Hold in abeyance.
 Objects to the proposed project, see discussion in Section VI, Conclusions.
 No objection.
 Has elected to not conduct an investigation nor provide any comments.

SCDHEC is in receipt of a letter from the SC Department of Natural Resources (SCDNR) dated October 2, 2023. The SCDNR provided recommendations on the beneficial use placement of dredged material, the US Fish and Wildlife Service's (USFWS) Biological Opinion (BO), and sea turtle nesting season. The SCDNR

concurs with the Finding of No Significant Impact (FONSI) on the quality of the natural environment for Alternative C, the Proposed Action Alternative, for the proposed maintenance dredging project. According to the SCDNR, negative impacts to natural resources are likely to be minor and temporary and will be further minimized by adhering to the below recommendations.

Response to SCDNR comments dated November 29 and December 8, 2023

A.1 Comment: The proposed Action Alternative, Alternative C, includes beneficial use placement of dredged material along the beaches and nearshore areas of Sullivan’s Island and Isle of Palms. The SCDNR’s letter states, given the distance between the Breach Inlet borrow areas and the nearshore and front beaches proposed for placement, it is likely that materials will be pumped a significant distance, and across a substantial acreage of estuarine habitat including oyster resources, thus creating the potential for impacts associated with dredge-pipe placement, failure, and inadvertent discharge. The SCDNR recommends that special precautions be taken to avoid and minimize disturbance to estuarine resources from dredging equipment mobilization and operation, especially pipelines.

Response: According to the USACE, the dredging contractors are required to place the dredge pipeline in deep water to the maximum extent practical and to avoid placing the pipeline in marsh except where absolutely necessary (i.e., depending on the project, there are some instances that the dredge pipeline has to go through the marsh, but the USACE limit the length of pipeline in the marsh to the minimum amount necessary to accomplish the work). The dredging contractor is required to identify oyster beds in the vicinity of the project and is required to avoid them. The dredging contractor is required to monitor their dredge pipelines for any leaks of dredged material and to promptly repair any leaks. Lastly, the contract also includes provisions that the contractor is required to remove any leaked dredged material that was deposited outside of designated placement areas.

A.2 Comment: As stated by SCDNR, the proposed front beach placement area along the Sullivan’s Island and Isle of Palms shoreline supports several threatened and endangered species, including the nesting loggerhead sea turtle, green sea turtle, leatherback sea turtle, non-breeding piping plover, and non-breeding red knot. The SCDNR understands that the USACE initiated a formal consultation with the USFWS to obtain a BO that will address the potential impacts of the proposed project on the above-listed species. This BO will include specific terms and conditions as well as conservation measures that will address the protection of these species and their critical habitat. The SCDNR recommends that the project adheres to all terms and conditions outlined in the BO.

Response: The USACE confirms compliance with all of the applicable requirements of the 2020 SARBO and USFWS’s Biological and Conference Opinion dated September 8, 2023.

A.3 Comment: The comment letter states, beach nourishment activities conducted during sea turtle nesting season (May 1 – October 31) can result in several adverse impacts, including the direct burial or crushing of nests and/or hatchlings, disruption of adult nesting activity, and decreased nesting success. The use and storage of heavy equipment on the beach can create barriers to nesting females and result in severe compaction or concretion of beach sediments, interfering with the turtle’s ability to nest successfully. Nesting success is highly dependent on the compatibility of nourishment materials with naturally occurring beach sand. Changes in sediment color, grain size, and organic content can adversely affect nesting success. To avoid adverse impacts to nesting turtles, SCDNR recommends that every effort be made to conduct nourishment activities outside of the turtle nesting season.

Response: The USACE confirms compliance with all of the applicable requirements of the 2020 SARBO and USFWS’s Biological and Conference Opinion dated September 8, 2023.

B. Environmental Protection Agency

Date: October 12, 2023

- Does not object to project provided the applicant adheres to the conditions in Section VIII.
- Hold in abeyance.
- Objects to the proposed project, see discussion in Section VI, Conclusions.
- No objection.
- Has elected to not conduct an investigation nor provide any comments.

SCDHEC received an e-mail from the Environmental Protection Agency (EPA) dated October 12, 2023. The e-mail discusses water quality and T&E species. The EPA recommended continued consultation with the SCDHEC regarding potential water quality impacts from the proposed project and the implementation of turbidity monitoring to ensure suspended solids dissipate from the water column as rapidly as anticipated. In regards to T&E species, the EPA reiterated the Draft EA language regarding the SARBO and avoidance and minimization measures associated with T&E species. The EPA defers to the USFWS on this matter and encourages continued coordination throughout the project's duration including ongoing maintenance and operations.

