



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: January 19, 2017
Comment Deadline: February 17, 2017
Corps Action ID Number: SAW-2011-01243

The Wilmington District, Corps of Engineers (Corps) received an application from the North Carolina Department of Transportation (NCDOT), seeking Department of the Army (DA) authorization to permanently impact 11.47 acres of non-riparian wetlands associated with safety improvements and grade separation at North Carolina State Road 1130 (Modlin Road) and the interchange at Old NC 11/NC State Road 1213 in Hertford County, North Carolina. (NCDOT TIP No.R-5311A)

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: North Carolina Department of Transportation (NCDOT)
Attn: Mr. Phillip Harris III
NCDOT –Natural Environment Section
1548 Mail Service Center
Raleigh, North Carolina 27699

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

Water resources in the study area are part of the Chowan River Basin (United States Geological Survey [USGS] Hydrologic Unit Code (HUC) 03010203 and 03010204). There were no identified streams in the study area, and therefore, no trout waters, designated anadromous fish spawning areas or Primary Nursery Areas present in the study area. Based on the North Carolina 2006 Final 303(d) list of impaired waters, there are no impaired waters located within one mile of the study area. No High Quality Waters (HQW), Outstanding Resource Waters (ORW), or WS-I or WS-II waters occur within one mile of the study area.

Six terrestrial communities were identified in the study area: maintained/disturbed, nonriverine swamp forest (sweetgum subtype), non-riverine wet hardwood forest (oak flat subtype), brownwater bottomland hardwood forest (high subtype), pine forest, and mesic mixed hardwood forest (coastal plain subtype).

A wetland identification and preliminary assessment analysis for the study area was performed and wetlands were delineated based on the 1987 U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual. Wetland delineations were completed in January of 2014.

Applicant's Stated Purpose

The purpose of the proposed project is to improve the safety along the NC 11 corridor at the intersections of SR 1130 (Modlin Road) and Old NC 11/ SR 1213 (Old NC 11 Road) in Hertford County. Secondary benefits from the proposed project include a reduction in the number of potential vehicular conflicts inherent with at-grade intersections.

Project Description

The proposed action involves construction of a grade separation at SR 1130 (Modlin Road) and interchange at Old NC 11/ SR 1213 (Old NC 11 Road). Full control of access is proposed. The total project length is 1.12 miles.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: All jurisdictional features were delineated, field verified and surveyed within the corridor for R-5311A. Using these features, preliminary designs were adjusted to avoid and/or minimize impacts to jurisdictional areas. NCDOT employs many strategies to avoid and minimize impacts to jurisdictional areas in all of its designs. Many of these strategies have been incorporated into BMP documents that have been reviewed and approved by the resource agencies and which will be followed throughout construction. All wetland areas not affected by the project will be protected from unnecessary encroachment. Individual avoidance and minimization items are as follows:

- No staging of construction equipment or storage of construction supplies will be allowed in wetlands or near surface waters.
- NCDOT and its contractors will not excavate, fill, or perform land clearing activities within Waters of the U.S. or any areas under the jurisdiction of the USACE, except as authorized by the USACE. To ensure that all borrow and waste activities occur on high ground, except as authorized by permit, the NCDOT shall require its contractors to identify all areas to be used to borrow material, or to dispose of dredged, fill or waste material. Documentation of the location and characteristics of all borrow and disposal sites associated with the project will be available to the USACE on request.
- All of the proposed drainage has been designed to have as little environmental and surface water impacts as possible.
- Ditches were designed using BMP grassed swale criteria. Velocities at wetland features are non-erosive.
- The 11,240 feet of ditches were designed using grassed swale criteria to reduce flow velocity, promote sedimentation, infiltration and runoff attenuation.
- Sediment and erosion control devices will be utilized where appropriate.
- The use of hand clearing rather than mechanized clearing where possible.
- Considering environmental, hydraulic, and roadway perspectives, 3:1 slopes are proposed within the wetlands where most practical.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The NCDOT has avoided and minimized impacts to jurisdictional resources to the greatest extent possible as described above. The unavoidable impacts to non-riparian wetlands will be offset by compensatory mitigation (1:1 ratio) provided by the North Carolina Department of Environmental Quality (NCDEQ)-Division of Mitigation Services (DMS).

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' determination is that the proposed project will not affect 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 and NCDOT coordinated with the NC Department of Cultural Resources and it was determined that no historic resources would be affected by the proposed project, and has received written concurrence from SHPO.
- 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 has been 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 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 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, Transportation 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 17, 2107 to:

NCDWR Central Office
Attention: Ms. Amy Chapman, Transportation 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 (NCDWM):

- 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 shall 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 17, 2017. Comments should be submitted to Mr. Bill Biddlecome, Washington Regulatory Field Office, 2407 West Fifth Street , Washington, North Carolina 27889, at (910) 251-4558.