



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

15-day notice

Issue Date: October 27, 2016

Comment Deadline: November 11, 2016

Corps Action ID Number: SAW-2013-00668

The Wilmington District, Corps of Engineers (Corps) received an application for a modification to an existing Department of Army (DA) permit from the North Carolina Department of Transportation (NCDOT), seeking Department of the Army authorization to permanently discharge fill material into 1,683 linear feet of jurisdictional stream channel, 2.84 acres of adjacent wetlands, 0.28 acre of jurisdictional open waters and temporarily discharge fill material into 271 linear feet of jurisdictional stream channel. This permit modification is associated with Transportation Improvement Project (TIP) R-2814C, the third phase (Phase C) of the construction of improvements to US 401 between Raleigh and Louisburg. This third phase involves widening of 6.6 miles of US 401 from NC 96 (Zebulon Road) to SR 1103 (Flat Rock Church Road/Clifton Pond Road), in Wake and Franklin Counties, North Carolina.

Specific plans showing impact location information are summarized below and shown on the Wilmington District Web Site at

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

If you wish to review these plans in person, or to obtain a copy of the plans by mail, please contact Eric Alsmeyer with the U.S. Army Corps of Engineers, Raleigh Regulatory Field Office at (919) 554-4884, extension 23.

Applicant: North Carolina Department of Transportation
Division of Highways
Mr. Philip S. Harris III, P.E., C.P.M.
Natural Environment Section Head
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

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

Directions to Site: The proposed project is located along the existing US 401 from NC 96 (Zebulon Road) to SR 1103 (Flat Rock Church Road/Clifton Pond Road), in Wake and Franklin Counties, North Carolina.

Project Length (miles): Approximately 6.6
Nearest Towns: Between Rolesville and Louisburg.
Nearest Waterways: Little River, Cliftons Pond, and Crooked Creek.
River Basins: 03020201, Neuse; and 03020101, Tar-Pamlico.
Latitude and Longitude: 35.9965° N, -78.368° W

Existing Site Conditions

This project lies within the Northern Outer Piedmont Ecoregion in the Neuse and Tar-Pamlico River Basins (Hydrologic Unit Codes 03020201 and 03020101). The setting of the general area to be impacted varies from undeveloped wooded land to residential areas and agricultural land. The wooded land varies from mature to medium-growth forest to recently logged areas. The delineated wetland community types located within the corridor include headwater and floodplain wetlands.

Stream channels within the project study area are classified by the NC DWR as Class WS-II; HQW, within the Neuse Basin, and Class C waters in the Tar-Pamlico Basin. One stream, Crooked Creek, is listed as an impaired water due to low oxygen. Jurisdictional features within the R-2814C project corridor that will be impacted include unnamed tributaries to the Little River, Cliftons Pond, Crooked Creek, and their unnamed tributaries, two ponds, and fifteen riparian wetlands.

Applicant's Stated Purpose

The applicant's stated purpose for the entire TIP R-2814 project (Phases A, B, C, & D) is to alleviate existing and future capacity deficiencies and improve safety along these sections of US 401.

Project Description

The Corps issued the original Department of the Army permit on July 14, 2009 (AID SAW-2008-01316), for impacts associated with R-2814, Sections A, B, C, and D, an 18.5 mile long segment of improvements to US 401, including the Rolesville Bypass (Section B), from SR 2044 (Ligon Mill Road) southeast of Rolesville, in Wake County, to SR 1700 (Fox Park Road) southeast of Louisburg, in Franklin County, North Carolina.

Impacts for R-2814 authorized by the permit included the placement of fill material impacting 5,036 linear feet of streams, 10.08 acres of ponds, and 7.68 acres of wetlands (including isolated wetlands).

Construction was completed on Phases A and B in 2015. A Special Condition requires the applicant to provide final design plans and specific mitigation information when they submit their request to modify the existing permit. This permit cannot be modified until the District Commander has made a determination that minimization of impacts has been achieved to the maximum extent practicable.

