

E1-26410



Public Notice # SAC 2016-1395

Public Notice Date: February 15, 2019

**NOTICE OF DEPARTMENT DECISION
STATE CERTIFICATION**

The Department, acting on an application for Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, Certification of Consistency with the SC Coastal Zone Management Program in accordance with R. 48-29-10 et. seq. and 15 CFR 93 and 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:

Palmetto Railways
Discharge fill material into Waters of the US including wetlands
Bulltown Ditch, the Diversion Canal (between Lake Marion and Lake Moultrie) and tributaries to
Caton Creek and Black Creek
Berkeley County
P/N SAC 2016-1395

After reviewing the project plans, staff of the Office of Ocean and Coastal Resource Management determined that the work is consistent with the Coastal Zone Management Program in accordance with 48-39-10 et. seq. and 15 CFR 93. Accordingly, the Department proposes to find this project consistent with the Coastal Zone Management Program.

After reviewing the project plans, staff of the Bureau of Water determined that there is a reasonable assurance that the proposed project will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act and the permitting requirements of R. 19-450. et. seq., 1976 SC Code of Laws. Accordingly, the Department certifies the project with conditions as follows:

401 Water Quality Certification conditions:

1. The applicant must implement appropriate best management practices that will minimize erosion and migration of sediments on project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other appropriate devices.
2. Only clean earthen material free of all potential sources of pollution must be used as fill.
3. Appropriate containment measures must be taken to prevent pollutants such as gasoline, oil, tar and debris and other pollutants from entering the adjacent waters or wetlands.
4. Where feasible, the Diversion Canal bridge must be constructed using mats, trestles, or barges (instead of barge canals or causeways), or such that access to the project site is attained from highland or from the portion of the bridge already completed ("end on end construction"). In addition, the bridge must be designed so that navigation will not be impeded.

attained from highland or from the portion of the bridge already completed ("end on end construction"). In addition, the bridge must be designed so that navigation will not be impeded.

5. Construction activities must not occur in the Diversion Canal between January and June 15, to the maximum extent practicable, to minimize migration and spawning impacts to diadromous fish species.
6. The staging area must be limited to 0.5 acres of anadromous fish habitat in the Diversion Canal and the area must be restored to pre-construction conditions following construction.
7. The applicant must compensate for unavoidable stream impacts by providing a minimum of 1,406 credits by purchasing 80 wetland mitigation credits from the Francis Beidler Forest Mitigation Bank, or other mitigation bank serving the project area, and generating the remaining required credits from the PRM Fairlawn C1 Parcel site within the Francis Marion National Forest, as proposed. Credit withdrawal documentation from an approved Mitigation Bank and restrictive covenants from the PRM site must be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.

Coastal Zone Consistency conditions:

1. In the event that any historic or cultural resources and/or archaeological materials are found during the course of work, the applicants must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology. Historic or cultural resources consist of those sites listed in the National Register of Historic Places and those sites that are eligible for the National Register. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials.
2. In-water work should be avoided between February 16 and June 15, to the maximum extent practicable, to avoid periods of anadromous fish migration and spawning.
3. Mitigation is performed as proposed under the Fairlawn C-1 Final Permittee-Responsible Mitigation Plan dated November 12, 2018.
4. Construction BMPs must be installed, inspected and maintained to hold sediment onsite and to protect any adjacent or downstream critical area, wetlands and waters through the life of the project. Upon completion of construction activities, all disturbed (includes undeveloped) areas, including those impacted for access, must be immediately stabilized.

The SC Department of Health and Environmental Control reserves the right to impose additional conditions on this Certification/Permit to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State standards.

The evaluation of the proposed work was conducted by the Bureau of Water and the Office of Ocean and Coastal Resource Management and a copy of the staff assessment supporting the proposed decision is enclosed. A copy of plans submitted by the applicant is available for review in the office of the Division of Water Quality, Bureau of Water or at the Office of Ocean and Coastal Resource Management. Additional information about the technical aspects of this application is available from Mark A Giffin, the project manager, at 803-898-4179.

The final State Certification will be issued unless there is a timely request for review conference 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.

A handwritten signature in black ink, appearing to read 'Chuck Hightower', written over a horizontal line.

Chuck Hightower, Manager
Water Quality Certification
and Wetlands Section

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 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. RFRs will not be accepted after 5:00 p.m.
2. 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
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed 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, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, 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. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
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. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will 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 forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) 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 above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 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 request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and 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 committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. 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 [10 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. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 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 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 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.

STAFF ASSESSMENT

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

I. Background Information

Applicant: Palmetto Railways

P/N Number: P/N SAC-2016-1395

P/N Date: April 4, 2018 **Date Received:** April 4, 2018

P/N Close: May 4, 2018

Section of Applicable Federal Law: ☐ Section 10 ☒ Section 404 ☒ Section 401

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

Brief explanation and purpose of activity:

The proposed work consists of constructing an industrial rail line, 22.7 miles long, connecting the CSXT Cross Subdivision and the Camp Hall Commerce Park. The purpose of the project is to locate, build and operate an industrial rail line that will connect the existing Class 1 rail line with the Camp Hall Commerce Park, which has increased the demand for rail service.

