



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: May 15, 2019
Comment Deadline: May 30, 2019
Corps Action ID Number: SAW-2008-02698

The Wilmington District, Corps of Engineers (Corps) received an application from Bailey & Fuller Properties, LLC seeking to modify the Department of the Army authorization issued on January 30, 2017 for the construction of the Bailey Center commercial development located at 810 West Corbett Avenue (Hwy 24), Swansboro, Onslow County, NC. The modification request is to discharge fill material into 0.23 acres of wetlands to facilitate expansion of the Bailey Center, which includes the construction of a multipurpose building with six units, a mini storage facility, associated parking, roads and a reconfigured stormwater facility.

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: Bailey & Fuller Properties, LLC
Attn: Mr. Chris Bailey
405D Western Blvd.
Jacksonville, NC 28546
Wilmington, NC 28405

AGENT: Southern Environmental Group, Inc.
Attn: Dana Lutheran
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 at 810 West Corbett Avenue (Hwy 24), Swansboro, Onslow County, NC. The project area is located on the north side of Highway 24 directly across the street from the McDonalds and is the undeveloped tract to the west of the current Bailey Center Development.

Project Area (acres): 3
Nearest Waterway: Cartwheel Branch
Latitude and Longitude: 34.698035 N, -77.139209 W

Nearest Town: Swansboro
River Basin: White Oak

Existing Site Conditions

The existing Bailey Center commercial development consists of the parcel located at 810 West Corbett Avenue and encompasses the tenants of Dollar Tree, Verizon Wireless and a commercial building subdivided into 4 retail units. Currently two of those leases have been purchased and restaurants will be added in the near future within this building.

The proposed new addition is within three adjacent parcels to the west and north that increase the size of the development to 3 acres. These parcels are currently undeveloped and vegetated with woody and herbaceous species. There are 0.98 acres of wetlands within the new project area which are described as a hardwood forest, with *Nyssa sylvatica* var. *biflora* (black gum), *Acer rubrum* (red maple), *Ulmus americana* (swamp elm), and *Smilax laurifolia* (greenbriar) being the predominant species. The site is within the White Oak River drainage basin and the onsite wetland flows to an unnamed tributary to Halls Creek, which empties into Queens Creek which empties into the Intracoastal Waterway. Land use in the vicinity of the commercial development is mostly commercial businesses with nearby residential developments.

Applicant's Stated Purpose

The applicant's stated purpose of the proposed project is to construct a mini-storage building and multipurpose building with associated parking and infrastructure on property to expand the existing commercial development. The proposed retail stores and storage facility is expected to service residents and visitors of Hubert, Cedar Point, Cape Carteret and Stella.

Project Description

The original Corps Individual Permit was issued January 30, 2017 which allowed for the fill of 1.01 acres of wetlands and 120 linear feet of jurisdictional open waters for the construction of a commercial development. The applicant asked for a modification in November 2017 which removed one parcel from the development and reconfigured the

buildings onsite and allowed for the fill of 0.69 acres of wetlands and 265 linear feet of open waters for the construction of the Dollar Tree, Verizon building and the additional commercial building authorized January 23, 2018 with an expiration date of December 31, 2021. To date 0.69 acres of wetlands and 265 linear feet of jurisdictional ditches have been impacted for the existing development.

With the modification request, the applicant proposes to discharge fill material into an additional 0.23 acres of wetlands for the expansion of the Bailey Center commercial development. This expansion includes the construction of a 16,100 square foot mini-storage building located behind the existing commercial buildings, which is located wholly in uplands. A 7,200 square foot multipurpose building with associated parking would expand to the west of the existing development and encompass all of the wetland impacts. Plans also include the relocation of the existing stormwater pond feature in order to accommodate the new additions.

Avoidance and Minimization

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

The Permittee incorporated the following avoidance and minimization efforts into the current project design:

1. Limiting the storage unit building to 16,100 SF avoided impacting +/- 11,100 SF of wetlands, on Tract 3.
2. Repurposing the existing stormwater pond into a forebay avoided impacting the remaining, +/- 4,100 SF of wetlands, on Tract 4.
3. Positioning the proposed multi-purpose building as close to the existing multi-purpose building avoided impacting +/- 1,800 SF of wetlands
4. Limiting the development to only 10' into Tract 2, rather than proposing additional parking on that site, which could be used, impacts to wetlands were minimized significantly.

By taking these actions, the Permittee has kept the proposed impacts to wetlands below 1.01 acre, which was previously authorized, under the original permits.

Other minimization techniques disclosed by the applicant included retaining walls, underground stormwater systems, bridges or bottomless culverts, pile supported structures and other engineering techniques which reduce the square footage of the project, namely in the location of on-site wetlands. Many of these engineering techniques were given the litmus test by the applicant by merely reviewing the Local or State rules or by engineering design constraints. In these cases, no design drawing were produced, as

a regulatory rule will not allow it or the proposed idea would exceed obvious engineering constraints.

Innovative stormwater design was considered as means to minimize wetland impacts within the project limits. The only technique, which would reduce the overall footprint of the stormwater system and possibly result in reduced wetland impacts, is an underground stormwater system. Based on the location of the project and its proximity to SA waters, this technique is not permissible with the State of North Carolina stormwater rules. For this reason no design drawings were produced or contained within the permit application.

In total, the applicant will impact 0.23 acre of wetlands. Best management practices have been incorporated into the site plan and will be utilized during the construction process. This should ensure unauthorized impacts to wetlands do not take place during construction.

Compensatory Mitigation

The applicant offered to compensate for the proposed fill of 0.23 acre of non-riparian wetland by making payment to the Hofmann Forest Mitigation Bank (HFWMB) at a 2:1 mitigation-to-impact ratio, which equals to 0.5 acre of non-riparian wetland restoration credit. 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 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 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 May 30, 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 (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 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, May 30, 2018. Comments should be submitted to Ms. Rachel Capito, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4487.