### JOINT PUBLIC NOTICE

### CHARLESTON DISTRICT, CORPS OF ENGINEERS 69A Hagood Avenue Charleston, South Carolina 29403-5107 and THE S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL Office of Ocean and Coastal Resource Management 1362 McMillan Avenue, Suite 400 North Charleston, South Carolina 29405

REGULATORY DIVISION Refer to: SAC-2023-00782

December 8, 2023

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (48-39-10 <u>et.seq.</u>), an application has been submitted to the Department of the Army and the S.C. Department of Health and Environmental Control by

#### Mr. Elias Deeb CMMC, LLC 1670 Drydock Ave, Suite 100 North Charleston, South Carolina 29405

#### Mr. Craig Pawlyk Jon Guerry Taylor & Associates, Inc. PO box 1082 Mt. Pleasant, South Carolina 29465 cpawlyk@jqtinc.com

for a permit to construct a fixed concrete quay dock, bulkhead and riprap, and perform new dredging in the

### Cooper River

Located off of Shipbuilding Way in the City of North Charleston, Charleston County, South Carolina (Latitude: 32.8672 °, Longitude: -79.9649 °), Charleston Quad.

In order to give all interested parties an opportunity to express their views

# NOTICE

is hereby given that written statements regarding the proposed work will be received by the **Corps** until

15 Days from the Date of this Notice,

and **SCDHEC** will receive written statements regarding the proposed work until

# 30 Days from the Date of this Notice

from those interested in the activity and whose interests may be affected by the proposed work.

NOTE: This public notice and associated plans are available on the Corps' website at: <u>http://www.sac.usace.army.mil/Missions/Regulatory/PublicNotices</u> .

# Applicant's Stated Purpose

According to the applicant, the purpose of the proposed project is to access waters of the U.S. for commercial, industrial, and military use.

# **Project Description**

The proposed work consists of constructing a 60' x 46' fixed pier travel way leading to a 339' x 60' quay, installing 108 linear feet of sheet pile bulkhead, and placing 112 cubic yards of riprap revetment below the mean high water line along 419 linear feet of shoreline. The above proposed work will result in filling 0.04 acre of vegetated tidal marsh, shading 0.04 acre of vegetated tidal marsh, shading 0.22 acre of shallow subtidal bottom. Furthermore, the proposed work consists of initial new dredging of 43,000 cubic yards of material to a depth of -40' MLW with 2' allowable overdepth within 1.41 acre of the Cooper River with annual maintenance dredging for ten years. The dredge work would be completed with a hydraulic cutterhead dredge preferably and/or a mechanical dredge operation as needed. The dredge material would be transported to Clouter Creek Dredge Material Placement Facility (DMPF) via a direct pipeline and/or scow barge where the sediment would be liquefied and the resultant slurry pumped into the DMPF.

# **Avoidance and Minimization**

The applicant has stated that the proposed project will avoid and/or minimize impacts to the aquatic environment by utilizing Best Management Practices.

# **Proposed Compensatory Mitigation**

The applicant has proposed to mitigate for impacts to wetlands and/or waters of the United States by purchasing the 5.5 mitigation credits from an approved compensatory mitigation bank.

# South Carolina Department of Health and Environmental Control

The District Engineer has concluded that the discharges associated with this project, both direct and indirect, should be reviewed by the certifying authority, South Carolina Department of Health and Environmental Control, in accordance with provisions of Section 401 of the Clean Water Act (CWA). The CWA Section 401 Certification Rule (Certification Rule, 40 CFR 121), effective September 11, 2020, requires certification, or waiver, for any license or permit that authorizes an activity that may result in a discharge. The scope of a CWA Section 401 Certification is limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements. The applicant is responsible for requesting certification Rule part 121.12, the Corps will notify the U.S. Environmental Protection Agency Administrator when it has received a Department of the Army (DA) permit application and the related certification. The Administrator is responsible for determining if the discharge may affect water quality in a neighboring jurisdiction. The DA permit may not be issued pending the conclusion of the Administrator's determination of effects on neighboring jurisdictions.

The work shown on this application must also be certified as consistent with applicable provisions of the Coastal Zone Management Program (15 CFR 930). This activity may also require evaluation for compliance with the S. C. Construction in Navigable Waters Permit Program. State review, permitting and certification is conducted by the S. C. Department of Health and Environmental Control. The District Engineer will not process this application to a conclusion until such certifications are received. The applicant is hereby advised that supplemental information may be required by the State to facilitate the review.