Waterbody Names: Bulltown Ditch, the Diversion Canal (between Lake Marion and Lake Moultrie), and tributaries to Caton Creek and Black Creek

Water Classifications: FW

Waterbody Location: Within a linear corridor approximately 22.7 miles long, connecting the CSXT Cross Subdivision near the Santee Cooper Cross Generating Station and the Camp Hall Commerce Park. The corridor would travel south and west, crossing the Diversion Canal between Lakes Marion and Moultrie, continue through the community of Cross, split and end with 2 tracks (Camp Hall Track and the Volvo Lead Track) on the Camp Hall Commerce Park site in Berkeley County (Begin: Latitude 33.40422° N, Longitude – 80.09814° W; End Camp Hall Track: Latitude 33.14241° N, Longitude –80.25723° W, End Volvo Lead Track: Latitude 33.14160° N, Longitude –80.23976° W).

Waterbody on 2016 303(d) List or within approved TMDL?

☒ Yes ☐ No A portion of the proposed rail route is located within the Charleston Harbor TMDL watershed developed due to low Dissolved Oxygen (D.O.) levels. Also, the proposed route would cross the Diversion Canal, which is impaired at CSTL-079 due to elevated copper levels, mercury in fish tissue and low D.O. In

addition, the proposed project has the potential to drain to Duck Pond Creek (SC-034), and Wassamassaw Swamp (CSTL-063), both of which are impaired due to elevated E. coli levels. The construction and use of the proposed rail line should not contribute to these impairments if the applicant uses appropriate best management practices (BMPs) and complies with conditions of this assessment (see Sections II. H. and VIII, respectively).

II. Project Description

A. Description of Work

The proposed work consists of constructing an industrial rail line, connecting the CSXT Cross Subdivision near the Santee Cooper Cross Generating Station and the Camp Hall Commerce Park. The proposed project corridor is approximately 22.7 miles long, varying in width, and will travel south and west, crossing the Diversion Canal between Lakes Marion and Moultrie, through the unincorporated community of Cross, and then ultimately split and end with 2 tracks (Camp Hall Track and the Volvo Lead Track) on the Camp Hall Commerce Park site. The proposed rail line would service the new Volvo Cars manufacturing facility, as well as future purpose development within the Camp Hall Commerce Park. In detail, the applicant proposes to impact approximately 120.01 acres of wetlands and 537.2 linear feet of other waters. Specifically, permanent fill is proposed in 103.12 acres of wetlands and mechanical clearing in 16.89 acres. Permanent pipe is proposed in 315.2 linear feet of waters and permanent morphological impact is proposed in 222 linear feet of waters.

The project purpose, as stated by the applicant, is to locate, build, own and operate an industrial rail line that will connect the existing Class 1 rail line with the Camp Hall Commerce Park. The need for the proposed project derives from the development of the Camp Hall Commerce Park, which has increased the demand for rail service to interconnect the commerce park with an existing Class 1 rail network, in a manner that is logically feasible to better serve the need of the future tenants and industry with the Camp Hall Commerce Park for transportation, distribution and logistics. These tenants include, but are not limited to Volvo Cars, as well as any associated support industries that might desire to locate in proximity to Volvo Cars in the future.

B. Fill

1. Is fill required? ☒ Yes ☐ No If no, proceed to Section II. C.

Amount	Acres or LF
Total	103.12 acres and 537 LF
Wetlands	103.12 acres
Open Waters of U.S.	537 LF

2. Is the fill temporary? ☐ Yes ☒ No

C. Excavation

1. Is excavation required? ☐ Yes ☒ No If no, proceed to Section II. D.

Amount	
Total	
Wetlands	
Open Waters of U.S.	

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

☐ Yes

☐ No

☒ N/A

D. Other Impacts: ☒ Yes ☐ No

☒ Mechanically cleared wetlands - 16.89 acres

☐ Flooding wetlands

E. Project Modification

Was the project modified from the original public notice?

☐ Yes

☒ No

F. Compensatory Mitigation

Is compensation required by DHEC?

☒ **Yes** The applicant proposed to mitigate wetland and stream impacts by providing a combination of Permittee Responsible Mitigation (PRM) and mitigation bank credits. For impacts within the Four Hole Swamp watershed, the applicant proposes to purchase 80 wetland mitigation credits from the Francis Beidler Forest Mitigation Bank. For impacts within the Cooper River watershed, PRM is proposed at the Fairlawn C1 Parcel site, a 1,380 acre site within the Francis Marion National Forest. Mitigation activities at the Fairlawn C1 Parcel site include the enhancement of 371.4 acres of wetlands and the preservation of 522 acres of wetlands to generate 1,406.7 credits. The Fairlawn C1 Parcel will be transferred to the U.S. Forest Service, which will permanently protect the site and make open to the public 1,380 acres of land, including 893.4 acres of wetlands. Credit requirements were determined based on the current Charleston Corps mitigation calculation methods found in "Guidelines for Preparing a Compensatory Mitigation Plan." The 1,406.7 total credits proposed meet the 1,406 credits required to offset project impacts. Therefore, the proposed mitigation should offset unavoidable project impacts provided that the applicant provide proof of purchase documentation from the Francis Beidler Forest Mitigation Bank. In addition, the applicant should provide documentation transferring the C1 parcel transferred to the U.S. Forest Service, with permanent protection of the site through restrictive covenants, as proposed. Mitigation bank credit withdrawal documentation and declaration of restrictive covenants must be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.

