



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: January 8, 2019
Comment Deadline: January 23, 2019
Corps Action ID number: SAW-2008-03183

The Wilmington District, Corps of Engineers (Corps) has received an application from the North Carolina Department of Transportation (NCDOT) seeking Department of the Army authorization to permanently impact 9,800 linear feet of jurisdictional stream channel, an additional 1,553 linear feet of temporary stream channel impact, permanently impact 1.96 acres of jurisdictional wetlands, and 4.36 acres of open water impact (ponds), associated with the proposed construction of the Winston-Salem Northern Beltway Eastern Section from US 158 to I-40 Bus/US 421 (Section B for a total of 3.4 miles), east of Winston-Salem, Forsyth County, North Carolina. The NCDOT has identified this project as TIP U-2579B.

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/PublicNotices.aspx>

Applicant: Mr. Phillip S. Harris III, P.E., C.P.M.
Natural Environment Section Head
North Carolina Department of Transportation Division of Highways
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 site is a new alignment linear transportation corridor from US 158 running southeast to an new interchange with I-40 Bus/US421 that includes widening up-grades at the existing I-40 Bus/US 421 alignment associated with the proposed new interchange, located east of Winston-Salem, Forsyth County, North Carolina.

Project Area (acres): 200 Nearest Town: Winston-Salem
Nearest Waterway: Kerners Mill Creek & Lowery Creek River Basin: Yadkin
USGS HUC: 03040101

Latitude and Longitude: 36.1178311N, -80.1380434 W

Existing Site Conditions

Existing land uses in the project corridor are primarily rural-residential, interspersed with scattered commercial and industrial development along the major traffic arteries with a concentration of commercial and industrial development at the I-40 Bus / US 421 interchange.

This project lies within the Piedmont Physiographic Province in the Yadkin River Basin (Hydrologic Unit Code 03040101). Jurisdictional features within the U-2579B project study area that will be impacted include 7 unnamed tributaries (UT) to Lowery Mill Creek (NCDWR Classification WS-III; NCDWR Index No. 12-94-12-3-[0.5]), Martin Mill Creek and 4 UTs to Martin Mill Creek (NCDWQ Classification WS-III; NCDWQ Index No. 12-94-12-3-1), Kerners Mill Creek and 1 UT to Kerners Mill Creek (NCDWR Classification WS-III; Index No. 12-94-12-2-[0.3]), Smith Creek and 11 UTs to Smith Creek (NCDWQ Classification WS-III; NCDWQ Index No. 12-94-12-2-1), and Fishers Branch and 2 UTs to Fishers Branch (NCDWR Classification WS-III; NCDWR Index No. 12-94-12-2-2-[1]), 5 ponds, and 17 riparian wetlands.

There are no designated Outstanding Resource Waters (ORW), High Quality Waters (HQW), Water Supply I (WS-I), or Water Supply II (WS-11) waters within 1.0 mile of the project area. No waters within the project area and within a mile of the project area are listed on the 2012 303(d) Final List of Impaired Waters of North Carolina

Applicant's Stated Purpose

The purpose of this project is to increase the traffic carrying capacity, reduce accident rates, and to relieve traffic congestion in the area surrounding US 158 and I-40 Bus/US 421 including the poor north and south connectivity within and through eastern Forsyth County.

Project Description

The Corps issued the original DA permit on September June 17, 2014 for impacts associated with U-2579B, a 4.06 mile, six-lane divided facility, on new location, construction extending US 158 running southeast to a new interchange with I-40 Bus / US 421 that includes widening up-grades at the existing I-40 Bus / US 421 alignment associated with the proposed new interchange, located east of Winston-Salem, Forsyth County, North Carolina.

Impacts for U-2579B authorized by the permit include the permanent placement of permanent fill material into 9,800 linear feet of jurisdictional stream channel, 1.96 acres of jurisdictional wetlands, 4.36 acres of open waters (ponds) and the temporary placement of fill material into 1,553 linear feet of jurisdictional stream channel.

Construction on U-2579B began shortly after permit issuance and will continue for the next several months. Special Condition 1 requires the applicant to perform all work in strict compliance with the approved plans and that any modification must be approved by the US Army Corps of Engineers (USACE) prior to implementation. Special Condition 4 requires that the applicant notify the USACE of any deviation in the construction design plans prior to any active construction in jurisdictional waters or wetlands.

The NCDOT has revised their plans for U-2579B requiring an increase in impact amounts. Specifically, they are requesting the following:

- An additional 51 feet of permanent stream impacts for culvert installation and 32 linear feet of temporary stream impacts for dewatering at permit site 23.
- An additional 598 linear feet of permanent stream impacts for culvert extension and 127 linear feet of temporary stream impacts for dewatering at permit site 28, due to stream migration to the toe of existing roadway fill leading to instability and safety concerns for the future long term stability of the proposed onramp.

Given that current proposed modified impacts to waters of the U.S. at sites 23 and 28 include an increase in stream impacts that alone would exceed Nationwide Permit thresholds, the current proposal to construct U-2579B is being placed on Public Notice.

Avoidance and Minimization

Avoidance and minimization has been employed in the project area to the maximum extent practicable. The following measures were implemented each section of the project:

U-2579B

•NCDOT's Best Management Practices (BMPs) for the Protection of Surface Waters will be enforced;

- Grass swales will be used throughout the project to treat stormwater;
- All storm drainage will be diffused and designed for non-erosive velocities before entering wetland areas to the maximum extent practicable;
- Rip rap stabilization on banks of jurisdictional streams will be implemented to prevent erosion;
- Pre-formed scour holes will be constructed at 10 locations, riprap apron/pads at 12 locations, and riprap energy dissipater basins at 3 locations;
- Reduction of permanent stream impacts by bridging Martin Mill Creek and Smith Creek (2 locations).
- NCDOT's Best Management Practices (BMPs) for the Protection of Surface Waters will be enforced;

Compensatory Mitigation

For the previously authorized DA permit, the applicant provided compensatory mitigation by providing payment to the North Carolina Division of Mitigation Services (NCDMS), for 16,413 Warm Water Stream Mitigation Units and 3.92 Riparian Wetland Mitigation Units within the Yadkin River Basin (Cataloging Unit 03040101). Stream mitigation was provided at a 2:1 mitigation to impact ratio for permanent stream losses of 7,396 linear feet of stream channel and at a 1:1 mitigation to impact ratio for permanent stream losses of 1,675 linear feet of stream channel. Wetland mitigation was provided for permanent riparian wetland losses at a 2:1 ratio for 1.96 acres.

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment for modifications to U-2579B:

Providing payment to NCDMS for the additional impacts to U-2579B at sites 23 and 28 including 1,298 Warm Stream Mitigation Units within the Yadkin River Basin (Cataloging Unit 03040101). Stream mitigation is proposed at a 2:1 ratio for permanent stream losses of 649 linear feet.

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 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 January 23, 2019 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):

- 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 consolidate 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, January 23, 2019. Comments should be submitted to James Lastinger, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 554-4884 extension 32.