



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: April 28, 2022
Comment Deadline: May 28, 2022
Corps Action ID Number: SAW-2021-00056

The Wilmington District, Corps of Engineers (Corps) received an application from Timbermill Wind, LLC Attention: Mr. Ken Young seeking Department of the Army authorization to temporarily impact 187.68 acres of wetlands, 0.15 acres of streams, and 5.16 acres of jurisdictional tributaries (ditches); and permanently impact 27.03 acres of wetlands, 0.03 acres of stream, and 0.54 acres of jurisdictional tributaries (ditches), associated with construction of an 45 turbine wind energy facility on approximately 1,933 acre project area within an approximate 6,300 acre site located approximately 2 miles north of the Town of Edenton in Chowan County, North Carolina. Additionally, the project will include 6.1-miles of transmission line to interconnect the Facility to Virginia Electric and Power Company dba Dominion Energy North Carolina's existing Winfall to Mackeys transmission line.

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: Timbermill Wind, LLC
Attention: Mr. Ken Young
120 Garrett Street, Suite 700
Charlottesville, Virginia 22902

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:



will result in temporarily impact 187.68 acres of wetlands and 5.31 acres of jurisdictional tributaries; and permanently impact 27.03 acres of wetlands and 0.57 acres of jurisdictional tributaries. The applicant proposes to purchase mitigation credits from the Great Dismal Swamp Mitigation Bank (GDSRB) –Timbermill Farm and/or Hidden Lake Mitigation Bank (HLMB).

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 evaluated 7 alternative site locations including the proposed Preferred Alternative in an effort to avoid and minimize impacts to wetlands and waters.

In addition, the applicant proposes the following onsite design features.

1. The applicant modified the Project from 2-MW turbines to larger, 4.2-MW turbines, which allowed for less than half the number of required turbines than were originally proposed, thereby significantly reducing the extent of disturbed wetlands.
2. The applicant co-located electrical collection lines, access roads, and construction crane paths to the extent practicable to minimize the project footprint and thereby minimize impacts to wetland and waters.
3. Where possible, the applicant would utilize existing access roads for linear Project features like collection lines and crane paths, thereby minimizing impacts to WOTUS.
4. The applicant would maintain the pre-existing hydrologic flow across the Project Area by placing culverts at each proposed access road crossing.
5. The applicant has evaluated each water crossing via collection lines and, where appropriate, would use directional bore or horizontal directional drill construction techniques to minimize impacts to wetland and waters.
6. The applicant would locate the laydown areas and operation and maintenance building outside of forested and wetland areas.

The applicant proposes implementing the following BMPs and minimization measures during construction and operations of the Project to avoid and minimize impacts to wetlands and waters.

1. All construction staff would receive environmental contractor training prior to working on the Project.
2. Prior to initiation of construction, the applicant would prepare an erosion and sedimentation control (E&SC) plan and stormwater pollution prevention plan in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual (NCDEQ 2013).
3. The applicant would require inspections of erosion and sedimentation controls as dictated by the E&SC plan.

4. All workspaces would be clearly marked prior to site preparation.
5. All sensitive resources (i.e., wetlands, waterbodies, protected species habitat, cultural resources) would be clearly marked prior to site preparation, and the marking will be maintained throughout Project construction.
6. Where uplands are available, refueling of construction equipment would be done at least 100 feet from wetlands and waterbodies. To the extent practicable, equipment maintenance and repairs would be completed at least 100 feet from wetlands or waterbodies. Due to the extent of wetlands in the Project Area, refueling of equipment may need to be completed within wetlands. In these cases, the following BMPs would be implemented to minimize and avoid spills that would lead to impacts on wetlands and waters.
 - a. Refueling would be constantly monitored with personnel who have immediate access to emergency shut off valves/switches.
 - b. Absorbent pads would be used at the point of refueling.
 - c. Portable secondary containment lined with absorbent pads would be placed under the equipment at the fuel intake.
 - d. Within WOTUS, fuel tanks would not be staged. Fueling would be conducted via fuel trucks; when not refueling, fuel trucks would be staged at least 100 feet from wetlands and waters.
7. In wetlands where impacts involve the temporary removal of vegetation for construction activities, vegetation would be cut just above ground level to allow the existing root systems to stay in place and to assist with erosion control and minimization of wetland soil disturbances. All cut vegetation would be removed from the wetland for disposal.
8. Wetland topsoil will be segregated in areas where trenching would take place for placement of electrical collection lines.
9. Construction scheduling or sequencing would be implemented to minimize the duration of open excavations or trenching and reduce the potential for erosion and sedimentation.
10. Trenched areas would be backfilled with subsoil to replace segregated topsoil and grade surfaces to previous contours.
11. The applicant would develop and implement a restoration and revegetation plan for temporary impact areas prior to initiating construction.
12. The applicant would use timber matting for temporary impact crossings of wetlands to reduce rutting to the soil.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: Timbermill proposes to purchase 34 wetland credits and 169 stream credits from the GDSRB – Timberlake Farm and/or the HLMB to mitigate for 48.56 acres (21.53 acres of conversion and 27.03 of permanent impacts) of wetland and 169 linear feet of permanent stream functional losses.

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 9 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 sixty 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 26, 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, May 28, 2022. Comments should be submitted to Mr. Anthony D. Scarbraugh, Washington Regulatory Field Office, 2407 West Fifth Street, Washington, North Carolina, at Anthony.d.scarbraugh@usace.army.mil.