



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: January 22, 2019  
Comment Deadline: February 21, 2019  
Corps Action ID Number: SAW-2011-01812

The Wilmington District, Corps of Engineers (Corps) received an application from The Oleander Company seeking Department of the Army authorization to discharge fill material into 1.57 acres of wetlands, to facilitate the development of Live Oak Bank Campus. This includes the construction of office buildings, parking decks and associated infrastructure; such as; roads and stormwater facilities.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Live Oak Bank  
Attn: W. Lee Williams  
1741 Tiburon Drive  
Wilmington, NC 28403

**AGENT:** Southern Environmental Group, Inc.  
Attn: David Syster  
5315 South College Road Suite E  
Wilmington, NC 28412

## Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- ☒ Section 404 of the Clean Water Act (33 U.S.C. 1344)
- ☐ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

## Location

**Location Description:** The project area is located 0.51 miles northeast of the intersection of Independence Boulevard and Shipyard Boulevard next to the existing Live Oak Bank Offices, in Wilmington, New Hanover County, North Carolina. The address for the Live Oak Bank is 1741 Tiburon Drive, Wilmington, North Carolina 28403.

Project Area (acres): 36.98                      Nearest Town: Wilmington  
Nearest Waterway: Unnamed tributary to Hewletts Creek    River Basin: White Oak  
Latitude and Longitude: 34.20190 N, -77.90251 W

## Existing Site Conditions

The Live Oak Bank site is located at the corner of Tiburon Drive near the intersection of Shipyard Boulevard and Independence in Wilmington, New Hanover County. The project area is 33.39 acres comprised of forested areas, a stormwater pond, two existing bank buildings and parking which comprise the applicant's current campus. The applicant purchased an additional 4.20 acres to the east of the project area for a total proposed project area of 36.98 acres. There are approximately 1.57 acres of jurisdictional wetlands within the project area. These wetlands directly abut 43.16 acres of property to the north in a conservation easement held by the North Carolina Coastal Land Trust, the property is still owned by The Oleander Company. The onsite wetlands and those held in the Land Trust drain to Hewletts Creek that is listed as High Quality Waters, via an unnamed tributary. According to the USDA Soil Survey of New Hanover County, on-site soils consist mainly of Murville fine sand, Leon sand, and Seagate fine sand soil series. The Live Oak Bank office on Tiburon Drive has been open since 2013. Land use in the vicinity of the existing offices consists of low density residential neighborhoods, two schools, apartment complexes, and commercial businesses.

### Applicant's Stated Purpose

The applicant's stated purpose of the proposed project is to facilitate the development of the Live Oak Bank Campus. This includes the construction of office buildings, parking decks and associated infrastructure; such as; roads and stormwater facilities.

## Project Description

The existing Live Bank Campus required 0.238 acres of wetland fill and was authorized by the use of Nationwide Permit 39 and 18 under the same Corps Action ID (SAW-2011-01812) on October 13, 2017 with an expiration date of March 18, 2022. This was determined to have avoided and minimized impacts to jurisdictional resources and still meet the purpose and need of the development. The applicant now proposes to discharge fill material into 1.57 acres of wetlands for the expansion of the Campus including the expansion of an existing stormwater feature, additional buildings and additional parking.

## **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The applicant reduced the area required for parking by utilizing parking decks at an additional cost. The current project design was done to compact the site as much as possible according to the applicant.

Additional secondary impacts were minimized by adjusting the stormwater normal pool level to a height similar to that of the adjacent wetlands. This prevented any secondary subsurface drainage. During the design of soil and erosion control plan, measures (such as silt fence and sediment traps) were utilized to ensure no sediment would migrate from the site during construction and into the adjacent wetlands.

## **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The Oleander Company proposes to mitigate for 1.57 acre of wetland at a 2:1 ratio by purchasing 3.14 acres of riparian wetland credits from Bachelors Delight Mitigation Bank. To date the Corps has not received a reservation letter for the proposed mitigation credits. The Corps has not determined if the compensatory mitigation proposed would fully offset all proposed unavoidable impacts to the aquatic environment.

## **Essential Fish Habitat**

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project would not effect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

## **Cultural Resources**

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- ☐ Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.

- ☐ No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- ☒ The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

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.

### **Endangered Species**

Pursuant to the Endangered Species Act of 1973, the Corps reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information:

- ☐ The Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- ☒ The Corps determines that the proposed project may affect, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat.
- ☒ The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete. \*

The Corps requests concurrence on their may affect not likely to adversely affect determination for the Red Cockaded Woodpecker (*Picoides borealis*). Project area is within 0.5 miles of observed species activity. The Northern Long Eared Bat (*Myotis septentrionalis*) is also located within New Hanover County.

- ☐ The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- ☐ The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- ☐ The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.
- ☐ The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

### **Other Required Authorizations**

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

**North Carolina Division of Water Resources (NCDWR):** The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice, combined with the appropriate application fee, at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by February 21, 2019 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit  
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

**North Carolina Division of Coastal Management (NCDCM):**

- ☒ The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.
- ☐ Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

**Evaluation**

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. 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 proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal 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 (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

## **Commenting Information**

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. 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 (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing will be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, February 21, 2019. Comments should be submitted to Ms. Rachel Capito, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4487.

**\*Due to the current lapse in funding for other Federal agencies that may have an interest in commenting on the proposed action, the District Engineer may extend the comment period to allow such agencies to comment so that the he can complete his required Public Interest Review.**







# Live Oak Bank Expansion

## Proposed Impact Map