☐ No

☐ N/A

G. Remediation

Is remediation required? ☐ Yes ☒ No

H. Stormwater Concerns

1. Are water quality impacts from stormwater expected?

☐ Yes

☐ Temporary

☒ **No** The proposed rail line will not include a substantial amount of new impervious area and the potential impacts are likely to result from the conversion of forested areas to maintained railroad right of way and the channelization of stormwater runoff along certain areas. Water

quality impacts from non-point sources will be minimized if the applicant uses Best Management Practices (BMPs) and is in compliance with SCDHEC administered stormwater permitting requirements during and after project construction to minimize erosion and migration of sediments. Post construction stormwater management also should provide a reasonable assurance that the proposed activity will not have the potential to contribute to low Dissolved Oxygen (D.O.) levels in the Charleston Harbor Watershed, elevated copper levels, mercury in fish tissue and low D.O. in the Diversion Canal, as well as E. coli levels in Duck Pond Creek and Wassamassaw Swamp, as discussed in Section I.

2. Has the applicant addressed stormwater concerns?

☒ **Yes** The applicant proposes to use a variety of BMPs during and after construction to convey, filter and dissipate runoff from the new rail line. During construction, erosion prevention BMPs that may be implemented include mulching, blown straw, hydro-mulching/seeding, erosion control blankets, turf reinforcement mats, outlet protection, temporary seeding, sediment tubes, flexible growth medium (FGM) or engineered fiber medium (EGM) i.e., Flexterra, and/or other devices as described by the design engineer. Runoff control and conveyance BMPs that may be implemented include sediment basins, sediment traps, silt fences, ditch checks, stabilized construction entrances, storm drain inlet protection and sediment tubes or other appropriate devices. All construction BMPs will be designed, implemented and maintained per the guidance in the SCDHEC Storm Water Management BMP Handbook (August 2005). The NPDES Phase II Construction General Permit (CGP) will address water quality and quantity. Post construction BMPs will include, but not be limited to, vegetated swales and filter strips, stream bank stabilization, and channelized flow dissipation. A Stormwater Pollution Prevention Plan (SWPPP) will be developed, as required by the NPDES permit. In addition, the applicant will adhere to Berkeley County's stormwater regulations associated with the specific implementation of various stormwater management facilities (e.g., ditches, culverts and secondary collections systems).

☐ **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 following alternatives analysis is a summary of information provided by the applicant. Reasonable alternatives were considered based on the project purpose and need and supporting criteria. The proposed project requires, at a minimum, a rail route that meets the following characteristics and criteria:

- Direct connectivity to a single Class 1 freight carrier main line, accessing the freight carrier's inland/domestic network, as well as the Port of Charleston.
- Sufficient rail access and capacity to serve both phases of the Volvo Cars site.
- Sufficient rail access and capacity to service future growth and needs of additional industrial sites within the remaining portions of Camp Hall such that the portion of the proposed rail spur located within Camp Hall does not limit access to the site while in use or require grade separation.

In addition, the following factors were considered in the Level 1 Practicability Analysis:

- The access points to Camp Hall and Volvo Cars site.
- Design alternatives for the on-site freight rail yard required to support and connect to Volvo Cars and other associated automotive industrial support facilities.
- Estimation of engineering and construction costs.
- Evaluation of potential environmental impacts and the availability and cost of mitigation for same.
- Evaluation of potential property impacts along the proposed routes between Camp Hall and the existing rail infrastructure.

Also, a Level 2 Practicability Analysis considered additional factors including land use, environmental justice, potential relocations, air quality, noise, threatened and endangered species, as well as surface waters and wetlands.

A. No Action - Under this alternative the project would not be built and would have no impacts, but would not meet the project purpose and need. This alternative was retained for further comparison in the alternatives practicability analysis in order to ensure a complete environmental impact evaluation, as well as provide a baseline comparison to other alternatives.

B. Soter South Route - This alternative would run approximately 14.9 miles through Berkeley County. It would connect to the CSX Transportation (CSXT) A-line near the Century Aluminum plant on US Highway 52, between Moncks Corner and Goose Creek. This route runs due west across US Highway 17, until it nears I-26. The route turns northwest and parallels I-26 until it reaches the eastern border of the Camp Hall Commerce Park. This route would cross 3 named streams including Grants Mill Branch, Felder Branch and Cypress Swamp, as well as 12 minor tributaries or ditches. Also, this route would potentially impact 113.28 acres of wetland based on NWI data. This route passes through a mix of industrial, commercial, residential, and silvicultural properties. Where possible, this route roughly follows existing utility line right-of-way.

