



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: October 23, 2019
Comment Deadline: November 21, 2019
Corps Action ID Number: SAW-2018-00053

The Wilmington District, Corps of Engineers (Corps) received an application from Gaston County Department of Public Works seeking Department of the Army authorization to impact 1,881.5 linear feet of jurisdictional stream channel and 0.40 acre of jurisdictional impoundments associated with the expansion of Gaston County Landfill in Gaston 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 <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

Applicant: Gaston County Department of Public Works
Attn: Ray Maxwell
PO Box 1578
Gastonia, North Carolina 28053

AGENT (if applicable): HDR
Attn: Kelly Thames
404 S. Church Street, Suite 900
Charlotte, North Carolina 28202

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)

Avoidance and Minimization

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

According to the applicant, the applicant's preferred alternative would avoid impacts to 11,052 linear feet of stream channel, 5.27 acres of wetlands, and 1.25 acres of ponds. Approximately 80% of the avoided streams (8,992.5 lf), 87% of wetlands (4.6 ac.), and 17.5% of ponds (0.22 ac) are located within, and are protected by, the buffer and setback regulatory controls that limit the locality of landfill disposal units within a landfill boundary. Discussed in the criteria for evaluating alternatives, local zoning or land use ordinances, state, or federal rules and/or laws set forth these buffers and setbacks.

NC General Statute § 130A-295.6¹ prohibits waste disposal units within FEMA floodplains. North Carolina Administrative Code 15A NCAC 13B .1600² requires a minimum 300-foot buffer between a disposal unit and all property lines and roads, and a minimum 500-foot buffer between a disposal unit and all residences and drinking wells. These regulations are more restrictive or equal to those listed for landfills in Gaston County's Unified Development Ordinance³. **Error! Reference source not found.** summarizes the regulatory buffers and setbacks required in determining placement of a disposal unit within a landfill. The 100-foot buffer around the existing on-site cemetery was a voluntary setback put in place by the landfill during original development to preserve the feature.

Table 1. Regulatory constraints

Constraint	Width (ft)
Property Boundary Setback	300 ft
Permitted Landfill Boundary Setback	300 ft
Residential Structures Buffer	500 ft
Road Buffer	300 ft
Cemetery Buffer	100 ft
FEMA Features	Avoid

The applicant has considered alternatives including a no-build option, constructing a new landfill elsewhere, and a new on-site cell location in order to avoid impacts to jurisdictional stream channels located within Unit III as described in the Environmental Assessment. Construction equipment and heavy machinery that would be utilized to build Unit III already have a dedicated space located in uplands for their storage and maintenance. Additional minimization measures include sediment and erosion controls that would be used to protect downstream waters. The Gaston County Landfill has been, and is currently, covered under the National Pollutant

¹ https://www.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_130a.html

² North Carolina Administrative Code. <http://reports.oah.state.nc.us/ncac/title%2015a%20environmental%20quality/chapter%2013%20-%20solid%20waste%20management/subchapter%20b/subchapter%20b%20rules.pdf>

³ Gaston County Board of Commission. April 2008. Gaston County Unified Development Ordinance. https://library.municode.com/nc/gaston_county/codes/unified_development_ordinance

Discharge Elimination System (NPDES) General Permit Number NCG120000 for Landfills (Certificate of Coverage No. NCG120012 effective 11/1/2018, expires 10/31/2021) as issued by the North Carolina Department of Environmental Quality (NCDEQ) Division of Energy, Mineral, and Land Resources (NCDEMLR). This coverage includes a Stormwater Pollution Prevention Plan (SWPP) and periodic water quality monitoring to monitor site discharge and runoff as required by the general permit. A Section 401 Individual Water Quality Permit is being submitted concurrently with this IP application.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

There are no active private mitigation banks within Hydrologic Unit Code (HUC) 03050102; therefore, the applicant proposes compensatory mitigation for all permanent impacts through the purchase of stream and wetland mitigation credits from the North Carolina Division of Mitigation Services (DMS). The applicant provided supporting documentation from DMS in a letter dated August 19, 2019, indicating that they are willing to accept compensatory mitigation payment for 1,881.5 linear feet of stream impacts and 0.40 acre of non-riparian wetland (for pond impacts) within the South Fork Catawba Sub-Basin within the Catawba River Basin (03050102). Proposed compensatory mitigation ratios are shown in Table 2.

Table 2. Proposed mitigation ratios.

Impact #	Feature	Ratio	Amount of Impact	Credits Proposed
Impact 1	Seasonal RPW Stream 1	1.5:1	848 lf	1,272
Impact 2	Perennial RPW Stream 1	1.5:1	280 lf	420
Impact 3	Seasonal RPW Stream 2	1.5:1	17 lf	25.5
Impact 4	Pond 1	0.5:1	0.40 ac.	0.25
Unauthorized Impacts	Perennial RPW Stream 1	2:1	736.5	1,473
Stream Credits:			1,881.5 lf	3,190.5
Wetland Credits:			0.4 ac.	0.25

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 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 November 21, 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 NCDWM, and the NCDWM 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 NCDWM.
- 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, November 21, 2019. Comments should be submitted to David L. Shaeffer, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801, at (704) 510-1437.