



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: June 18, 2020
Comment Deadline: July 9, 2020
Corps Action ID Number: SAW-2015-02060

The Wilmington District, Corps of Engineers (Corps) received an application from the North Carolina Wildlife Resources Commission seeking Department of the Army (DA) authorization to permanently impact wetlands and waters associated with replacement of the previously existing Rhodes Pond Dam in Dunn, Cumberland County, North Carolina.

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:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

Applicant: North Carolina Wildlife Resources Commission
c/o Brad Kleinmaier
1720 Mail Services Center
Raleigh, North Carolina 27699

AGENT (if applicable): McGill and Associates, P.A.
c/o Jon Swaim
1013 State Farm Road
Boone, North Carolina 28607

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)

Location

Location Description: From Raleigh, North Carolina, travel east on I-40 for approximately 29.3 miles. Then, take exit 328A on right for I-95 South and travel approximately 11.7 miles to exit 70 toward US-301. Travel on Bud Hawkins Road for 0.6-mile, then turn left onto US-301 (Dunn Road). Travel 2 miles to the project area located on the north side of the crossing (Figures 1, 2, and 4).

Project Area (acres): 278.5
Nearest Waterway: Black River
Latitude and Longitude: 35.2258N, -78.6524W

Nearest Town: Dunn
River Basin: Cape Fear

Existing Site Conditions

Rhodes Pond and dam have been in place since approximately 1770 and provides a documented 120 acres of open surface water for recreational use with a historical surface water elevation of 131 feet. Following damage sustained during Tropical Storm Andrea in June 2013, North Carolina Dam Safety reclassified the dam from Intermediate Hazard to High Hazard. Repairs were permitted in September 2015 under a Department of the Army Nationwide Permit 3: Maintenance to protect the dam from overtopping during a 100-year storm event; however, during construction, the dam was overtopped and breached during Hurricane Matthew in October 2016. Subsequently, NC Dam Safety officials directed the applicant to design a spillway that accommodates the current design standard of ½ Probable Maximum Precipitation. For reference, the existing dam was designed to withstand 10 inches of accumulated precipitation within a 48-hour period. The average rainfall at Rhodes Pond during Hurricane Matthew was estimated to be 15 inches.

Since the 2016 failure, the 278.5-acre project area has remained mostly drained. The extent of waters affected by the impoundment and subsequent breach was delineated utilizing desktop data and field observations. Based on this information, 8,800 linear feet of the Black River and 1,971 linear feet an unnamed tributary (UT) to the Black River have reestablished their channels and natural flow patterns. Approximately 66.5 acres of shrub-scrub wetland and 26.8 acres of emergent wetlands have also reestablished since 2016. Additionally, two large open water pools totaling approximately 8.9-acres and 169.3 acres of mature, wooded wetlands lie within the project area.

Woody shoreline vegetation consists of black willow (*Salix nigra*), shortleaf pine (*Pinus echinata*), loblolly pine (*Pinus taeda*), red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*), wax myrtle (*Myrica cerifera*), river birch (*Betula nigra*) and Chinese privet (*Ligustrum sinense*). Bald cypress (*Taxodium distichum*) dominated the forested wetland areas and shallow river edges throughout the pond. Predominant herbaceous vegetation consists of a mix of sedges, rushes, woolgrass (*Scirpus cyperinus*), and native emergent species such as American white waterlily (*Nymphaea odorata*) and American eelgrass (*Vallisneria Americana*).

Applicant's Stated Purpose

The purpose of the project is to replace the existing dam with a labyrinth weir structure that meets current dam safety regulations for a 500-year storm event to reduce future breaches and help protect downstream properties. The restored dam will reflood Rhodes Pond, which is used for wildlife habitat and recreation purposes by the applicant and the public.

Project Description

Within the project construction area, as depicted in Figure A9, the project proposes to permanently impact 0.79-acre of open water, 0.09-acre of wetland, and 75 linear feet of perennial stream and temporarily impact 0.67-acre of open water, 0.40-acre of wetland, and 348 linear feet of perennial stream for the purpose of demolishing the existing dam and replacing it with a 6-cycle labyrinth weir structure designed to accommodate the 500-year flood event.

Specifically, replacement of the main dam and spillway will require permanent impacts to 0.5-acre of open water and 75 linear feet of the Black River and temporary impacts to 0.49-acre of open water, 348 linear feet of the UT Black River, and 0.38-acre of emergent wetlands (Figure A10). The permanent impact footprint includes the labyrinth weir, a concrete spillway, embankment repairs, and riprap protection. The proposed main spillway will be placed at the location of the breach and embedded into the existing embankments. A riser structure will be placed on compacted soils near the toe of the embankment, replacing the spillway and maintaining the flow connectivity between the pond and downstream channel. The east embankment was not breached except immediately adjacent to the main spillway. Additionally, the embankment sustained significant erosional damage on the downstream face at several locations. As a result, the embankment will be restored to original conditions and stabilized with riprap protection. Three four feet high by four feet wide control gates are currently located west of the main spillway. Because the condition of the gates' structure and foundation is unknown, the structure will be demolished, and only the gates will be reused as part of the proposed design, maintaining their invert elevations. Flow diversion will be achieved by installing sheet piling, large, impervious dikes, and a pump around system and constructing an inner berm to allow for access and construction activities to be completed in the dry, resulting in the temporary impacts.