The Soter South route alternative impacts the largest amount of emergent wetlands of alternatives carried forward to the Level 2 analysis, at nearly six times more impacts to emergent wetlands than the second highest route alternative. This alignment also the second highest overall percentage of wetlands within the Right-Of-Way (ROW). In addition, this alignment intersects the North Charleston urbanized area. Furthermore, the Nexton development, a proposed and permitted 4,500-acre mixed use development, is located within the Soter South corridor. Due to the impacts existing and proposed development, potential socioeconomic impacts, including the cost and logistical difficulties associated with the displacement/relocations along this route, traffic, and noise/vibration concerns, the Soter South route was eliminated as a viable alternative.

C. Soter North Route - This alternative would run approximately 16.7 miles through Berkeley County. It would connect to the CSXT A-line near the Century Aluminum plant on US Highway 52, between Moncks Corner and Goose Creek. The route runs due west to US Highway 176, and then parallels US Highway 176 northwest until it approaches Lebanon Road, turns southwest and enters the northeastern corner of the Camp Hall Commerce Park. This route would cross 4 named streams including Grants Mill Branch, Sandy Run, Cypress Swamp and Mill Branch, as well as 7 minor tributaries or ditches. Also, this route would potentially impact 88.89 acres of wetlands based on NWI data. This route passes through a mix of industrial, commercial, residential and silvicultural properties.

The Soter North alignment would cross the most developed land, including the rapidly expanding North Charleston urbanized area, with the route composed of 27.8% developed land. This route

would impact the greatest number of parcels, require the most number of road crossings, and require the largest number of relocations, including 42 residential buildings, 13 commercial buildings and 2 churches. These impacts and relocations substantially increase the cost of this alignment alternative, while logistics of successfully executing these relocations in a cost effective and expedient manner is substantially more difficult. Due to these considerations, the Soter North route was eliminated.

D. Moncks Corner Route - This alternative would run approximately 17.1 miles through Berkeley County. It would connect to the CSXT A-line near the Tailrace Canal, north of Moncks Corner. The route would run west from the CSXT A-line towards Lake Moultrie, veers southwest below Pinopolis, and then west into the Camp Hall Commerce Park. This route crosses 4 named streams, including Mill Branch, Caton Creek and Wassamassaw Swamp, as well as 7 minor tributaries. Also, this route would potentially impact 136.5 acres of wetlands based on NWI data. This route passes through a mix of residential and silvicultural properties.

Of the remaining route alternative evaluated in the Level 2 analysis, the Moncks Corner alignment would require the largest amount of wetland impacts, with nearly 20 additional acres of wetland impact versus the next highest alignment and the largest number of potential floodplain crossings. According to the applicant, this alignment also has the largest potential to impact potential environmental justice communities. In addition, this alignment intersects the rapidly expanding North Charleston urbanized area. Due to these considerations, the Moncks Corner route was eliminated as a viable alternative.

E. Cross Route - This alternative would run approximately 18.5 miles through Berkeley County. It would connect to an existing CSXT A-line rail spur, which services the Santee Cooper Cross Generating Station. The route runs south southwest from the Cross Generating Station, crossing the Diversion Canal between Lakes Marion and Moultrie, runs through the unincorporated community of Cross and south into the Camp Hall Commerce Park. This route would cross 8 named streams including Big Run, Black Creek, Caton Creek and Mill Branch, as well as 7 minor tributaries. Also, this route would potentially impact 117.04 acres of wetlands based on NWI data. This route passes through a mix of commercial, residential and silvicultural properties.

The Cross route alternative alignment has been identified as Palmetto Railway's **preferred project corridor** based on the Level 2 Analysis. The Cross route provides the most practical route with the least amount of overall impacts, while still meeting the characteristics and criteria identified by the applicant for the proposed project and in light of potential impact to environmental economic and socioeconomic resources.

Based on a Level 3 Analysis, 4 alternative Cross alignments were considered for further evaluation. The following 4 Cross alternative are generally longer and more sinuous than the generalized Cross alternative presented in the Level 2 Analysis, because the generalized route was not optimized to reduce environmental, cultural, economic and socioeconomic impacts:

Cross Rail Alignment Option 1 - This option runs approximately 20.51 miles through Berkeley County. It connects to the existing CSXT A-Line rail spur, which serves the Santee Cooper Cross Generating Station. The major difference between the Cross Option 1 and the Level 2 Cross route is that the Option 1 spans further west at Short Cut Road to avoid smaller parcels, potential relocations and numerous Carolina Bays. The Cross Option 1 route runs southwest from the Cross Generating Station, crossing the Diversion Canal between Lakes Marion and Moultrie, runs west of the unincorporated community of Cross and south into the Camp Hall Commerce Park.

Cross Rail Alignment Option 2 - This option runs approximately 21.13 miles through Berkeley County. It connects to the existing CSXT A-line rail spur, which serves the Santee Cooper Cross Generating Station. The major difference between the Cross Option 2 and the Level 2 Cross route is that the Option 2 is located further west at Short Cut Road and further east at Old Highway 6 and Ranger Road to avoid smaller parcels, potential relocations and numerous Carolina Bays. The Cross Option 2 route runs southwest from the Cross Generating Station to Camp Hall Commerce Park, with a similar overall route as the Cross Option 1 route.

