



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: January 23, 2019
Comment Deadline: February 24, 2019
Corps Action ID Number: SAW-2018-00987

The Wilmington District, Corps of Engineers (Corps or USACE) received an application from Dr. Theodore Morris of Promenade on the Lake LLC (Applicant) seeking Department of the Army (DA) authorization to carry out bank stabilization, create a beach recreation area, dredge open water, and install pilings for expansion of an existing marina located on Lake Norman at 144 Big Dukes Lane Mooresville, NC 28117 in Iredell County. There are no streams or wetlands located on the subject property. There is 0.114 acre of open water (small cove open to Lake Norman) located on the subject property. The “full pond” elevation of Lake Norman as determined by Duke Energy is at an elevation of 760 feet. When Lake Norman is at the full pond elevation the parcel has approximately 2960 linear feet of shoreline along Lake Norman. Duke Energy’s seasonal target elevation ranges from 755 to 758 feet to provide additional and emergency storage during periods of high rainfall.

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: Dr. Theodore Morris
Promenade on the Lake, LLC
7215 Lebannon Road, Suite G
Mint Hill, NC 28227

AGENT (if applicable): Jennifer L Robertson
Atlas Environmental, Inc.
712 English Tudor Lane
Charlotte, NC 28211

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 is located in Iredell County at 144 Big Dukes Lane Mooresville, NC 28117 off North Carolina Highway 150. The property is located 4.25 driving miles west of Interstate 77 in Mooresville.

Project Area (acres):	16.567
Nearest Town:	Mooresville
Nearest Waterway:	Catawba River (Lake Norman): Below 760 WS-IV, B; CA
River Basin:	Upper Catawba (03050101)
Latitude and Longitude:	35.60365, -80.93196

Existing Site Conditions

The project location was historically owned by Duke Energy once planning for the construction of Lake Norman began. Promenade on the Lake LLC obtained the parcel in December 2004 from Jack and Melanie Williams who had obtained the parcel from Duke Energy. Recently the property has been used as a commercial marina with 52 boat slips on three separate docks. Docks A and B have 21 slips each and Dock C has 10 slips. A golf cart retail shop "Race City Golf Carts" is located on site at 1479 River Highway Mooresville, NC 28117. The current shoreline classification from the Catawba-Wateree FERC SMP is "Commercial Marina". This classification extends from Queens Landing and includes the entire subject parcel. The approximate length of shoreline around the peninsula is 2960 linear feet. Estimations based on historical aerial imagery indicate severe erosion along a 408-foot section of shoreline on the eastern side of the peninsula.

From approximately 1998 to 2018 the shore has eroded 30-35 feet inland progressing approximately 1.75 feet per year. This erosion has caused the loss of approximately 0.16 acres of land and produced 518 cubic yards of sediment that has been washed into Lake Norman. This active erosion is contributing to the high sediment load the lake already receives, causing water temperature to increase, dissolved oxygen concentrations to decrease, and fish biodiversity to decrease. The Shoreline Management Plan (SMP) states that shoreline stabilization is encouraged to control soil erosion, particularly in high erosion areas. Typically, high erosion areas associated with lakes are land areas that are subjected to direct wave action from the main channel, areas of constriction, and areas exposed to accelerated run-off from development.

Most of the peninsula is forested with a cleared area of approximately 3.5 acres in the vicinity of Race City Golf Carts and along River Highway 150. The parcel does not contain any jurisdictional streams or wetlands. There is 0.114 acre of open water (small cove open to Lake Norman) present on site directly abutting the peninsula.

Atlas Environmental Inc performed a stream and wetland delineation on July 26, 2018, to identify waters subject to regulation by the United States Army Corps of Engineers (Corps) and/or the North Carolina Division of Water Resources (NC DWR). There are no streams or wetlands present on the subject property. Open water is present on site and directly abutting the peninsula in the amount of 0.114 acre.

Summary of Jurisdictional Waters

Aquatic Resource	Amount
Shore Line	2,960 Linear Feet
Stream	0 Linear Feet
Wetland	0 Acre
Open Water- small cove open to Lake Norman	0.114 Acres

The forested areas of the project boundary contain a mix of coniferous and deciduous trees that are in a successional stage of young forest with moderate density of shrubs as understory. The forest community is composed largely of Loblolly Pine (*Pinus taeda*) and Red Maple (*Acer rubrum*) with minor trees of northern red oak (*Quercus rubra*), American beech (*Fagus grandifolia*), and white oak (*Quercus alba*).

Saplings/shrub species are American beech (*Fagus grandifolia*), red maple (*Acer rubrum*), and sourwood (*Oxydendrum arboreum*).

Herbaceous species include poison ivy (*Toxicodendron radicans*), Christmas fern (*Polystichum acrostichoides*), and Virginia creeper (*Parthenocissus quinquefolia*).

Plant species within the maintained areas consist of ragweed (*Ambrosia artemisiifolia*), goldenrod (*Solidago canadensis*), pokeweed (*Phytolacca americana*), broadleaf plantain (*Plantago major*), tall fescue (*Festuca arundinacea*), and white clover (*Trifolium repens*).

