



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: April 23, 2019
Comment Deadline: May 24, 2019
Corps Action ID Number: SAW-2018-01447

The Wilmington District, Corps of Engineers (Corps) has received an application from the North Carolina Department of Transportation (NC DOT) regarding a potential future requirement for Department of the Army (DA) authorization to discharge dredged or fill material into waters of the United States associated with the proposed R-5706 A & B, NC 73 widening projects. Four (4) build alternatives and the No Build alternative are being considered at this time. The project is located in Mecklenburg and Cabarrus Counties, North Carolina.

Proposed impacts to waters of the U.S. for the four (4) build alternatives range from 2,538 – 3,054 linear feet of stream channel, and proposed wetland impacts range from 0.42 – 0.58 acre. Proposed open water impacts range from 0.07 to 3.46 acre (Alternative 2 has 3.46 acres of proposed open water impact (drain and/or fill)). Detailed descriptions of these alternatives are found within the Project Description section.

Specific alignment alternatives and location information are described below and shown on the plans, Sheets 1-24 (Figures 1-3, (A-U)) available on the Wilmington District Web Site at: <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

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Authority

The Corps will evaluate this application to compare alternatives that have been carried forward for detailed study 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)

In order to more fully integrate Section 404 permit requirements with the National Environmental Policy Act (NEPA) of 1969, and to determine that the project is not contrary to the public interest and complies with the 404(b)(1) Guidelines, the Corps is soliciting public comment on the merits of this proposal and on the alternatives evaluated in the NC DOT Environmental Assessment (EA) (Scheduled for completion in September 2019). Information on NCDOT's R 5706 A & B is available on the NCDOT website at <https://www.ncdot.gov/projects/nc-73-mecklenburg-cabarrus/Pages/default.aspx>.

At the close of this comment period, the District Commander will evaluate and consider the comments received as well as the expected adverse and beneficial effects of the proposed road construction to select the least environmentally damaging practicable alternative (LEDPA). The District Commander is not authorizing construction of the proposed project at this time. Authorization for this project (i.e., a DA Individual Permit or verification letter for the use of a General Permit) may be issued only after our review process is complete, impacts to the aquatic environment have been minimized to the maximum extent practicable, and a compensatory mitigation plan for unavoidable impacts has been approved.

Location

Location Description: NC 73 for 11.1 miles from SR 2693 (Davidson-Concord Road) to US 29 (Concord Parkway), Mecklenburg and Cabarrus Counties, North Carolina.

Project Area (acres): 1600 acres (approx.) Nearest Towns: Huntersville/Concord
Nearest Waterway: Coddle Creek River Basin: Pee Dee River
Latitude and Longitude: 35.4420670 N, -80.7454080 W

R-5706A: incorporates NC 73 from SR 2693 (Davidson-Concord Road) to SR 1394 (Poplar Tent Road), near the Mecklenburg/Cabarrus County line.

R-5706B: incorporates NC 73 from SR 1394 (poplar Tent Road) to US 29 (Concord Parkway North) in Cabarrus County, North Carolina.

Existing Site Conditions

The proposed projects begin in northwestern Mecklenburg County, within the towns of Huntersville and Kannapolis, and extend east along NC 73 for approximately 11.3 miles to US 29 in Concord, Cabarrus County.

The R-5706 study area encompasses various land uses. The Don T. Howell Reservoir (also referred to as Coddle Creek Reservoir) is in the middle of the project corridor and is managed by the Water and Sewer Authority of Cabarrus County. West of the Don T. Howell Reservoir, land

use has historically been rural and agricultural. Recently, subdivisions and shopping centers have been developed or are planned to be developed in this area.

Land use south of the reservoir is primarily undeveloped or low-density residential. This land use is expected to remain the same for the foreseeable future. Between Kannapolis Parkway and I-85 land use is primarily commercial with industrial sites and large-scale distribution facilities.

The study area between I-85 and US 29 is fully developed with subdivisions and multi-family housing. While commercial sites are scattered throughout this segment, commercial development is primarily concentrated east, near the intersection with US 29.

The existing NC 73 is a two-lane undivided highway with no bicycle accommodations and very limited pedestrian accommodations. NC 73 is currently wider at a number of signalized intersections to accommodate turn lanes. There is currently no control-of-access along NC 73, which limits the level of mobility and travel speeds through the corridor due to numerous driveways for residences and businesses on both sides of the road. The existing right-of-way of NC 73, within the project study area, varies and is primarily 60 feet, with wider sections at some intersections.

Applicant's Stated Purpose

The purpose of the project is to increase mobility on NC 73, between SR 2693 (Davidson-Concord Road) and I-85, and between US 29 (Concord Parkway North) and I-85, reduce congestion at the intersections, improve traffic operations along NC 73 with an operational target of Level of Service (LOS) D in the 2040 design year, and to provide bicycle and pedestrian facilities.

Project Description

The NC DOT R-5706 A & B projects propose multi-lane improvements to NC 73 from SR 2693 (Davidson-Concord Road) in Mecklenburg County to US 29 (Concord Parkway) in Cabarrus County, North Carolina.

R-5706 A, between SR 2693 (Davidson-Concord Road) and SR 1394 (Poplar Tent Road) in Mecklenburg County, proposes a 4-lane divided facility with a 30' raised median, curb and gutter, and multi-use paths on both sides of the road.

R-5706 B, between SR 1394 (Poplar Tent Road) and US 29 (Concord Parkway North) in Cabarrus County, also proposes 4-lane divided facilities: From SR 1394 (Poplar Tent Road) to I-85, a 4-lane section with a 30' raised median, curb and gutter, sidewalks and bike lanes on both sides of the road is proposed. From I-85 to US 29, NC 73 would be 4-lanes with a 23' raised median, curb and gutter, and sidewalks and bike lanes on both sides of the road.