The restoration of the existing western inner berm will result in approximately 0.23-acres of fill placement and stabilization in open waters in order to reestablish the berm and existing walking trail and fishing pier.

Lastly, the project proposes to permanently fill 0.06-acre of open water and temporarily impact 0.18-acre of open water and 0.2-acre of scrub-scrub wetland within the project construction area for the purpose of replacing the existing small spillway (Figure A11). Permanent impacts will occur from constructing the new earthen spillway, riser structure, and rip rap bank protection. Temporary impacts will occur due to the installation of flow diversion dikes and equipment access.

Upon project completion, the dam will impound waters to its historical elevation of 131 feet and reflood approximately 40 acres of lakebed, which includes increasing the water depth of 8.9 acres of existing open water pools, 8,800 linear feet of the Black River, 1,971 linear feet of the UT Black River, 66.5 acres of reestablished shrub-scrub wetlands, 26.8 acres of reestablished emergent wetlands, and 169.3 acres of mature forested

wetland. The reflooded area encompasses approximately 278.5 acres (Figures A12 and A13).

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: Project impacts will be limited to those required to bring the existing dam into compliance with state and federal regulations. Temporary disturbances will be kept to a minimum and returned to preconstruction grade and contours following project completion. Erosion control measures will be used during construction to minimize impacts to the stream and limit erosion, and material will be stockpiled in uplands areas as much as practicable. A floating turbidity curtain will also be used to deter silt suspension and movement of silt particles during construction. In order to maintain a dry construction area, impervious diversion dikes will be used to direct flow through gates and pump water as needed.

Compensatory Mitigation

The applicant has been required by North Carolina Dam Safety to construct the proposed structure, which requires larger impacts outside of the previously existing dam footprint. Due to the required change in footprint, the project no longer met the terms and conditions of the Nationwide Permit 3 that authorized replacing the currently serviceable structure and did not require mitigation. Any wetlands that have naturalized since the breach in 2016 support only young pioneer and weedy species in the herbaceous, sapling, and shrub canopy layers. Additionally, upon project completion, hydrology will be restored to those wetland areas where the hydrologic regime was altered after the dam failure. Hydrologic restoration is proposed as a self-mitigating measure of the project with no other form of mitigation proposed.

Essential Fish Habitat

The Corps' determination is that the proposed project would not effect Essential Fish Habitat 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:

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).

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 identified Corps permit area.

Endangered Species

Pursuant to the Endangered Species Act of 1973 (ESA), 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:

Based upon consultation between the applicant and the US Fish and Wildlife Service (Service) documented in the Service's response letter dated December 18, 2019, the Corps determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat. By copy of this public notice, 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 is the lead federal agency, and the Corps and the USFWS have entered into a SLOPES agreement dated January 30, 2017, for the Northern long-eared bat. Proper application of the procedures outlined in the SLOPES will ensure that activities regulated under Section 404 of the CWA and/or Section 10 of the RHA in North Carolina are processed in accordance with the requirements of Section 7(a)(2) of the ESA.

Section 408

There are no Corps Civil Works project(s) within or in the vicinity of the applicant's proposed project.

Any comments received will be considered by the USACE in determining whether to issue, modify, condition or deny a permission for this proposal if received before the comment period expiration date. To make its decision, the USACE will review comments received to supplement and inform its assessment of impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments will be taken into consideration in the preparation of an appropriate document pursuant to the National Environmental Policy Act (NEPA) (e.g. Environmental Assessment). Comments will also be used to determine the need for a public hearing and to determine overall public interest in the proposed action.

It should be noted that materials submitted as part of Section 408 requests become part of the public record and will be available to the general public under the provisions of the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under the FOIA or make an appointment to view the project file at the USACE Wilmington District's Office of Counsel.

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. Unless NCDWR is granted a time review extension, 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 9, 2020 (21 days from date of PN) to:

NCDWR Central Office
Attention: Mr. Paul Wojoski, 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):

Based upon all available information, the Corps determines that this application for a Department of Army permit does not involve an activity that would affect the coastal zone, which is defined by the Coastal Zone Management 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 and/or an Environmental Impact Statement pursuant to 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 9, 2020. Comments should be submitted to Emily Greer, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 or at emily.c.greer@usace.army.mil. For tracking purposes, please include the Corps Action ID Number in the subject line of all correspondence related to this project.