South Carolina Mitigation Association

US Army Corps of Engineers
Attention: Mr. David Wilson, Regulatory Division
69A Hagood Avenue
Charleston, South Carolina 29403

November 17, 2020

Submitted via email:
david.b.wilson@usace.army.mil

Dear Mr. Wilson,

The South Carolina Mitigation Association (SCMA) would like to provide comments on the Public Notice for SAC-2020-01405, SCDOT Statewide In-Lieu Fee (ILF) Mitigation Program currently under review by the Charleston District. As an organization, SCMA's mission is to promote an active and efficient mitigation marketplace that supports ecological function and economic development within the State. We acknowledge that the ILF program proposed by the South Carolina Department of Transportation (SCDOT) has a role to play within the mitigation marketplace. The SCMA presents the following comments to encourage ILF program establishment that adheres to the requirements for mitigation, as described in 33 CFR PART 332, and as applied to all compensatory mitigation projects approved by the Charleston District.

Functional Uplift. While these types of culvert replacement projects may undoubtedly improve a particular stream's hydrologic connection, the functional lift gained from these projects is not well defined in the Prospectus. SCMA recognizes that each project will have unique (site-specific) limitations. As the prospectus states (in multiple locations), "One undersized or perched culvert can result in impairments that extend well beyond the upstream and downstream ends of the pipe." This statement is accurate, but improving or replacing a structure will not address systemic instabilities that result in stream degradation upstream or downstream of the structure. Examples of stream degradation that are not addressed by structure replacement include: disconnection from a floodplain due to elevation constraints, progressive headcuts in the streambed, high and eroding banks susceptible to mass failure, and removal of riparian vegetation leading to erosional sources. These constraints may limit the functional lift a project can achieve through structural replacement alone. These examples require additional restoration or enhancement measures to stabilize the stream.

Monitoring. Potential stream functional lift should be validated through a robust monitoring protocol and documented performance standards that "must be based on attributes that are objective and verifiable", as stated in 33 CFR PART 332. The Prospectus identifies "annual inspections to ensure the culvert is functioning properly", but the Sponsor fails to identify

sufficient stream assessment activities that will take place over the proposed 6-year monitoring period. SCMA recognizes the SARP Culvert Assessment Datasheet as an adequate measure to document the structure's physical parameters but suggest that these datasheets do not document the stream's functional value beyond the location of the structure. SCMA recommends additional monitoring that encompasses the extent of the stream claimed for mitigation. Recommended monitoring activities include: functional assessments extending up and downstream of the project, photo points at multiple locations, pebble counts or other sediment sampling practices that track bed material, macroinvertebrate monitoring, or water quality sampling.

Site Protection. The Prospectus identifies an example whereby claimed stream credits within the SCDOT right-of-way receive a higher (stream mitigation) credit ratio than stream credits claimed outside the SCDOT ROW. The Prospectus does not identify measures to mediate conflicts with other SCDOT priorities (i.e., maintenance of site distance and structural integrity of infrastructure often require vegetative clearing and other maintenance needs that conflict with a stream ecosystem restoration). The Prospectus states that a Memorandum of Understanding will be developed between the SCDOT and the USFWS to provide long-term protection. However, the Prospectus lacks details related to this MOU. The proposed site protection instrument (and proposed credit ratios) should address the limited potential for ecological improvement (and lift) associated with streams that are located directly adjacent to roadways. The instrument and ratios should also address the threat that future roadway improvements (i.e., widening or other expansion projects) have on claimed mitigation through this ILF. Similarly, beyond the ROW, certain land practices may restrict or prohibit the stream from achieving the functional lift claimed by the structure replacement project. Credit generated from any stream footage that does not have a adequate site protection instrument and an adequate buffer would not be in compliance with the 2010 Charleston District SOP guidance.

Mitigation Hierarchy. SCMA recognizes that the 2008 Mitigation Rule provides the USACE with the flexibility to deviate from the mitigation hierarchy. However, the Association re-iterates our support for the District to develop (mitigation) guidelines that align with the 2008 Mitigation Rule and prioritize mitigation bank credits over in-lieu fee projects. Adherence to the hierarchy will continue to promote the development of mitigation banks within the state. The SCMA recommends that any approval for this proposal be conditioned to require this mitigation hierarchy

Thank you for the consideration of our comments on this Prospectus. While we believe an ILF program can fill a niche in the State's mitigation framework, we encourage the USACE to hold all mitigation plans (banks, on-site and off-site PRMs, ILF programs, etc.) to the same standard. The Association and District should promote adherence to the SOP to ensure consistency and that each generated mitigation credit provides sufficient ecological uplift to offset the coupled impact.

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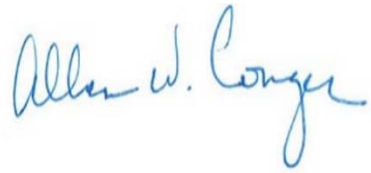
On behalf of the South Carolina Mitigation Association:



Allen Conger, President

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