



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: April 30, 2021
Comment Deadline: June 1, 2021
Corps Action ID Number: SAW-2020-00395

The Wilmington District, Corps of Engineers (Corps) received an application on April 16, 2021, from Creech, LLC (Applicant) seeking Department of the Army (DA) authorization for the construction of final phases of Highgate Subdivision (Highgate). The Applicant requests DA authorization to impact 0.416 acre (ac) of Waters of the United States (WotUS), comprising 0.414 ac of wetlands and 110 linear feet (lf) (0.002 ac) of stream channel for the construction of road and utility crossings. The road crossings are required to provide interconnectivity within the existing subdivision and surrounding secondary roads. Connections to existing Shotwell and Covered Bridge roads are not permissible by transportation standards due to traffic constraints near their intersection.

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: Mr. Raymond Gottlieb
Creech, LLC.
448 Viking Drive, Suite 220
Virginia Beach, Virginia 23452

AGENT (if applicable): Mr. Wyatt Brown
Brown's Environmental Group, Inc.
242 Batten Farm Road
Selma, North Carolina 27576

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: Highgate is located near the northern boundary limits of the Town of Clayton, in Johnston County, NC. The 229-lot subdivision is bordered by Covered Bridge Road to the north, Shotwell Road to the west, an unnamed perennial stream to the southwest, and private residences and undeveloped timberland to the south and east.

Project Area (acres): 58.93

Nearest Waterway: UT Neuse River

Latitude and Longitude: 35.67208 N, -78.47350 W

Nearest Town: Clayton

River Basin: Neuse

Existing Site Conditions

The project area for the proposed subdivision is located in the piedmont physiographic region of North Carolina. The project area primarily comprises an existing residential development, and post-agricultural early successional forest land

The property for Highgate was purchased by the current owners in 2005 as four tracts. Two of the tracts have become Highgate. Two additional tracts adjacent to the south are not a part of the project and are being developed by a different party. Rezoning for the project was approved by Clayton concurrently with the subdivision plans in 2015. In 2016, the main tract was purchased by Creech NC, LLC., and construction began. Infrastructure, utilities, and amenities associated with the construction of Phases 1 and 2 have been completed.

Construction continues today in Phases 3 and 4. Road and utility infrastructure associated with Highgate Phases 1 through 4 is largely complete. Previous impacts verified via Nationwide Permit on this project total 0.442 acre of wetland. No stream impacts have been required to date. Construction of Phase 5 would require additional impacts, which would be authorized by this standard permit, originally submitted on January 18, 2021.

During site visits on January 21, and 22, 2021, unauthorized impacts associated with a greenway trail (to be owned by the Town but constructed by the developer) had occurred. The application was put on hold on January 22, 2021, to assess and include those impacts in this application. A revised, complete application was received on April 16, 2021.

No 100-year floodplain occurs on the project site. The applicant identified seven wetlands and two streams within the project boundaries. A total of 2.044 ac of wetland and 554.38 lf of streams were identified.

The Jurisdictional boundaries of these streams and wetlands were field verified by the Corps on June 7, 2020, and January 21 and 22, 2021. All streams and wetlands within the project area drain to the Neuse River via an unnamed tributary within the Neuse River Basin; 8-digit hydrologic unit code (HUC) 03020201. Wetlands within the project areas are classified as Headwater Forest, Bottomland Hardwood Forest, or Basin Wetlands according to the North Carolina Wetland Assessment Method (NCWAM).