C. Public Comments

- Yes, comments were received from adjacent property owners (APOs) regarding the proposed project. Specifically, the comments centered on how the project would directly or indirectly affect private property, such as locations of dredging activities or locations of DMMA's. The SCDHEC provided information to commentors directly, such as location maps of the dredging activities or DMMA's. For questions on specific locations of dredging activities or locations of DMMA's and whether those activities would affect private property, SCDHEC directed commentors to the USACE for response. No comments were received opposing the proposed project activities.
- No

V. Conclusion on Water Quality Impacts and Classified Uses

When evaluating the proposed work, SCDHEC followed procedures for implementing State 401 Water Quality Certification regulations pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, the requirements of SC Regulation 61-101, and SC Regulation 19-450 Permits for Construction in Navigable Waters.

The project will be conducted in several water classifications of the AIWW, including Class SA, Class SB, Freshwaters (FW), Shellfish Harvesting (SFH) Waters, and Outstanding Resource Waters (ORW). Class SA waters are tidal saltwaters suitable for primary and secondary contact recreation, crabbing, and fishing, except harvesting of clams, mussels, or oysters for market purposes or human consumption and uses listed in Class SB. SA are also suitable for the survival and propagation of a balanced indigenous aquatic community of marine fauna and flora. Class SB are tidal saltwaters suitable for primary and secondary contact recreation, crabbing, and fishing, except harvesting of clams, mussels, or oysters for market purposes or human consumption. SB are also suitable for the survival and propagation of a balanced and indigenous aquatic community of marina fauna or flora. FW are suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the SCDHEC. FW are suitable for fishing and the survival and propagation of a balanced and indigenous aquatic community of fauna and flora. FW are also suitable for industrial and agricultural uses. SFH waters are tidal saltwaters protected for shellfish harvesting and uses listed in Class SA and Class SB. SFH are waters suitable for primary and secondary contact recreation, crabbing, and fishing. Also suitable for the survival and propagation of a balanced indigenous aquatic community of fauna and flora. ORW are freshwaters or saltwaters which constitute an outstanding recreational or ecological resource or those freshwaters suitable as a source for drinking water supply purposes with treatment levels specified by the SCDHEC. The proposed project should not

cause or contribute to any impairments of the AIWW or removing existing uses.

The proposed project will be conducted in Class SA waters from NC/SC state line to Highway 9-E bridge, FW waters from Highway 9-E bridge to intersection of Waccamaw River, FW-SP and SA-SP from intersection of Waccamaw River to Winyah Bay, SA waters from Winyah Bay to South Santee River, SFH from South Santee River to Ben Sawyer Blvd./703 bridge, SB waters from Ben Sawyer Blvd./703 bridge to the Stono River, SFH waters from the Stono River to the Wadmalaw River, ORW from the Wadmalaw River to Dawho River, SFH waters at Dawho River to South Fork Edisto River, ORW at South Fork Edisto River to Ashepoo River, SFH waters at Ashepoo River to Beaufort River, SA at intersection of Battery Creek and Beaufort River to Port Royal Sound. The Port Royal Sound is classified as SFH waters.

The purpose of the project is to ensure safe and efficient navigation for commercial and recreational vessels. As stated by the USACE, incorporating BU projects can reduce the financial cost of dredged material placement while providing opportunities to increase shoreline resilience, improve and maintain habitat for sea turtles, shorebirds, and invertebrates, and protect coastal marsh resources from the effects of sea level rise.

Please see Section III Environmental Assessment for information on the alternatives analysis for the proposed project as well as avoidance and minimization measures noted by the USACE.

During the public comment period, comments were received from APOs regarding the proposed project. No comments were received opposing the proposed project. Please see Section IV of this Staff Assessment for more information on comments received.

On August 30, 2023, SCDHEC received the USACE' Draft EA and FONSI dated August 2023. SCDHEC is in receipt of comments made by the SCDNR and the EPA on the Draft EA. The SCDHEC requested a response to comments received on the Draft EA dated October 16, 2023. On November 29, 2023 and December 8, 2023, the applicant submitted responses to these comments. Please see Section IV of this Staff Assessment for comments received and the applicant's response to comments on the proposed project.

The water quality impacts of the proposed project will be temporary, provided that the applicant follows the project as described in the Draft EA dated August 2023 and adheres to all of the conditions in Section VIII of this Staff Assessment. SCDHEC has reasonable assurance that the water quality standards of Regulation 61-68 will not be contravened as a result of the proposed work. The proposed activity will result in no significant degradation to the aquatic ecosystem and should enhance/achieve existing and classified uses of the AIWW and complies with the above regulations provided the applicant adheres to the conditions in Section VIII. The above assessment also ensures that the proper sequencing of avoidance, minimization, and appropriate compensation for unavoidable impacts has been demonstrated. Information about the technical aspects of this application is available from Haley A. Smarr, the project manager, by calling 803-898-4243 or by e-mailing smarrha@dhec.sc.gov.

