



October 23, 2017

USACE Mobile District, Regulatory Division

Attn: Mr. Dylan Hendrix

P.O. Box 2288

Mobile, AL 36628-0001

RE: PUBLIC NOTICE NO. SAM-2017-00883-DCH – “REQUEST TO DISCHARGE FILL MATERIAL INTO 1.3 ACRES OF WETLANDS TO IMPROVE AND EXTEND FERN VENUE FROM STATE ROUTE 59 TO THE FOLEY BEACH EXPRESS, FOLEY, BALDWIN COUNTY, ALABAMA”

To Whom It May Concern:

We are Mobile Baykeeper, a twenty-year-old environmental nonprofit organization with the mission of providing citizens a means to protect the beauty, health and heritage of the Mobile Bay Watershed and our coastal communities. We are submitting comments on behalf of our board, officers, staff and more than 4,500 members regarding the proposed request to fill wetlands in the Sandy Creek-Wolf Creek Watershed impacting Wolf Creek and associated tributaries and wetlands to improve and extend Fern Avenue. It is our position that the current application is incomplete and the Corps must address the following items:

Inclusion of Stream Impacts

The applicant proposes to fill 1.3 acres of wetlands in Mobile, AL to make improvements and extend Fern Avenue from State Route 59 to the Foley Beach Express. Although not described in the permit application, our review and site visit indicate the proposed work looks to not only fill wetlands but impact an unnamed tributary to Wolf Creek. The Corps must thoroughly review the possibility of impacts to this stream (shown in the images provided) and subsequently consider this in the application review process.

Since it appears the proposed project will impact the stream the Corps must evaluate the determination of impacts on water quality, endangered species, and historical significance in light of that



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finding. Furthermore, the applicant will need to include stream compensation in their proposed mitigation as to account for these additional impacts. There are several policies that apply specifically to streams in addition to wetland requirements that are in Section 404. Examples of this include: 1) The overall discouragement of stream establishment and reestablishment (73 Federal Reg. 19596)¹; 2) Favorability to in-kind rehabilitation, enhancement or preservation for streams and other “difficult-to-replace” resources if more avoidance and minimization are not practicable (33 C.F.R. § 332.4(e)(4))²; 3) Use of riparian area plantings, planform geometry, channel form, watershed size, design discharge, etc. within stream mitigation plans (33 C.F.R. § 332.4(c)(7))³. It is of the utmost importance to evaluate the impacts to the unnamed tributary to Wolf Creek that will occur as a result of this permit application so that avoidance, minimization, and mitigation properly take into account and compensate for unavoidable impacts.

Avoidance and Minimization

If the applicant does not clearly demonstrate impracticability of additional avoidance and minimization the project does not comply with § 404(b)(1). There appears to be a way to avoid disturbance of the stream and wetlands through the use of bridging. We request the Corps insist the applicant verify the impracticability of: alternative site designs, including the use of bridging and other avoidance and minimization methods to decrease wetland fill and stream disturbance.

Once all feasible avoidance and minimization has been performed, any remaining unavoidable adverse impacts to wetlands must be addressed through “appropriate and practicable compensatory mitigation”.⁴ Mobile Baykeeper requests that the required mitigation is fulfilled by restoring wetlands within the impacted **8 digit HUC catalogue unit** so as to provide the least negative impact to hydrology and water quality within the impacted watershed. If this proves impracticable we request that wetland mitigation credits are purchased within the impacted 12 digit HUC subwatershed at a substantial rate 5:1. Additionally, if the Corps determines the proposed project will impact a stream, the applicant will need to include compensation for unavoidable impacts to streams through an approved stream mitigation plan.

Low Impact Development (LID) Practices

Mobile Baykeeper suggests the applicant consider implementing Low Impact Development strategies to minimize the facilities impacts on water quality. Incorporating these strategies would help to improve local water quality and minimize the applicant’s impacts on the surrounding area. More information to consider implementing these practices can be found in the Alabama Low Impact Development Handbook. We would like to see conditions requiring LID practices in any permit that the Corps approves for this proposed project. Specific recommendations include roadside bioswales especially in areas near wetlands to reduce impacts to water quality and hydrology.

Project Monitoring

Given that the project site is located within the banks of a waterbody, we request the applicant and Alabama Department of Environmental Management (ADEM) conduct twice a week inspections that include background, on-site, and downstream turbidity monitoring occur if/while working in a waterbody and after any rainfall of 0.75 inches or greater. We also request that site inspections and turbidity monitoring be required no less frequently than twice a month during the course of the project. If any deficiencies are found, weekly monitoring should be conducted until all issues have been corrected. To ensure this occurs, any permit approved should include conditions requiring the applicant to create a comprehensive plan that addresses best management practices and monitoring activities. We request copies of all inspections and turbidity monitoring conducted during the project be forwarded to Mobile Baykeeper at ckistler@mobilebaykeeper.org.

Project Connectivity

We request the Corps look into if this proposal is part of a larger road improvement project. If it is, the impacts of this proposal should be considered in conjunction with the other parts of the project. In pursuant to the National

Environmental Policy Act, an EIS should be completed on the full project, should one exist, before any decision about the project is made.

In summary:

- We strongly recommend the Corps verify if there will be impacts the stream located in the proposed site path. If the Corps determines such impact exists, the following must be accounted for: 1) Impacts to endangered or threatened species, water quality, and historical value; and 2) Inclusion of proper stream mitigation from the project's proposed activities.
- Practical alternatives such as the use of bridges should be thoroughly reviewed to ensure proper avoidance and minimizations requirements are met.
- Any compensatory mitigation should preferentially seek to restore wetlands in the same 8 digit HUC catalogue unit and preferably within the impacted 12 digit HUC subwatershed and only use mitigation credits as a secondary method of fulfilling compensatory mitigation requirements.
- LID practices should be required to minimize impacts to hydrology and water quality.
- Require the applicant to have a comprehensive plan for best management practices including consistent and regular monitoring activities.

Thank you in advance for your consideration of these comments. Please feel free to contact us with any questions at (251)-433-4229.

Sincerely,



Casi (kc) Callaway
Executive Director
Mobile Baykeeper



Cade Kistler
Program Director
Mobile Baykeeper

Citations

1. Federal Register, Vol. 73 No. 231, 19596
2. 33 C.F.R. § 332.4(e)(4)
3. 33 C.F.R. § 332.4(c)(7)
4. 1990 Mitigation MOA, supra note 6 at § II.A; 40 § C.F.R. 230.75.