



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: June 13, 2019

Comment Deadline: July 13, 2019

Corps Action ID Number: SAW-2017-02531

The Wilmington District, Corps of Engineers (Corps) received an application from 347 MCO, LLC, seeking Department of the Army authorization to discharge fill material into 0.47 acres of wetlands and 70 linear feet of stream for the construction of a mixed use development with commercial retail, hospitality, office, residential units, and parking garages. This project, known as Carroll at the Avenue, will also impact 3.4 acres of open water jurisdictional pond in order to convert the pond for stormwater use.

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: 347 MCO, LLC
Attn: Roy E. Carroll II
201 North Elm Street
Suite 201
Greensboro, NC 27401

AGENT: Land Management Group
Attn: Kim Williams
3805 Wrightsville Ave
Suite 15
Wilmington, NC 28403

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 off Military Cutoff Road, between Old MacCumber Station Road and East Westwood Road, adjacent to an unnamed tributary to Howes Creek, in Wilmington, New Hanover County, North Carolina. The address for this site is 349 and 565 Military Cutoff Road, Wilmington, North Carolina 28405.

Project Area (acres): 44.5

Nearest Town: Wilmington

Nearest Waterway: Howe Creek

River Basin: White Oak

Latitude and Longitude: 34.252310 N, -77.823279 W

Existing Site Conditions

The proposed Carroll at the Avenue site is located off of Military Cutoff near the intersection of Old MaCumber and Military Cutoff in Wilmington, New Hanover County. The project area is 44.5 acres which is partially undeveloped with some commercial development and a mobile home park onsite. There are three ponds onsite, two of which the Corps considers jurisdictional features with abutting wetlands, 5.2 acres of jurisdictional wetlands, and 1,600 linear feet of stream channel. The wetlands onsite flow east and north to Howe Creek, an environmentally sensitive watershed with limited high quality wetlands remaining in the area due to high development pressures within the watershed. The Howe Creek watershed is categorized by the State as an Outstanding Resource Waters and SA waters used for commercial shell fishing, and drains east into the Atlantic Intracoastal Waterway. According to the USDA Soil Survey of New Hanover County, on-site hydric soil are Leon Sand, Murville fine sand, Johnston soils. The Wakulla sand soil types is also located onsite, however it is not a hydric soil. Land use in the vicinity of this proposed development consists of residential neighborhoods, commercial businesses, and mixed use developments.

Applicant's Stated Purpose

The applicant's stated purpose of the proposed project is to construct a mixed-use development with commercial, retail, hospitality, office, and residential units that has access points from major roads and is centrally located within the northern part of New Hanover County to serve both Wilmington and Wrightsville Beach residents and visitors.

Project Description

The 44.5-acre site is located at 349 Military Cutoff Road in Wilmington and has access from Military Cutoff Road, Old MacCumber Road, and Lance Drive. The site is zoned Urban Mixed Use and is designated area of high intensity in the Create Wilmington Comprehensive Plan. The applicant previously received authorization for impacts to 0.47 acres of wetlands and 70 linear feet of stream for the same project footprint under a Nationwide Permit 29 issued March 16, 2018, with an expiration date of March 18, 2022.

After further review it was determined that the site did not have an adequate stormwater system for the proposed site. The applicant's new request dated May 29, 2019 requests the same initial impacts proposed under the Nationwide Permit (0.47 acres of wetlands and 70 linear feet of stream impacts) and an additional 3.4 acres of jurisdictional open water impacts for the conversion of an onsite pond into a stormwater feature. The pond will still function as an open water feature however the conversion to a stormwater feature removes Section 404 jurisdiction from the pond.

Avoidance and Minimization

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

Once the specific project location was determined, several site plans were evaluated by the applicant. The applicant evaluated various plans in respect to minimizing impacts to existing wetlands and Waters of the US, providing connections to Military Cutoff Road and other roads, establishing City-required conservation resource boundaries, and protecting adjacent land uses.