### **Essential Fish Habitat**

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project would impact 1.41 acres of estuarine substrates and emergent wetlands utilized by various life stages of species comprising the shrimp, and snappergrouper management complexes. The District Engineer's initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service (NMFS). The District Engineer's final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

#### **Endangered Species**

Pursuant to the Section 7 of the Endangered Species Act of 1973 (as amended), the Corps has reviewed the project and based on the location of the project and available information, the following species may be present in the County(s) where the work will occur: Eastern black rail (*Laterallus jamaicensis jamaicensis*), American wood stork (*Mycteria americana*), Piping plover (*Charadrius melodus*), Red-cockaded woodpecker (*Picoides borealis*), Red knot (*Calidris canutus rufa*), Atlantic sturgeon (*Acipenser*)

oxyrinchus), Shortnose sturgeon (Acipenser brevirostrum), Finback whale (Balaenoptera physalus), Humpback whale (Megaptera novaeangliae), Northern long-eared bat (Myotis septentrionalis), Right whale (Eubalaena glacialis), Sei Whale (Balaenoptera borealis), Sperm Whale (Physeter macrocephalus) Canby's dropwort (Oxypolis canbyi), Pondberry (Lindera melissifolia), Green sea turtle (Chelonia mydas), Kemp's Ridley sea turtle (Lepidochelys kempii), Leatherback sea turtle (Dermochelys coriacea), Loggerhead sea turtle (Caretta caretta) and West Indian manatee (Trichechus manatus).

Based on all information provided by the applicant and the most recently available information, the District Engineer has determined the following:

The project will have <u>no effect</u> on : Eastern black rail (*Laterallus jamaicensis jamaicensis*), American wood stork (*Mycteria americana*), Piping plover (*Charadrius melodus*), Red-cockaded woodpecker (*Picoides borealis*), Red knot (*Calidris canutus rufa*), Finback whale (*Balaenoptera physalus*), Humpback whale (*Megaptera novaeangliae*), Northern long-eared bat (*Myotis septentrionalis*), Right whale (*Eubalaena glacialis*), Sei Whale (*Balaenoptera borealis*), Sperm Whale (*Physeter macrocephalus*) Canby's dropwort (*Oxypolis canbyi*), Pondberry (*Lindera melissifolia*), and will not result in the destruction or adverse modification of designated or proposed critical habitat.

The project <u>is not likely to adversely affect</u> the Atlantic sturgeon (Acipenser oxyrinchus), Shortnose sturgeon (Acipenser brevirostrum, Green sea turtle (Chelonia mydas), Kemp's Ridley sea turtle (Lepidochelys kempii), Leatherback sea turtle (Dermochelys coriacea), Loggerhead sea turtle (Caretta caretta) and West Indian manatee (Trichechus manatus) or result in the destruction or adverse modification of designated or proposed critical habitat. This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on this determination.

This public notice serves as a request to the U.S. Fish and Wildlife Service (USFWS project code: 2024-0022567) and the National Marine Fisheries Service for any additional information they may have on whether any listed or proposed endangered or threatened species or designated or proposed critical habitat may be present in the area which would be affected by the activity.

#### **Cultural Resources**

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), this public notice also constitutes a request to Indian Tribes to notify the District Engineer of any historic properties of religious and cultural significance to them that may be affected by the proposed undertaking.

In accordance with Section 106 of the NHPA, the District Engineer has consulted South Carolina ArchSite (GIS), for the presence or absence of historic properties (as defined in 36 C.F.R. 800.16)(I)(1)), and has initially determined that historic properties, are present; moreover, these historic properties may be affected by the undertaking.

This public notice serves to notify the State Historic Preservation Office that the Corps plans to initiate Section 106 consultation on these historic properties. Individuals or groups who would like to be consulting parties for the purposes of the NHPA should make such a request to the Corps in writing within 30 days of this public notice. To ensure that other historic properties that the District Engineer is not aware of are not overlooked, this public notice also serves as a request to the State Historic Preservation Office and other interested parties to provide any information they may have with regard to historic properties.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

### **Corps' Evaluation**

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest and will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency (EPA), under authority of Section 404(b) of the Clean Water Act and, as appropriate, the criteria established under authority of Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest. In cases of conflicting property rights, the Corps cannot undertake to adjudicate rival claims.

#### **Solicitation of Public Comment**

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing.

Please submit comments in writing, identifying the project of interest by public notice/file number (SAC-2023-00782), to SAC.RD.Charleston@usace.army.mil <u>or</u> the following address:

### U.S. Army Corps of Engineers ATTN: REGULATORY DIVISION 69A Hagood Avenue Charleston, South Carolina 29403-5107

If there are any questions concerning this public notice, please contact this office at (843) 329-8044, toll free at 1-866-329-8187, or by email at brittany.a.fournet@usace.army.mil.







































