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Friends of Gadsden Creek appeal decision on WestEdge development

CHARLESTON, S.C. — Today, Friends of Gadsden Creek filed an appeal of the December 5 Administrative Law Court decision to uphold a permit issued by the South Carolina Department of Health and Environmental Control (DHEC) to the WestEdge Foundation to fill and build over Gadsden Creek, one of the last remaining tidal creeks on the Charleston peninsula. If the decision is upheld, and WestEdge also receives a permit from the Army Corps of Engineers, the development will be allowed to proceed, removing Gadsden Creek as a resource for Gadsden Green residents and the greater Charleston community forever.

“Friends of Gadsden Creek looks forward to working with the South Carolina Environmental Law Project to appeal the December 2022 ruling,” said representatives from Friends of Gadsden Creek. “We reject WestEdge’s paternalistic claims that presume to know what the community wants and needs. Friends of Gadsden Creek continues to stand with the community in saying NO to this plan.”

Several community members also commented, including Audrey Lisbon, President of the Westside Neighborhood Association, which includes Gadsden Creek and Gadsden Green. “I’ve lived in this area all my life. Growing up, we used to fish, crab, swim and wade in Gadsden Creek,” said Lisbon. “We couldn’t get to the beaches, so we went to our creek in the neighborhood - it has a historic feeling and should be beautified. In 2018, when the [WestEdge] project was brought before the Westside Neighborhood Association, it showed that Gadsden Creek would be beautified with green space and a park, but now they want to cap the creek - where’s the water gonna go?”

Gadsden Green resident John Flowers added, “I testified in June, and also support the appeal, because I believe WestEdge will harm my community. I’ve lived here for over 15 years and walk to the creek almost every day to see the nature and animals - it’s only two blocks away! Covering up the creek for high-dollar property is what got us this flooding problem in the first place. If you want to cover this last 4 acres, we have to ask, ‘why was it covered up in the first place?’ This question isn’t asked enough.”

SCELP filed the appeal because the Administrative Law Court's ruling ignored the plain language of the critical area regulations. It also failed to apply the controlling policies of the South Carolina Coastal Zone Management Program document and the water quality regulations properly. When the Legislature passed the South Carolina Coastal Management Act, it declared that one of its goals was to "protect, and where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations." The restoration and enhancement aspects of the policy cannot be ignored.

The critical area regulations also expressly forbid "[d]redging and filling in [critical area] wetland[s]" unless the proposed "activity is water-dependent and there are no feasible alternatives[.]" There is no question the structures at issue are not water-dependent and there are feasible alternatives to prevent flooding in the area, including installing a muted tide gate or a berm. The court even acknowledged, "it is possible from an engineering perspective to restore the creek (and) protect it from the landfill."

"There have been many occasions in the history of Charleston and this state where past conduct has required correction, even if the correction is not cheap," said Ben Cunningham, staff attorney at SCELP. "Using cost as an excuse not to remediate harm one directly inflicted on a community and environment is unjust."

"We continue to hold the City of Charleston responsible for addressing the flooding and contamination that they themselves have caused," said representatives from Friends of Gadsden Creek. "We continue to urge the City to explore a viable alternative, rather than paving over the last vestige of this vital wetland."

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The South Carolina Environmental Law Project is a nonprofit public interest law firm. We use our legal expertise to protect land, water and communities across South Carolina. Learn more at www.scelp.org.

Friends of Gadsden Creek is a grassroots, community-led nonprofit opposing the destruction of Gadsden Creek, and the continued patterns of injustice inflicted upon the Gadsden Green community. Learn more at www.friendsofgadsdenecreek.com.