Lane widths would be 12' from SR 2693 (Davidson-Concord Road) to I-85, and would be 11' from I-85 to US 29 (Concord Parkway). Various improvements to intersecting roads are proposed.

Alternatives Being Considered (see attached Sheets 1-24, Figures 1-3 (A-U) for details)
<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

- **Alternative 1** proposes a Best Fit alignment from SR 2693, (Davidson-Concord Road) to US 29 with an elevated structure (i.e., bridges) adjacent to the south of the existing causeway over Don T. Howell Reservoir.

Alternative 1 proposes 2,538 linear feet of stream channel impacts (fill) and 0.42 acre of wetland impact. Open water impacts are proposed at 0.07 acre.

- **Alternative 2** proposes a Best Fit alignment from SR 2693 (Davidson-Concord Road) to US 29 and widening the existing causeway over Don T. Howell Reservoir.

Alternative 2 proposes 2,538 linear feet of stream channel impacts and 0.42 acre of wetland impact. Open water impacts are proposed to be 3.46 acres.

- **Alternative 3** proposes a Best Fit alignment beginning at SR 2693 (Davidson-Concord Road) with the alignment travelling south of the existing NC 73 centerline beginning approximately 1,700 feet west of the NC 73 and Odell School Road intersection before meeting Odell School Road approximately 1,900 feet south of the NC 73 and Odell School Road intersection. The alignment begins to follow the existing centerlines of Odell School Road, Untz Road and La Forest Lane until approximately 1,000 feet south of the existing NC 73 centerline before extending northeast through existing development and realigning with the existing NC 73 centerline approximately 1,300 feet east of the NC 73 and Riding School Lane intersection and resuming a Best Fit alignment ending at US 29 (Concord Parkway North).

Alternative 3 proposes 2,657 linear feet of stream impacts, and 0.58 acre of wetland impacts. Open water impacts are proposed to be 0.07 acre.

- **Alternative 4** proposes a Best Fit alignment beginning at SR 2693 (Davidson-Concord Road) with the alignment travelling south of the existing NC 73 centerline beginning approximately 800 feet east of the NC 73 and Odell School Road intersection and extending between approximately 1,000 - 2,000 feet south of the existing NC 73 centerline before realigning with the existing NC 73 centerline at the intersection of NC 73 and La Forest Lane and resuming a Best Fit alignment ending at US 29.

Alternative 4 proposes 3,054 linear feet of stream channel impacts and 0.44 acre of wetland impacts. Open water impacts are proposed to be 0.08 acre.

- A **No Build** concept would maintain existing facilities. Impacts to the natural environment and human environment would not occur; however, **a no build concept does not address the purpose and need for the project.**

All concepts exclude improvements around the I-85 interchange at NC 73. The interchange was previously converted to a Diverging Diamond Interchange as part of the I-85 widening, and was completed in 2014. The R-5706 B design would primarily tie to this previously constructed project.

Avoidance and Minimization

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

NCDOT has attempted to avoid or minimize impacts to streams and wetlands to the greatest practicable extent. NCDOT will continue to seek ways to avoid and minimize impacts in further design efforts for the selected Alternative.

Specific measures employed to minimize impacts include:

- NCDOT's design has vertical and horizontal alignments and intersection configurations that avoid jurisdictional resources to the maximum extent practicable, while also minimizing impacts to competing resources.
- NCDOT's design utilizes 2:1 slopes to minimize impacts to wetlands, streams, and open waters.
- NCDOT proposes to retain and extend all existing major hydraulic structures where practicable, minimizing stream and wetland impacts.
- NCDOT will construct a bridge at Afton Run and remove the existing culvert at this location, avoiding permanent impacts to a jurisdictional stream that would have resulted from a culvert extension.
- Alternative 1 (if selected) proposes three bridges over the Don T. Howell reservoir on the south side of NC 73 and avoids widening the existing NC 73 causeway to the north, avoiding permanent impacts to the reservoir.
- To avoid impacts to Wetland WAZ, NC 73 widening would occur on the south side.
- To minimize impacts to Stream SDA, NC 73 widening would occur on the south side.
- In four (4) locations, sidewalks were designed to be closer to the roadway to avoid and minimize impacts to wetlands and streams.

Compensatory Mitigation

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

- NCDOT will review the project for on-site mitigation opportunities. If no feasible opportunities exist, NCDOT will acquire mitigation from the NC Division of Mitigation Services for mitigable impacts to jurisdictional resources on the project.

Public Meetings

Two public information meetings were held by NC DOT for R-5706. The meetings were held on January 28 and January 29, 2019 at the following locations:

- January 28, 2019 at Lake Norman Church of Christ, 17634 Caldwell Station Road, Huntersville, NC 28078.
- January 29, 2019 at Connect Christian Church, 3101 Davidson Highway, Concord, NC 28027.

The Corps has access to the public comments submitted during these meetings.

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 will not adversely 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.

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 select the least environmentally damaging practicable alternative (LEDPA) 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. All comments received will also be evaluated and used in the determination of whether to (1) process this project under an Individual Permit, in which case the Corps will prepare a project specific Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to NEPA, or (2) verify that this project meets the terms and conditions for use of Regional General Permit (RGP) 31. 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 24, 2019. Comments should be submitted to Ms. Nicholle Braspennickx, U.S. Army Corps of Engineers, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina, 28801, at email: Nicholle.M.Braspennickx@usace.army.mil, and/or at phone: (704) 510-0162.