Federal Threatened and Endangered Species Review

A record search of the US FWS website was conducted to determine what species are known to occur within Iredell County. The IPaC (Information, Planning, and Conservation System) which is a mapping tool was also used to generate a table of threatened, endangered, or candidate species, and/or designated critical habitat. This research returned two species that are known to occur in the Lake Norman North Quadrangle, Iredell County, and/or the vicinity of the project.

A field evaluation for these species indicated either a lack of habitat or lack of species presence. It is not anticipated that the construction will negatively affect any federally listed threatened or endangered species.

Correspondence with the Fish and Wildlife Service was initiated on January 5, 2018, and a comment letter was received on February 13, 2018, stating that ...“we believe the proposed activity will not have any adverse effect on listed species.” Recommendations were made to install and maintain stringent erosion control measures, maintain native

vegetation, outdoor fixtures be fully shielded above the horizontal plane to prevent light pollution, and that all activities follow Duke Energy's SMP.

Common Name	Scientific Name	Federal Status
Northern Long-Eared Bat	<i>Myotis septentrionalis</i>	T
Dwarf-Flowered Heartleaf	<i>Hexastylis naniflora</i>	T

E – Endangered.

T – Threatened

North Carolina Historic Preservation Review

Correspondence with NC HPO was initiated on January 3, 2018. A No Comment letter was issued on February 13, 2018 stating that NC HPO is "...aware of no historic resources which would be affected by the project."

Applicant's Stated Purpose

To undertake infrastructure improvements and expansion activities at the existing marina facility including bank stabilization, dredging, user recreational area, and construction / reconfiguration of new and current slips in order to alleviate ongoing shoreline erosion, provide protection from future shoreline erosion, enhance user access, increase the number of slips, and create a recreational area for current and future patrons.

Project Description

The project involves expansion of an existing marina. The proposed boat slips will be leased at quarterly, semi-annual, and annual intervals. Some of the slips may be used for day use in the future. The positioning of the slips and docks have been drawn by an architect and will not extend greater than 1/3rd the width of the open water areas on either side of the peninsula. All existing docks and/or slips will be re-built or reconfigured, if necessary, according to the most recent guidelines outlined in the Duke Energy SMP.

The area surrounding the peninsula is very shallow due to the erosional effect of waves along the shoreline. The area surrounding the peninsula will be dredged, pending Duke Energy approval, to provide better boat access to the constructed slips. The proposed dredging depth will be to 6 feet which will remove approximately 39,345 cubic yards of erosional fill from the lake. The removal of this erosional material will benefit aquatic life and allow for boat access to the constructed slips.

Property improvements to enhance recreational activities for current and future patrons include the construction of a beach area. The proposed beach will be constructed along a 460-foot section of the shoreline and extend approximately 20 feet into Lake Norman. Shoreline stabilization is proposed for 2,500 linear feet. Of which 200 linear feet will be enhanced rip rap at the point of the peninsula to handle the increased wave action. Rip rap will be used for all the shoreline stabilization which will provide aquatic habitat. The banks will be re-shaped to a stable angle prior to placement of the rip-rap or enhanced rip-rap. The shoreline of the peninsula is currently highly unstable and actively eroding with vertical banks. The shoreline will be stabilized, pending Duke Energy approval. All

bank stabilization methods will be carried out according to the most recent guidance in the SMP.

Public water is available along River Highway, NC-150, and would require a hook up to the service. The project also contains a private water supply well that would be sufficient to serve project needs if necessary. Public sewer access is not available at the site. A private company has been contacted and can manage the sewer requirements of the project across NC-150 at an existing facility. Currently a fire hydrant is not located on the site. The nearest emergency response units, the fire department, are located less than three miles from the project site.

Avoidance and Minimization

Construction techniques will be used to minimize environmental effects to wildlife by the placement of non-woven filter fabric underneath the rip-rap and enhanced riprap covering the reshaped banks. The placement of the fabric will minimize soil outwash from the banks. The use of enhanced rip-rap for 200 feet will provide a natural appearance and ecological benefits due to the stabilization.

Compensatory Mitigation

As part of project development, to provide necessary and safe access to the peninsula, dredging and bank stabilization will provide substantial environmental benefits. Bank stabilization will reduce erosion rates and sediment input into the lake and provide refuge for fish and benthic organisms within the rip-rap. The dredging will remove the sediment from the historic and current erosion while increasing habitat for fish and reducing water temperatures. The use of enhanced rip-rap around the tip of the peninsula will also provide increased stability during high water and storm events while providing aquatic and terrestrial habitat. Any vegetation removed during the re-shaping of the banks and the stabilization techniques will be replanted with native vegetation.

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 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 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 60 DAYS AFTER PN CLOSING DATE 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 (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 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 February 24, 2019. Comments should be submitted to Mrs. Catherine Janiczak, Charlotte Regulatory Field Office, 151 Patton Avenue, Room 208, at (704) 510-1438.