Cross Rail Alignment Option 3 (Preferred Project Corridor) - The Cross Route Option 3 runs approximately 22.5 miles through Berkeley County. It connects to the existing CSXT A-Line rail spur, which serves the Santee Cooper Cross Generating Station. The major differences between Cross Option 3 and the Level 2 Cross route is that Option 3 arcs northwest from Camp Hall to avoid the Caton Creek Mitigation Bank, and extends further west at Short Cut Road, and turns further east at Old Highway 6 and Ranger Road to avoid smaller parcels, potential relocations and numerous Carolina Bays. The Cross Option 3 route runs southwest from the Cross Generating Station to Camp Hall Commerce Park with a similar overall route as the Cross Option 1 route. The Option 3 route alternative alignment has been identified as the applicant's preferred project corridor based on the Level 3 analysis. This option is preferred because it is within the range of reasonable impacts, it affects the least amount of parcels within the project ROW, it does not require any relocations, it has no known archaeological sites, and does not affect the Caton Creek Mitigation Bank. Cross Option 3 is the most practical route with the least amount of overall impacts, as judged by the potential impacts to environmental, economic and socioeconomic resources.

Cross Rail Alignment Option 4 - This option runs approximately 21.99 miles through Berkeley County. It connects to the existing CSXT A-Line rail spur, which serves the Santee Cooper Cross Generating Station. The major differences between Cross Option 4 and the Level 2 Cross route is that Option 4 curves northwest from Camp Hall to avoid the Caton Creek Mitigation Bank, and turns further west at Short Cut Road to avoid smaller parcels, potential relocations and numerous Carolina Bays. The Cross Option 4 route runs southwest from the Cross Generating Station to Camp Hall Commerce Park with a similar overall route as the Cross Option 1 route.

F. Eutawville/Holly Hill Route - This alternative would run approximately 17.5 miles through Orangeburg and Berkeley Counties. It connects to a CSXT secondary service track immediately south of Eutawville. This route runs southeast from Eutawville to Mudville Road, before shifting south directly into the Camp Hall Commerce Park. This route passes through a mix of commercial, residential, agricultural and silvicultural properties.

The Eutawville/Holly Hill Route was included in the initial analysis to determine if a CSXT route from the northwest is viable. This route would connect to the CSXT "AKE-Line" that runs roughly from Elloree through Eutawville and Holly Hill, and connects to the Norfolk Southern line between St. George and Dorchester. Palmetto Railways determined that this route alternative makes it logistically impractical and functionally infeasible to provide efficient direct access to the Port of Charleston by a single Class 1 freight carrier; therefore it does not satisfy a primary characteristic and criterion identified as critical by the applicant. Because the Eutawville/Holly Hill route alternative fails to meet the basic minimum requirements of the proposed Project, it was eliminated from consideration since it was determined to be a nonviable alternative by Level 1 analysis.

G. Ridgeville Route - This alternative would run approximately 4.1 miles through Dorchester and Berkeley Counties. It would connect to the Norfolk Southern freight line running through Dorchester

County. The route would run northeast through the Ridgeville Commerce Park, across I-26 and US Highway 78, and enters the Camp Hall Commerce Park from the southwest. Key components of this route would include a grade separation rail bridge crossing of I-26, a grade separated road bridge of Centerline road on Camp Hall, bridging of Timothy Creek, and at-grade crossings of U.S., State and local roads. This route was originally developed by Norfolk and Southern as a concept proposal following the development of the WestRock (Mead Westvaco) Ridgeville industrial Site and Camp Hall. This route passes through a mix of commercial, residential and silvicultural properties.

This alternative was eliminated in the Level 1 Practicability Analysis due to the fact that the Ridgeville Route does not satisfy one of the most basic characteristics set forth in the purpose and need of the proposed project which is ownership and operational control by Palmetto Railways. While Norfolk and Southern expressed support for Palmetto Railways being the applicant, financier, and construction manager of the proposed project, it desired and expected that, once the project was completed, operation control of the rail line connections would be transferred to, or within the substantial control of Norfolk Southern. Without ownership and operational control, the applicant could neither justify the cost nor satisfy its statutory purpose of providing safe, efficient and cost effective rail solutions to facilitate the movement of freight within South Carolina.

Second, the Ridgeville Route within the Camp Hall Commerce Park would require a crossing of Centerline Road due to the proposed entry point of the route on the southwestern side of the site (the opposite side of Centerline Road from both phases of the Volvo Cars Site). An at-grade crossing of Centerline Road has the potential to cause frequent disruption to the operational capabilities of Volvo Cars and other future industrial sites within the Camp Hall Commerce Park, as Centerline Road serves as the primary vehicular access point to Camp Hall on the northern and southern boundaries, as well as the main thoroughfare within the site.