The applicant studied four alternatives on the preferred project site:

- 1.) Utilize the site plan from the Nationwide Permit Application: This plan assumed that underground infiltration would be able to sufficiently treat stormwater generated from this project. However, based on the City of Wilmington stormwater ordinance it was determined that infiltration rates of the site would not meet the City's stormwater requirements and was not considered feasible.
- 2.) Stormwater pond in uplands: Once it was determined that a stormwater pond would be needed, the applicant evaluated whether the pond could be located entirely in uplands. In order to accommodate the proposed development, the stormwater pond would need to be approximately three acres in size with the best location being in the southeastern corner. A three-acre pond in this location would eliminate Building #10 and its associated parking, which is critical to the economic feasibility of the overall project. Therefore, this alternative was removed from further consideration.
- 3.) Preferred Project: The applicant's preferred alternative consists of a mixed-use development with 10 proposed buildings and 3 parking garages with two outparcels. This project will include the previously authorized 0.47 acres of wetland fill and 70 linear feet of stream impacts and would convert an existing on-site jurisdictional pond into a tertiary stormwater feature. Two forebays will be constructed adjacent to the pond and with the pond would meet the City of Wilmington's stormwater ordinance. Previous pavement will also be utilized onsite to reduce runoff.

- 4.) Using Northern Pond for Stormwater: The applicant evaluated the possibility of using the pond located along the northern property line for stormwater. This pond is 0.85 acres in size and has wetland fringe and a stream that runs nearby. This pond is also partially located within the NC Division of Coastal Management's 575 foot Outstanding Resource Waters Area of Environmental Concern. This pond would need to be expanded, would further increase wetland impacts by 0.1 acre, and displace one of the parking garages proposed onsite. For environmental and economic reasons, this alternative was removed from further consideration.

Compensatory Mitigation

The applicant has attempted to avoid and minimize jurisdictional impacts as much as possible during the site design and has offered to buy wetland and stream credits from an appropriate mitigation bank to offset any unavoidable functional loss to the aquatic environment. No mitigation is proposed for the open water impacts since the pond will continue to function as open water habitat.

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 Northern Long Eared Bat (*Myotis septentrionalis*). The project area is located within New Hanover County and appropriate winter and summer roosting habitat is present within forested sections of the site.
 - ☐ 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 July 13, 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.