SCDHEC reserves the right to impose additional conditions on this State Certification to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State water quality standards.

VI. Staff Recommendation

Issue 401 Water Quality Certification

VII. Conditions to be Placed on the 401 Water Quality Certification When Issued

401 Water Quality Certification conditions:

1. The applicant must implement appropriate BMPs that will minimize erosion and migration of sediments on and off the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other devices capable of preventing erosion, migration of sediments, and bank failure. All disturbed land surfaces and sloped areas affected by the project must be stabilized.
2. All necessary measures must be taken to prevent oil, tar, trash, debris, and other pollutants from entering the adjacent off-site areas, waters or wetlands.
3. All efforts must be made to protect existing native riparian vegetation in and along shoreline areas.
4. Compliance with all applicable requirements in the 2020 SARBO and USFWS's Biological and Conference Opinion dated September 8, 2023, including the Standard Manatee Construction Conditions.
5. Compliance with all recommended BMPs included in the 2023 *Programmatic Essential Fish Habitat Consultation for United States Army Corps of Engineers Activities and Projects Regularly Undertaken in South Carolina*.

Prepared by: Henry A. Inman

Date: 2/6/24

Reviewed & Approved by: [Signature]

Date: 2/6/2024

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day.
2. RFRs should be filed on-line (scdhec.gov/FileRFR) or in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFRs may be filed with the Clerk by electronic mail (boardclerk@dhec.sc.gov).
3. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - the name of the Requestor and the Requestor's mailing address, email address, if applicable, and phone number(s) at which the Requestor can be contacted. If the Requestor consists of a group of individuals, a representative of the group should be identified to receive all notices and communications related to the RFR for the group.

All information submitted is subject to release under the Freedom of Information Act. If the RFR and accompanying documentation contain information the Requestor believes should not be released, such information should be identified.

4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day. Credit card payments may be made by phone (803-898-3460, option 2) or on-line at scdhec.gov/FileRFR.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure or any other procedural question, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of ~~any claim or defense by the agency in subsequent proceedings concerning the RFR.~~
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall, based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of

the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.

8. Following any necessary redaction, the Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within ten (10) working days. If the Requestor is not the applicant, permittee, or licensee, the Clerk will email the RFR to the applicant, permittee, or licensee and give them the option of providing a response within ten (10) working days. Upon receipt of the Department Response and, if timely received, the applicant, permittee, or licensee response, the Clerk will forward the RFR and response(s) to all Board members for review, and all Board members will confirm receipt of the RFR package to the Clerk by email. The responses will also be provided by the Clerk to the Requestor and the applicant, permittee, or licensee if not the Requestor, when provided to the Board; however, questions by RFR Committee members notwithstanding, no subsequent submittals by the parties will be provided to the Board until and if a Conference is scheduled. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will attempt to contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will respond to the Clerk's email within seventy-two (72) hours and will request further review. If no Board member requests further review of the RFR within the seventy-two (72) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described in this provision end on a weekend or State holiday, the time is automatically extended to the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Board that further review is requested. The Board member(s) requesting further review will appear at the RFR Committee meeting to discuss the matter with the RFR Committee unless excused by the presiding member. If time allows, an RFR Committee member may submit questions to the parties via the Clerk to be answered in writing prior to the RFR Committee meeting. RFR Committee meetings are open to the public and will be public noticed at least twenty-four (24) hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publicly noticed and the Notice should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by a committee other than the RFR Committee or a designee, include a copy of the Chairman's order appointing the committee or the designee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
3. Information submitted to the Clerk at least twenty-four (24) hours prior to the Conference will be provided to the Board for consideration prior to the Conference. Such information will also be provided to the parties. While parties may distribute handouts at the Conference, information received by the Clerk after this deadline will not be provided to the Board or the parties.
4. Slide presentations for the Conference must be provided to the Clerk at least twenty-four (24) hours prior to the Conference to allow time for uploading. Slide presentations will be provided to the Board and the parties prior to the Conference.
5. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [15 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site

- Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
- Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [20 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [20 minutes]
 - Rebuttal by applicant, permittee, or licensee, if not the Requestor [5 minutes]
 - Rebuttal by Requestor(s) [15 minutes]
- Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
 3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
 4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
 5. All Conferences are open to the public.
 6. The officers may deliberate in closed session.
 7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
 8. The Clerk will mail the written final agency decision (FAD) to parties within thirty (30) days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent to the parties by certified mail, return receipt requested.
 9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.