Third, because the Norfolk and Southern main line is located to the west of I-26, the proposed route requires a grade separation rail bridge crossing of I-26, as well as an at-grade crossing of U.S. Highway 78. These road crossings would add substantial additional engineering and construction costs to the project. In addition, adding additional capacity to Norfolk Southern's mainline increases logistic and feasibility risks to providing adequate freight rail service to, from and between the Camp Hall Commerce Park and the Port of Charleston.

Finally, the applicant determined that the Ridgeville Route would impact areas identified as critical importance within the environment, including wetland and stream impacts. Palmetto Railways identified 3 primary environmental issues related to the Ridgeville Route. First, the roadway crossings to achieve required grade separation would require bridging and associated construction, which would impact the environment. Second, the propose route requires a crossing of the headwaters of Timothy Creek, near the Camp Hall Commerce Park, which have been mentioned as an area of greater concern from both Santee Cooper and WestRock (which would be impacted by such a crossing). Finally, the Ridgeville Route would impact more stream habitat in the Four Hole Swamp watershed, requiring substantial stream mitigation credits.

For all of the above reasons, the Ridgeville Route fails to meet the basic minimum requirements of the Proposed Project as a preferred freight carrier provider and was eliminated as a non-viable alternative.

C. Water Quality Assessment

Numeric Standards Contraventions?

☐ Yes

☒ 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 H., and the conditions described in Section VIII. of this staff assessment).

☐ No

Will the proposed activity cause alterations of current patterns, water circulation or navigation?

Yes ☐

No ☒ The applicant proposes to design culverts and bridges to maintain existing flow/exchange and hydrology for wetlands and other aquatic areas. This should maintain existing current patterns, hydrology and aquatic life passage.

IV. Public Comments Received and Summary of Comments

A. S. C. Department of Natural Resources (SCDNR)

Date: May 3, 2018, October 10, 2018

☒ Does not object to project provided the applicant adheres to the conditions in Section VIII.

☐ Hold in abeyance, see discussion in Section VI, Conclusions.

☐ Objects to the proposed project, see discussion in Section VI, Conclusions.

☐ No objection.

☐ Has elected to not conduct an investigation nor provide any comments.

SCDNR asked for additional information in their first letter. SCDNR provided additional comments after the applicant responded to comments and had no further objections to permit issuance provided that their previously stated concerns regarding diadromous fish are adequately addressed.

B. U.S. Fish and Wildlife Service (USFWS)

Date: May 7, 2018

☒ Does not object to project provided the applicant adheres to the conditions in Section VIII.

☐ Hold in abeyance, see discussion in Section VI, Conclusions.

☐ Objects to the proposed project, see discussion in Section VI, Conclusions.

☐ No objection.

☐ Has elected to not conduct an investigation nor provide any comments.

USFWS stated that the requirements of section 7 of the Endangered Species Act (ESA) have been fulfilled relative to the proposed action and no further consultation is necessary unless new information becomes available. USFW did have recommendations regarding culvert placement and "At Risk Species" (see Section VI.).

C. U.S. Environmental Protection Agency (EPA)

Date: April 30, 2018

☒ Does not object to project provided the applicant adheres to the conditions in Section VIII.

☐ Hold in abeyance, see discussion in Section VI, Conclusions.

☐ Objects to the proposed project, see discussion in Section VI, Conclusions.

☐ No objection.

☐ Has elected to not conduct an investigation nor provide any comments.

EPA asked for additional information, which the applicant provided (see Section VI.).

D. National Marine Fisheries Service (NMFS)

Date: May 4, 2018

☒ Does not object to project provided the applicant adheres to the conditions in Section VIII.

☐ Hold in abeyance, see discussion in Section VI, Conclusions.

☐ Objects to the proposed project, see discussion in Section VI, Conclusions.

☐ No objection.

☐ Has elected to not conduct an investigation nor provide any comments.

NMFS provided recommendations to protect anadromous fish species in the Diversion Canal (see Section VI.).

E. Santee Cooper

Date: May 2, 2018

☒ Does not object to project provided the applicant adheres to the conditions in Section VIII.

☐ Hold in abeyance, see discussion in Section VI, Conclusions.

☐ Objects to the proposed project, see discussion in Section VI, Conclusions.

☐ No objection.

☐ Has elected to not conduct an investigation nor provide any comments.

Santee Cooper generally supports the project but expressed concern regarding potential drainage impacts on tracts of SC property that the project will cross (see Section VI.).

V. Consistency with the Coastal Zone Management Program, R. 48-39-10 et seq.

Did the staff of the Office of Ocean and Coastal Resource Management (OCRM) find the project consistent with the S.C. Coastal Zone Management Program? ☒ Yes ☐ No N/A ☐

Date: February 6, 2019

☐ Per revisions

☒ Per conditions included in Section VIII.

☐ If no, provide Sections of Coastal Zone Management Program cited.

VI. 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 Regulation 61-101, Water Quality Certification and Coastal Zone Management Program, R. 48-39-10 et seq.

