



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: December 12, 2022
Comment Deadline: January 11, 2023
Corps Action ID Number: SAW-2009-01449
TIP No. R-2707D and E

The Wilmington District, Corps of Engineers (Corps) received an application on October 19, 2022, from the North Carolina Department of Transportation (NCDOT) seeking modification to an existing Department of Army (DA) permit and requesting authorization for the impact to 1.59 acres of wetland (1.24 acres of permanent fill, 0.15 acres of excavation and 0.2 acres of mechanized clearing) , the permanent impact to 11,526 linear feet of stream, the temporary impact of 570 linear feet of stream channel, the relocation of 2,678 linear feet of stream channel and the impact to 1.8 acres of open waters (0.06 permanent impacts and 1.74 acres of temporary impact) associated with Sections D and E of the Shelby Bypass Project TIPR-2707. The Shelby Bypass Project was separated into sections A-E and the original permit, issued April 12, 2013, presented final impacts for R-2707A, R-2707B and preliminary impacts for R-2707C, R-2707D and R-2707E. A permit modification was issued in 2017, authorizing the final design impacts for R-2707C. The October 19, 2022, application requests authorization for Sections D and E, which begins where Section C terminates, just east of the NC 150 Interchange and extends southeast to terminate west of Stony Point Road (SR 1001) in, Cleveland County, North Carolina.

Due to the large number of permit drawing plans associated with this proposal, they are not included with this Public Notice. This Public Notice and the plans are available on the Wilmington District Web site at:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

Applicant: North Carolina Department of Transportation
Division of Highways
Mr. Jeffrey Wyatt
Division Environmental Officer
P.O. Box 47
Shelby, NC 28151

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

The overall project site consists of five phases located along an approximate 19-mile corridor, from approximately 0.6 mile west of SR 1162 to east of SR 1162 as an upgrade/widening of existing US Highway 74, then on new location from east of SR 1161 to west of Buffalo Creek where the roadway would tie into existing US Highway 74. The project corridor is located to the west, north, and east of the town of Shelby in Cleveland County, North Carolina. Sections D and E, of the project begins where Section C terminates, just east of the NC 150 Interchange and extends southeast to terminate west of Stony Point Road (SR 1001).

Project Area: Total project is 18.62 miles & Sections D and E total 6.73 miles long.

Nearest Town: Shelby

Nearest Waterways: First Broad River, Hickory Creek, Kings Mountain Reservoir

River Basin: Upper Broad Watershed; Santee River Basin (HUC 03050105)

Latitude and Longitude: 35.317300 N and -81.562577W

Existing Site Conditions

The overall project study area is located within the Southern Piedmont Ecoregion. Topographically, the study area is characterized as broad, gently rolling inter-stream areas and by steeper slopes along drainage ways. Elevations within the study area range from a topographic low of 660 feet above mean sea level (MSL) to a topographic high of 980 feet above MSL) with an average elevation of 820 feet. Soils in the study area are classified by the US Department of Agriculture Natural Resources Commission (NRCS). Three of the six classified soil types found in Cleveland County are located within the project study area: 1) Cecil-Pacolet-Applying Association, consisting of sandy loam or sandy clay loams found on well drained or eroded slopes; 2) Grover-Madison Association characteristic of gravelly, sandy loams found on steeper slopes; and 3) Chewacla-Wehadkee Association dominated by soils with hydric inclusions found within floodplains along Beaverdam Creek, Buffalo Creek, First Broad River, and numerous unnamed tributaries. The project study area is dominated by residential and commercial land uses with scattered forested and agricultural areas between developments. The project vicinity is mainly rural in nature except along existing US 74 on the western and eastern most reaches of the project where economic development is more commercial in nature.

All streams within the proposed project study area are classified as North Carolina Division of Water Resources (NCDWR) Class C waters, fresh waters protected for

secondary recreation, fishing aquatic life including propagation and survival, and wildlife. The streams within the project study area are unnamed tributaries to Sandy Run Creek, Beaver Creek, Beaverdam Creek, Brush Creek, First Broad River, and Buffalo Creek. The overall project is located within sub-basins 030804 and 030805 of the Upper Broad River Watershed of the Santee River Basin (HUC 03050105). No Outstanding Resource Waters (ORW) or High-Quality Waters (HQW) exist within the project area. Both Buffalo Creek and the First Broad River were listed on the North Carolina Department of Environment and Natural Resources (NC DENR) 2010 Final 303(d) List, however the 2012 Final 303(d) List no longer shows either creek as impaired. The project is also located within Water Supply Watersheds for Cleveland County and the City of Shelby (WS III and WS IV). The proposed project is located approximately 0.5 mile upstream of the Water Supply Critical Area associated with the First Broad River. A portion of the eastern most section of the proposed bypass project is also located within the Water Supply Critical Area associated with the Kings Mountain Reservoir.