The predominant terrestrial communities within the proposed Highgate Phase 5, greenway corridor, and project area footprints are residential/disturbed, mixed pine-hardwood upland forest, and early successional pine forest. The mixed pine-hardwood upland forest abuts most of the streams and wetlands that occur within the project site. The canopy stratum includes loblolly pine (*Pinus taeda*), white oak (*Quercus alba*), northern red oak (*Q. rubra*), southern red oak (*Q. falcata*), sweetgum (*Liquidambar styraciflua*), American beech (*Fagus grandifolia*), and mockernut hickory (*Carya alba*). Scattered occurrences of Virginia pine (*Pinus virginiana*) are also present in the canopy stratum. The shrub stratum consists of American holly (*Ilex opaca*), sourwood (*Oxydendrum arboreum*), red maple (*Acer rubrum* var. *rubrum*), ironwood (*Ostrya virginiana*), eastern red cedar (*Juniperus virginiana* var. *virginiana*), saplings of the hardwood species, and scattered occurrences of Chinese privet (*Ligustrum sinense*). Understory vegetation, although sparse, includes common greenbrier (*Smilax rotundifolia*), Japanese honeysuckle (*Lonicera japonica*), panic grasses (*Panicum* spp.), blackberry (*Rubus* sp.), wild onion (*Allium canadense*), Christmas fern (*Polystichum acrostichoides*), muscadine (*Vitis rotundifolia*), Virginia creeper (*Parthenocissus quinquefolia*), and hardwood seedlings. The pine forest community comprises a canopy stratum dominated by pines and sweetgum, and an understory of plant species that are common to the mixed pine-hardwood upland forest. Residential/disturbed communities are dominated by fescue (*festuca* sp.) and landscape ornamental shrubs.

The proposed Highgate Phase 5 project site includes the following mapped soil series: Nankin, Norfolk, and Udorthents. The greenway corridor traverses the following soil series: Udorthents, Wedowee, and Wehadkee. Of the soils that occur within the project area, Rains and Wehadkee series are identified as hydric soils.

Applicant's Stated Purpose

The purpose of the modification request, as stated by the applicant, is the following:

“Construction of the Highgate Subdivision will create single-family residential housing to meet the current high demand for residential housing in the in the western Johnston County area. This area is contiguous with the overall Raleigh/Durham/Research Triangle Area and provides housing for many who work in the overall area”.

Project Description

Continued development of Phase 5 of Highgate requires the construction of Roadway G. Site Plans show the roadway extending from near the main entrance off Covered Bridge Rd through the developable uplands and exiting the subdivision to the west, near Shotwell Rd. Construction of the roadway would require a road crossing of a headwater forest wetland and a second road crossing of a separate headwater forest wetland and perennial stream. A third impact would be required along Shotwell Rd to accommodate utility construction.

Designs provided show that construction of this project would require the below new impacts. Impact numbers correspond with those included in the summary table, Table 1, below. Impacts associated with Highgate Phase 5 and the proposed utility line are all depicted on the attached exhibit, "Overall Project Impact Map for Highgate Subdivision". Impacts associated with the construction of the greenway trail are depicted on the attached exhibit, "Wetland Impact Map for Highgate Subdivision Greenway".

Roadway construction associated with accessing Highgate Phase 5 would require 0.03 ac of fill to construct a crossing of Wetland C (WL Impact #2). This crossing is required to provide connectivity between Phases 1 through 4 and the proposed Phase 5. The roadway would also require 0.25 ac of fill to cross Wetland AB2 (WL Impact #3). This second crossing would require the permanent loss of 61 lf (122 square feet (sf)) of Stream 1 identified as Stream Impact #1 and Steam Impact #1a would involve the hardening of 26 lf (52 sf) of Stream 1 to provide inlet/outlet protection. This crossing is required to provide connectivity between Highgate and Meadowview Subdivision to the south, per the Town of Clayton requirements.

The proposed utility line (Stream Impact #2), a waterline to be installed parallel with the right-of-way of Shotwell Road would cross Stream 1 via open cut, requiring temporary impact to 23 lf (46 sf). The construction and maintenance corridor across Wetland AB2 (WL Impact #4) would require the permanent conversion of 0.004 ac from forested to herbaceous wetland.

Greenway construction would utilize an existing easement extending south from Covered Bridge Road, and then west to connect with the town's existing greenway network. Construction would require crossing wetlands in three locations. WL Impact#2 would permanently fill 0.01 ac of Wetland C, WL Impact #5 would permanently fill 0.11 ac of Wetland 300, and WL Impact #6 would permanently fill 0.01 ac of Wetland 200.