Previous sections of this staff assessment have provided a description and evaluation of specific project impacts to jurisdictional waters, and provided recommendations and modifications, when necessary, to ensure that the proposed work will not contravene water quality standards or change classified uses. The following analysis will address additional measures intended to avoid adverse impacts to water quality and other resources in the project area. The following analysis may also address other concerns raised by the SCDHEC, resource agencies or other commenting parties:

SCDNR and EPA requested an explanation for the differences in project impacts cited in the 2017

Environmental Report compared with greater impacts cited in the Public Notice. The Environmental Report stated that approximately 83.18 acres of wetlands and 169 linear feet of other waters would be impacted by project construction, while the current Public Notice states that the applicant proposes to impact 120.01 acres of wetlands and 537.2 linear feet of other waters. EPA is concerned that these increases may have affected the accuracy of initial screening criteria and requested that updated finer scale impact information be assessed for all Level 2 alternative sites. The applicant responded by explaining that since the submittal of the Environmental Report, the Palmetto Railways and its consultants have continued to conduct a finer level of engineering design, hydrologic analysis, and onsite review of the rail corridor of the proposed project in order to determine with more specificity the anticipated impact of the project on jurisdictional wetlands. As a result of this continued review and design refinement, the applicant has determined that the total anticipated impacts of the project rail corridor has increased compared to the impacts listed in the Environmental Report. Attachment G of the permit application provides more details regarding revised impacts to waters of the U.S. Revised impacts were due to factors such as refined rail alignment, side slopes, road crossings, grading, ditches, culverts and hydraulic design. While engineering changes have increased the anticipated wetland impacts for the preferred rail corridor, based on the applicant's analysis, including confirmation of the similar nature of the hydrology of the remaining route corridor alternatives, it does not believe that the increase in wetland impacts would alter the findings or conclusions of the Alternative Analysis presented in the Environmental Report. Level 2 and level 3 of the Alternatives Analysis analyzed and completed impact calculations for generalized 200-foot corridors around each of the alternative alignments. The methodology used allowed for additional minor route modifications within the preferred alternative corridor without invalidating the Alternative Analysis. Because the fine level engineering analysis and design for the preferred rail corridor was conducted only after the cross route was carried forward to Level 3 of the Alternatives Analysis, a similar fine-level analysis was not conducted for the Moncks Corner and Soter North route corridors. However, based on the fact that the topography and hydrology of each of the other route corridors is similar to that of the preferred rail corridor, including the fact that each occurs within and impacts the same watersheds, Palmetto Railways projects that, if a similar fine-level engineering analysis were created for the Moncks Corner and Soter North corridor, they would show a similar proportional increase in their respective wetlands impact from the acreages listed in the Environmental Report, just as with the preferred corridor. This projection is consistent with the design standards and basic avoidance and minimization measures used by Palmetto Railways, as well as the increase in percentage acreage coverages shown by the use of the individual hydric soil ratings maintained by the National Resource Conservation Service (NRCS).

SCDNR and EPA requested that additional information be provided addressing the conceptual mitigation plan. SCDNR has no objection to the purchase of credits from the Francis Beidler Forest Mitigation Bank for impacts within the Four Hole Swamp watershed provided that credits are available. SCDNR also submitted that the Fairlawn C1 Parcel may be a suitable PRM site for impacts within the Cooper River watershed; however, the information provided in the July 27, 2017 Draft Wetlands Mitigation Plan is deficient. SCDNR and EPA recommended that a final PRM plan should address the 12 elements in the 2008 Compensatory Mitigation Rule and SCDNR suggested that the applicant follow guidance provided by the Corps of Engineers. SCDNR also requested that the final PRM plan be provided for review and EPA suggested that a site visit be conducted once a complete mitigation plan is submitted. The applicant responded by submitting the final PRMP that includes the 12 elements required. In addition, the applicant indicated that a site visit can be coordinated with EPA and any other regulatory agencies that are interested.

USFWS recommended that the applicant consider species considered for listing under the Endangered Species Act (ESA), as well as Candidate Species (referred to as At Risk Species) that may be in the project area. The applicant stated that it would take this issue under consideration.

SCDNR and NMFS recommended that construction activities not occur in the waters of the Diversion Canal at certain times to minimize migration and spawning impacts to diadromous fish species using the canal for

passage. SCDNR recommended that construction should not occur between January and April, while NMFS recommended suspending construction between February 16 and June 15. This assessment is conditioned to address both the recommended construction windows (see Section VIII.). SCDNR also recommended that coordination occur with the Atlantic States Marine Fisheries Commission (ASMFC) regarding blueback herring and American shad. NMFS also recommended that the staging area be limited to 0.5 acres of anadromous fish habitat in the Diversion Canal and that all areas be restored to pre-construction conditions following construction. This assessment is conditioned to address this concern. The applicant did provide a list of impact limitations and requirements regarding in-water work at the Diversion Canal. Also, SC mentioned that the Diversion Canal Bridge crossing design should maintain navigation. In a follow-up letter, SCDNR had no further objections to permit issuance provided that their concerns regarding diadromous fish are adequately addressed. In response, the applicant did agree to require its contractors to limit "in-water" work between January and April and February 16 and June 15 to the maximum extent practical." This assessment is conditioned to address this commitment.

SCDNR recommended that appropriate measures be taken to minimize or avoid impacts to State Wildlife Action Plan (SWAP) species of concern near the project corridor. The applicant stated that it would take this issue under consideration.