The NCDOT has completed their final design plans for R-2814C, requiring an increase in impact amounts. Specifically, they are requesting the following:

- An additional 1,005 linear feet of permanent stream impacts.
- An additional 271 linear feet of temporary stream impacts.
- An additional 0.44 acre of wetland impacts.
- An additional 0.28 acre of pond impacts.

The additional impacts are mainly due to the addition of two stream impacts that were not included in the preliminary design impact, underestimation of slope fill impacts, and not accounting for stream impacts due to bank stabilization.

Therefore, the current permit modification request for Section C includes permanent impacts to 1,683 linear feet of stream, 2.39 acres of wetlands, and 0.28 acre of ponds, and temporary impacts to 271 linear feet of stream, and 0.24 acre of wetlands. Permanent impacts proposed are due to roadway fill, culvert installation, and rip rap bank stabilization. Temporary impacts proposed are for utility relocation and stream dewatering.

Given that the current proposed impacts to waters of the U.S. include an increase in stream and wetland impacts that alone would exceed Nationwide Permit thresholds, the current modification request for Section C is being placed on Public Notice.

Avoidance and Minimization

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

- Utilization NCDOT's Best Management Practices (BMPs) for the protection of surface waters;
- Use of Design Standards in Sensitive Watersheds throughout the project;
- Runoff from impervious surfaces has been diverted away from surface waters or has been treated using grass swales prior to entering jurisdictional waters.
- Grass swales would be used at several locations along the length of the project.
- Minimization of wetland and stream impacts through the proposed construction of 2:1 slopes in most wetland areas;
- Rip rap stabilization on banks of jurisdictional streams would be implemented to reduce erosion;

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment for the modified impacts for R-2814C:

Providing payment to the North Carolina Division of Mitigation Services (NCDMS) for the impacts to R-2814C, including 1,010 Warm Stream Mitigation Units and 2.06 Riparian Wetland Mitigation Units within the Neuse River Basin (Cataloging Unit 03020201), and 1,707 Warm Stream Mitigation Units and 0.33 Wetland Mitigation Units within the Tar/Pamlico River Basin (Cataloging Unit 03020101). Mitigation is proposed at a 2:1 ratio for permanent stream losses of 1,044 linear feet, and permanent wetland losses of 1.78 acres, and at a 1:1 ratio for stream impacts from bank stabilization of 629 linear feet, and for wetland impacts from mechanized clearing of 0.61 acre.

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. The North Carolina State Historic Preservation Office (SHPO) has concurred, by letter dated August 6, 2008, that no additional archaeological investigation is necessary, and that the project will not affect portions of archaeological sites within the project's Area of Potential Effect that contain any important information. The Corps has determined that the following registered properties, is located within the project area, and will be affected by the proposed work: Jeffreys-Ellington Farm, Rogers-Whitaker-Haywood House, and Cascine Plantation. NCDOT will not be acquiring any right-of-way or easements from this historic property, and has committed to using landscaping measures along the property's right-of-way, and to providing reasonable access to the property owner. The North Carolina State Historic Preservation Office has determined that the proposed highway improvements will have no adverse effect to these properties, by concurrence forms dated June 26, 2000 and April 13, 2006. A special condition requiring NCDOT to comply with its commitments regarding these historic properties was included in the original 404 permit.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO, 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 may affect the federally listed endangered *Alasmidonta heterodon* (Dwarf wedgemussel), *Elliptio steinstansana* (Tar River spiny mussel), and Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). The U.S. Fish and Wildlife Service's (USFWS's) Programmatic Biological Opinion (BO) titled "Northern Long-eared Bat (NLEB) Programmatic Biological Opinion for North Carolina Department of Transportation (NCDOT) Activities in Eastern North Carolina (Divisions 1-8)," dated March 25, 2015, and adopted on May 4, 2015, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that are specified in the BO. The Corps initiates consultation under Section 7 of the ESA for the two mussel species, and will not make a permit decision until the consultation process is complete. The Corps is not aware of the presence of other 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 November 11, 2016 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 (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, November 11, 2016. Comments should be submitted to Eric Alsmeyer, Raleigh Regulatory Field Office
3331 Heritage Trade Drive, Suite 105 ,Wake Forest, North Carolina 27587, at (919) 554-4884 extension 23.