Table. Summary of Total Project Impacts

Impact ID	Resource ID	Perm/Temp	Purpose	Amt
WL Impact #1	Wetland C	Permanent	Road Fill	0.03 ac

WL Impact #2	Wetland C	Permanent	Greenway Fill	0.01 ac
WL Impact #3	Wetland AB2	Permanent	Road Fill	0.25 ac
WL Impact #4	Wetland AB2	Permanent	Conversion	0.004 ac
Stream Impact #1	Stream 1	Permanent	Culvert/Road Fill	61 LF (0.001 ac)
Stream Impact #1a	Stream 1	Permanent	Inlet/Outlet Protection	26 LF (0.0005 ac)
Stream Impact #2	Stream 1	Temporary	Water Utility	23 LF (0.0005 ac)
WL Impact #5	Wetland 300	Permanent	Greenway Fill	0.11 ac
WL Impact #6	Wetland 200	Permanent	Greenway Fill	0.01 ac

The Applicant is requesting authorization to permanently impact wetlands and streams for the construction of road infrastructure, utilities, and a greenway trail associated with Highgate’s final phases. The total wetland and stream impact would be 0.416 ac. The total stream impact would be 110 lf (.002 ac). The total wetland impact would be 0.414 ac.

Water line installation would require 0.004 ac of permanent, no-loss wetland conversion. Of the stream impact requested, 61 lf (0.001 ac) would be permanent loss due to culvert installation and the remaining would be either temporary or bed hardening to protect proposed structures.

Avoidance and Minimization

The Applicant indicated that they have considered appropriate and practicable steps to minimize potential adverse impacts to wetlands and streams through the analysis of development concepts during project planning.

Alternatives considered to roadway crossings associated with Highgate Phase 5 included new entrances on Shotwell and Covered Bridge roads and bridging jurisdictional crossings. New roads would be constructed too close to the existing intersection and were not considered further due traffic constraints near the intersection of the Covered Bridge and Shotwell Roads. Bridging wetland and stream crossings were eliminated due to being cost prohibitive. The location of the road crossing of Wetland C (WL Impact #1) avoids impact to the existing stream and is not flexible due to the pre-existing road stub constructed as part of Phases 1 through 4. The location of the road crossing to access Meadowview Subdivision to the south is fixed due to the Town of Clayton’s transportation plans and an already approved road stub on that project’s northern boundary.

The original greenway right-of-way included construction of the trail through Wetland C, Wetland 400, Wetland 300, Wetland 200, and Wetland 100. After review of the impacts required, project designers realigned the trail to avoid impacts to wetlands 400 and 100. Culverts would be required under the greenway to preserve connectivity of the impacted wetlands.

All development projects in North Carolina that disturb an acre or greater of land require an approved Erosion & Sediment Control (E&SC) Plan. E&SC Plans must be produced in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual, dated May 2013. The Town of Clayton is a National Pollutant Discharge Elimination System (NPDES) Phase II permitted entity. Plan review, approval, and inspections would be performed by the Town of Clayton throughout project construction to ensure compliance with their ordinance, which became effective on January 1, 2021.

Compensatory Mitigation

The Applicant evaluated the following compensatory mitigation options for the proposed action: (1) credit purchase from an approved private mitigation bank, or (2) credit purchase through the North Carolina Division of Mitigation Services (NCDMS) In-Lieu Fee Program. Based on the review of the mitigation options available, the applicant committed to credit purchase through an approved mitigation bank. On-site mitigation and off-site mitigation opportunities were not explored because the bank credits were available. The Applicant has not proposed stream mitigation at this time.

Wildland Holdings III, LLC. received payment for purchase of 0.45 ac of wetland credits, debited from their approved Falling Creek Stream and Wetland Mitigation Bank on November 16, 2020. This payment offset wetland loss associated with 0.442 acre of NC WAM 'Low' rating wetlands associated with construction of previous phases.

The proposed mitigation ratios proposed for the remaining impacts associated with this project:

- A mitigation ratio of 1:1 was applied for riparian wetlands with a NCWAM overall rating of low or medium (Wetlands C and AB2, associated with one greenway and two road crossings of previously disturbed wetlands).
- A mitigation ratio of 2:1 was applied for wetland resources with a high NCWAM rating (Wetlands 200 and 400, both associated with new greenway alignments through forested wetlands).

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 *** 2021, to:

NCDWR Central Office
Attention: Mr. Rick Trone, 401 and Buffer Permitting Branch
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, NC 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 WotUS, 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, June 7, 2021. Comments should be submitted to Mr. Chris Hopper,

Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 ,
Wake Forest, North Carolina 27587, at (919) 554-4884, ext. 35.