Santee Cooper expressed concern regarding potential drainage impacts on tracts of Santee Cooper property that the project will cross. Santee Cooper specifically mentioned ditches in 4 areas including the Cross Generating Station, "Greenfield Site" and "Camp Hall". The applicant responded by preparing a Preliminary Hydraulic Study that addresses existing and planned storm water conveyances for the current engineering design. The applicant is currently in the process of selecting a qualified firm to prepare final design documents for the proposed project. The applicant and the selected engineering firm will coordinate with Santee Cooper, local, State and Federal representatives to ensure that the proposed project is designed to not significantly impede the existing stormwater drainage patterns or efficiencies.

USFWS recommended that additional culverts be installed in addition to those proposed to improve hydrologic flows and wildlife connectivity underneath the proposed rail line. Specifically USFWS recommended that double box culverts be installed every 200 feet along the rail line. The applicant responded by citing the Preliminary Hydraulic Study that identified major, primary and secondary drainages and designed to convey, at a minimum, the 25-year storm event. The proposed alignment is approximately 22.6 miles and the installation of culverts every 200 feet, as requested by USFWS, along the rail corridor would equate to the installation of approximately 596 culverts. The preliminary hydraulic study identified the need for approximately 136 culverts to satisfy the local, State, and Federal and railway standards.

The use of clean fill material will avoid contamination from leaching in the areas to be filled/backfilled. Also, appropriate containment measures must be taken to prevent pollutants such as gasoline, oil, tar, and debris and other pollutants from entering the adjacent waters or wetlands during clearing operations.

The water quality impacts of the proposed project will be temporary provided the applicant 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 or remove existing and classified uses of Bulltown Ditch, the Diversion Canal (between Lake Marion and Lake Moultrie), and tributaries to Caton Creek and Black Creek and is in compliance 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 Mark Giffin, the project manager, by calling 803-898-4179 or by e-mailing giffinma@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.

VII. Staff Recommendation

Issue 401 Water Quality Certification and find consistent with the Coastal Zone Management Act with conditions.

VIII. Conditions to be Placed on the 401 Water Quality and Coastal Zone Consistency Certifications When Issued

401 Water Quality Certification conditions:

1. The applicant must implement appropriate best management practices that will minimize erosion and migration of sediments on the project site during and after construction. These practices should include the use of appropriate grading and sloping techniques, mulches, silt fences, or other appropriate devices.
2. Only clean earthen material, free of all potential sources of pollution, may be used as fill.
3. Appropriate containment measures must be taken to prevent pollutants such as gasoline, oil, tar, and debris and other pollutants from entering the adjacent waters or wetlands.
4. Where feasible, the Diversion Canal bridge must be constructed using mats, trestles, or barges (instead of barge canals or causeways), or such that access to the project site is attained from highland or from the portion of the bridge already completed ("end on end construction"). In addition, the bridge must be designed so that navigation will not be impeded.
5. Construction activities must not occur in the Diversion Canal between January and June 15, to the maximum extent practicable, to minimize migration and spawning impacts to diadromous fish species.
6. The staging area must be limited to 0.5 acres of anadromous fish habitat in the Diversion Canal and the area must be restored to pre-construction conditions following construction.
7. The applicant must compensate for unavoidable stream impacts by providing a minimum of 1,406 credits by purchasing 80 wetland mitigation credits from the Francis Beidler Forest Mitigation Bank, or other mitigation bank serving the project area, and generating the remaining required credits from the PRM Fairlawn C1 Parcel site within the Francis Marion National Forest, as proposed. Credit withdrawal documentation from an approved Mitigation Bank and restrictive covenants for the PRM site must be submitted to SCDHEC and the Corps of Engineers prior to the work beginning.

Coastal Zone Consistency Conditions:

1. In the event that any historic or cultural resources and/or archaeological materials are found during

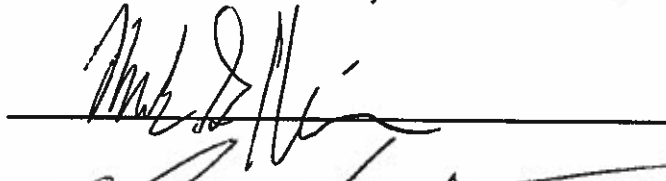
the course of work, the applicants must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology. Historic or cultural resources consist of those sites listed in the National Register of Historic Places and those sites that are eligible for the National Register. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials.

2. In-water work should be avoided between February 16 and June 15, to the maximum extent practicable, to avoid periods of anadromous fish migration and spawning.

3. Mitigation is performed as proposed under the Fairlawn C-1 Final Permittee-Responsible Mitigation Plan dated November 12, 2018.

4. Construction BMPs must be installed, inspected and maintained to hold sediment onsite and to protect any adjacent or downstream critical area, wetlands and waters through the life of the project. Upon completion of construction activities, all disturbed (includes undeveloped) areas, including those impacted for access, must be immediately stabilized.

Prepared by:



Date: 2-14-19

Reviewed &
Approved by:



Date: 2/14/19

HBP