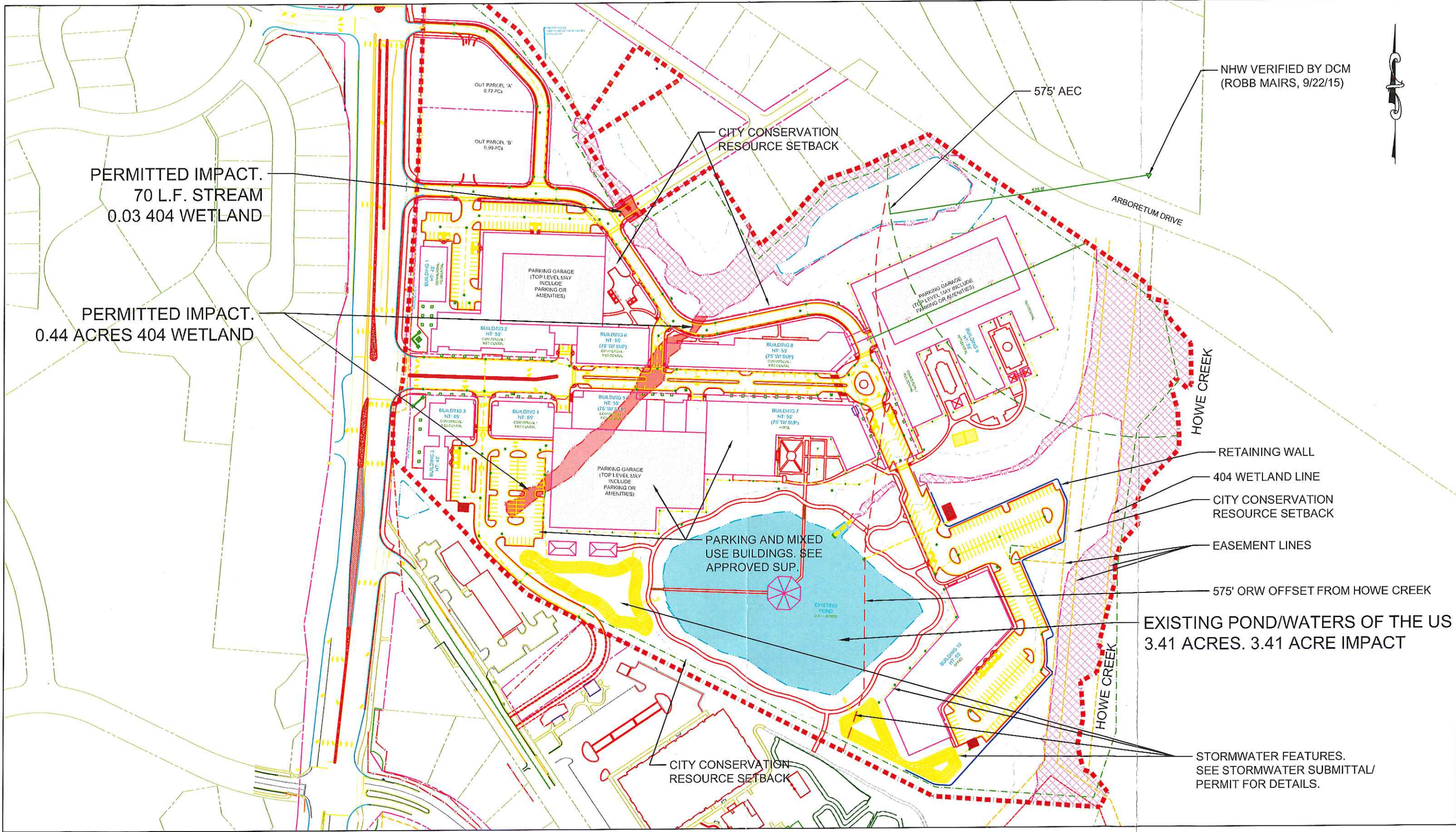
Commenting Information

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 July 13, 2019. Comments should be submitted to Ms. Rachel Capito, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4487.



Project Boundary

404 Wetland Line

Legend

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NOTES:

1. BASE CAD FILE PROVIDED BY PARAMOUNTE ENGINEERING, INC.
2. NOT A SURVEYED OR ENGINEERED DRAWING.
3. FOR ENVIRONMENTAL PERMITTING ONLY.

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LMG
LAND MANAGEMENT GROUP
a DAVEY company
3805 Wrightsville Ave, Suite 15
Wilmington, North Carolina 28402
Telephone: 910-452-0001

Project/Applicant:	Carroll at the Avenue/ 347 MCO, LLC	Date:	5/10/19	Revision Date:	NA
Title:	Plan View with Permitted and Proposed Impacts	Scale:	1"=200'	Job Number:	LMG18.400
		Drawn By:	GSF	Sheet Number:	Figure 6



Legend

Project Boundary



NOTES:

1. BASE CAD FILE PROVIDED BY PARAMOUNTE ENGINEERING, INC.
2. 2016 AERIAL FROM NCONEMAP.
3. UTILITIES NOT SHOWN.
4. NOT A SURVEYED OR ENGINEERED DRAWING.
5. FOR ENVIRONMENTAL PERMITTING ONLY.



Project/Applicant: Carroll at the Avenue/ 347 MCO, LLC	Date: 5/10/19	Revision Date: NA
	Scale: 1"=200'	Job Number: LMG18.400
	Drawn By: GSF	Sheet Number: Figure 5