Existing US 74 within the study area, is mostly a four-lane divided highway with partial control of access and limited right-of-way. This highway includes commercial strip development that contains various retail uses and some light industry. This portion of US 74 has frontage roads and numerous intersections, driveways, and traffic signals which contribute to the increasingly congested, unsafe traffic conditions as traffic volumes increase. NCDOT anticipates future traffic congestion problems along the existing US 74 without the proposed project; level of service (LOS) for all intersections and the NC 150/18 interchange in the year 2020 would be LOS F. Existing US 74 from 0.3 mile west of SR 1162 to US 74 Business and from US 74 Business to SR 1001 exceeded the statewide crash rate from January 2000 to December 2002. Additionally, the existing US 74 Bypass section crash rate for that time period was nearly half of the statewide rate. Based on the information presented in the NCDOT's and the FHWA's 2008 Final Environmental Impact Statement Approved, the proposed alternative will reduce the number of rear end crashes at intersections. Rear end crashes accounted for over 50% of the type of incidents which occurred along existing U.S. 74 during the rating period. Currently the Shelby Bypass Project, Sections A-C are in various stages of construction or completion.

Applicant's Stated Purpose

The overall project purpose is to increase the capacity of the U.S. 74 corridor, improve safety and reduce traffic congestion along the existing U.S. 74, and improve Level of Service.

Project Description

The original 2012 permit application (submitted July 9, 2012) and subsequent DA Individual 404 Permit, issued April 12, 2013, presented final impacts for R-2707A, R-2707B and preliminary impacts for R-2707C, R-2707D and R-2707E. Total impacts authorized to jurisdictional streams and wetlands in association with the construction of

the entire Shelby Bypass were 21,224 linear feet of streams and 6.09 acres of wetlands. Proposed permanent open water impacts totaled 2.43 acres and temporary impacts totaled 0.17 acre of stream channel.

Impacts for sections C, D, and E were calculated using construction limits plus 25-foot slope stakes. Permit modification requests were required for sections C, D, and E as final design is completed for each section. A permit modification was issued on April 12, 2013, authorizing the final design impacts for R-2707C.

Summary of R-2707D and R-2707E Jurisdictional Impacts:

The preliminary design impacts projected from the 2012 permit application for R-2707D were 5,916 linear feet of permanent stream impacts, 0.40 acres permanent impacts to wetlands and 0.07 acres of temporary stream impacts. Final design impacts for R-2707D are 10,062 linear feet of permanent impacts to streams, 1.28 acres of permanent impacts to wetlands, <0.01 acres of excavation of wetlands and 0.10 acres of temporary stream impacts. There are 0.87 acres of surface water impacts to a pond. This section also includes 2,678 linear feet of natural channel stream design.

The preliminary design impacts projected from the 2012 permit application for R-2707E were 2,844 linear feet of permanent stream impacts, 0.67 acres permanent impacts to wetlands and 0.01 acres of temporary stream impacts. Final design impacts for R-2707E are 1,464 permanent impacts to streams, 0.16 acres of permanent impacts to wetlands, 0.14 acres of excavation of wetlands and 0.01 acres of temporary stream water impacts. There are 0.06 acres of permanent and 0.83 acres of temporary surface water impacts to a pond.

A number of changes led to an increase or decrease in impacts as noted below:

1. Changes to jurisdictional waters based on a reverification conducted in 2017 and 2019. Changes led to:
 - a. Decrease in impacts due to new stream origin at R-2707D Site 10
 - b. Impacts resulting from addition of wetland at R-2707D Site 12 and 12A
 - c. Impacts resulting from addition of stream at R-2707D Site 16
 - d. Impacts resulting from new stream origin at R-2707E Site 4B
2. Addition of two service roads not included in the preliminary design led to an increase in impacts at R-2707D Sites 11A and 11B (stream and pond impacts).
3. Bank stabilization impacts not included in preliminary design were added to seven sites on R-2707D including bridges over Buffalo Creek.
4. Inlet and/or outlet channel impacts associated with culverts not included in preliminary design were added to seven sites on R-2707D and three sites on R-2707E.
5. Interchange relocated from Bethlehem Rd approximately 1,100 feet west led to decrease of impacts at R-2707E Site 3 and 4. The original Site 5 impact was eliminated. New interchange location impacts a pond labeled as R-2707E Site 5.

