



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 26, 2022
Comment Deadline: August 26, 2022
Corps Action ID Number: SAW-2011-00914

The Wilmington District, Corps of Engineers (Corps) received an application from the Town of Carolina Beach seeking Department of the Army authorization to dredge a portion of the Carolina Beach Lake as well as fill a portion to enhance recreation, in New Hanover 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:

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

Applicant: Town of Carolina Beach
Bruce Oakley, Town Manager
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428

AGENT (if applicable): Davey Resource Group, Inc.
Kim Williams
3805 Wrightsville Ave., Suite 15
Wilmington, NC 28403

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: Carolina Beach Lake is located south of the Carolina Beach Boat Basin adjacent to the Atlantic Ocean in central Carolina Beach, NC.

Project Area (acres): +/- 13 Nearest Town: Carolina Beach
Nearest Waterway: Atlantic Ocean River Basin: Cape Fear
Latitude and Longitude: 34.028716N, -77.896629W

Existing Site Conditions

Carolina Beach Lake is an approximate 11.5-acre freshwater Lake that accepts regional stormwater and serves as municipal park centrally located in Carolina Beach. The Lake is surrounded by uplands that is used as a passive special events park facility where park guests enjoy picnicking, playground activities, paddle boating, viewing wildlife from piers, walking trail, and the Stingray Amphitheater. A concrete walkway surrounds most of the Lake. Two small islands are located within the Lake and elevated bridges extend into these islands. Adjacent land use consists of residential development to the north and west, undeveloped and forested areas to the south, Highway 421 to the east, with a mix of residential and commercial development along Highway 421. The Atlantic Ocean is located approximately 600 feet east of the Lake.

A recent delineation determined that the majority of the Lake is open water with an exception of a small section in the south eastern part of the Lake where Phragmites marsh exists. Based on recent bathymetric survey the water depths within the eastern part of the lake are mostly -1 to -2 feet MSL with increasing depths as you move west toward an area more recently dredged.

The Lake's watershed is over 500 acres in size. The site's primary stormwater conveyance is a surface flow system through grassy swales with culverts that drain into the Lake. Most of these inlets have been armored with stone to filter run-off before reaching the Lake. Stormwater outfalls from the Lake flow to Henniker's ditch located northeast of the Lake, then on to the Cape Fear River. The Cape Fear River is classified by the NC Division of Water Resources as SB. This classification is given to tidal salt waters protected for all SC uses in addition to primary contact recreation. This contact recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized manner or on a frequent basis. The project area is located within Zone AE, a special flood hazard area. No CAMA-regulated Areas of Environmental Concern exist within the site.

An environmental Services Report prepared by ECS Southeast LLP collected soil samples from the eastern portion of the Lake to analyze the sediment for potential environmental risks of utilizing dredged sediment for Lake or shore stabilization. Most compounds that were detected were below the Preliminary Soil Remediation Goal (PSRG). However, a few compounds were found to exceed their PSRG. After further analysis and through the use of NC Department of Environmental Quality Risk Calculator, the investigating firm's opinion was that the Lake sediment does not appear to present an unacceptable risk for direct contact to sediment for four different receptor scenarios (residents, non-residential workers, construction worker and recreator/trespassers) nor does it appear that leaching of metals from the sediment will

cause a contravention of applicable surface or groundwater standards. The third-party firm does not believe there is a need to dispose of the sediment in a permitted facility should it be disturbed at this time.

Applicant's Stated Purpose

The applicant envisions the Lake project split into separate phases which have independent purpose and needs. Phase 1 of the project is to improve stormwater retention capabilities and aesthetics by dredging a portion of the Lake and stabilizing the eroded shoreline. Phase 2 is to improve recreational opportunities at the park by filling a portion of the Lake and using this area to construct additional amenities, new bandshell and farmers market shelter.

Project Description

The applicant's preferred project would remove 3,000 cubic yards (CY) of sediment from the eastern half of the Lake to nominally improve the storage capabilities and reduce the propensity for eutrophic conditions. A turbidity curtain will be placed around the existing stormwater pumps to prevent sediment from entering the pumps. The contractor will then utilize a barge to dredge the Lake with a pump. The shallowest areas (above -2 MSL) will be the initial focus. The sediment will be deposited along the shoreline to dewater in place, either in a geotextile bag or polyethylene mesh. Once adequately dewatered, the deposited material will be graded and stabilized with vegetation to reshape the shoreline profile, repairing eroded areas and beautifying many of the areas previously hardened with riprap and concrete debris. The designers anticipate that the geotextile bags or mesh will tie into the bank at contour -2-ft. The fill will be placed on top of the existing grade and tie into a point around contour 2 or 3 at a 4:1 slope to an elevation of -1 MSL, and then 3:1 slope below that.

The Town will continue to use the existing three pumps to lower the lake in anticipation of wet weather. This project also includes the installation of an additional permanent stormwater pump to drop the lake level more quickly in advance of known storms and to increase overall pumping capacity during storms to eliminate, or at least minimize the need for emergency pumping onto the beach.

The Town would further desire to complete additional dredging of the eastern half of the Lake while using this material to fill the northeastern portion of the Lake between the existing bank and the island. The vision is to construct a new bandshell at this location. According to the applicant the above is considered preliminary at this point.

Phase 1 will temporarily impact approximately 4 acres of the open water Lake to excavate 3,000 CY of material and will permanently impact 1.3 acres of open water along the shoreline to stabilize the banks. Phase 2 will temporarily impact 4.2 acres of open water Lake to excavate 2,600 CY of material and will permanently impact 0.75 acres of open water in the northeastern part of the Lake to create an amenity areas, new bandshell and farmers market shelter.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The applicant has primarily described its avoidance and minimization as measure to maintain all work and dredging on site.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: According to the applicant, the proposed impacts are to an open water Lake that primarily functions as a stormwater pond. With the proposed dredging and filling, overall capacity of the Lake will remain relatively constant. Therefore, the applicant has not proposed any compensatory mitigation for their dredge proposal and fill loss of open water habitat.

Essential Fish Habitat

The Corps' 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.

- This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project would impact (CHOOSE ALL THAT APPLY- marine substrate, estuarine substrate, water columns, emergent wetlands, submerged aquatic vegetation, artificial reefs, hardbottoms) (see project description) utilized by various life stages of the following species: (CHOOSE ALL THAT APPLY – coastal migratory pelagics, corals, golden crab, shrimp, snapper grouper, spiny lobster, Atlantic highly migratory species). Our initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by Fishery Management Councils and the National Marine Fisheries Service (NMFS). Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.
- The Corps will consult under the Magnuson-Stevens Act and will not make a permit decision until the consultation process is complete.
- The Corps has initiated consultation the Magnuson-Stevens Act and will not make a permit decision until the consultation process is complete.

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.
 - By copy of this public notice, 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 applicant did not provide or satisfy all the elements required for a complete 401 certification request. Therefore, the 401 Certification process has not started. 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 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. 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 August 19, 2022 to:

NCDWR Central Office
Attention: Mr. Paul Wojowski, 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, August 26, 2022. Comments should be submitted to Brad Shaver, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, at (910) 251-4611. Comments may also be submitted to brad.e.shaver@usace.army.mil.