6. Channel relocation was identified for R-2707D Sites 3-6. Preliminary design only noted impact areas and did not include the impacts associated with reconnecting the channel pieces and providing a stable channel based on natural channel design principles. This led to an increase in stream impacts. A mitigation plan for this area provides information on impacts and ecological uplift of the stream and its tributaries.

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 avoided impacting many wetlands and streams and reduced impacts to wetlands and streams to the greatest extent practicable. In addition to the measures listed in the 2013 phased permit application, other specific examples of avoidance and minimization measures include:

Section D:

- 2:1 slopes will be used in fill areas to reduce impacts to surrounding wetlands and jurisdictional streams.
- The Buffalo Creek Bridge will not discharge deck drains over open water and will utilize deck drain dissipator pads in the overbanks to prevent erosion
- The three box culverts will use sills and baffles, be backfilled with native material and maintain existing bed geometry.
- Hazardous spill basins will be installed in areas that are within 1 mile and drain to Kings Mountain Reservoir (643+00 -L- LT, 648+00 -L- RT, 652+00 -L- RT, 656+00 -L- LT, 668+00 - L- LT, 682+50 -L- RT, and 687+00 -L- LT)
- Dissipator basins will be installed in five locations (726+50 -L- RT, 730+50 -L- LT, 734+50 -LLT, 741+08 -L- LT, and 24+46 -Ramp A- RT)
- Four dry detention basins will be utilized to attenuate increased peak flows and provide treatment (643+00 -L- LT, 668+00 -L- LT, 781+50 -L- RT, and 813+50 -L- LT).

Section E:

- 2:1 and 1.5:1 slopes will be used in fill areas to reduce impacts to surrounding wetlands and jurisdictional streams.
- Three dry detention basins will be utilized to attenuate increased peak flows and provide treatment (19+22 – Y42RPB-LT, 20+25-Y42RPC-RT, 896+75 -L- RT)

Compensatory Mitigation

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

The NCDOT has avoided and minimized impacts to jurisdictional resources to the greatest extent practicable as described above. R-2707D will permanently impact 1.28 acre of wetlands and 10,062 linear feet of streams while R-2707E will permanently impact 0.3 acre of wetlands and 1,464 linear feet of stream. Mitigation for impacts resulting from the Section D and E will be provided by the North Carolina Division of Mitigation Service (NCDMS).

Onsite stream relocation using natural channel design was incorporated on Section D in the area identified in the 2012 permit and is not included in the total mitigable impacts. Streams impacted at Sites 1A, 2, 3B, 3C, 3D on the Section E were identified as low quality using the North Carolina Stream Assessment Method (NCSAM). Mitigation is being requested at a reduced ratio for these impacts (989 linear feet of intermittent stream).

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:

- 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.

Based on the originally approved permit, this project will not have an adverse effect on any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance based on letter and concurrence from SHPO dated October 19, 2000. (Concurrence form signed by NCDOT, FHWA, and the State Historic Preservation Office (SHPO)).

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or Tribal Historic Preservation Office, 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 may affect, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat.

An Amended Biological Opinion issued November 9, 2012, from the United States Fish and Wildlife Service (USFWS) continued the call of Not Likely to Jeopardize the Continued Existence of the Dwarf-flower Heartleaf from the 2004 Opinion. The 2012 Opinion outlines 8 Conservation Measures which supersede those identified in the 2004 Opinion and were incorporated as Special Conditions of this original permit. According to the applicant, as of April 2, 2015, the USFWS lists two federally protected species for Cleveland County. The only change since the 2012 permit application is the northern long-eared bat (*Myotis septentrionalis*) was added to the list for Cleveland County.

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 at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within 120 days of the date of this public notice. 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 January 2, 2023, 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):

- 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, January 4, 2023. Comments should be submitted to Ms. Crystal Amschler, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980, ext 4231. Comments may also be submitted to AshevilleNCREG@usace.army.mil