



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 14, 2022
Comment Deadline: August 12, 2022
Corps Action ID Number: SAW-2021-01521

The Wilmington District, Corps of Engineers (Corps) received an application from Forestar Group, Incorporated seeking Department of the Army authorization to discharge fill material into waters of the United States associated with the Albemarle Road Project in Cabarrus 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: Forestar Group, Incorporated
Attn: Robert C. Price
481 Munn Road E. Suite 150
Fort Mill, South Carolina 29715
robertprice@forestar.com

AGENT (if applicable): Wetlands & Waters, Incorporated
Attn: Meagan Jolly
328 East Broad Street, Suite D
Statesville, North Carolina 28677
meaganjolly@wetlands-waters.com

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: The project site is located south of the intersection of Morrison Road and Lower Rocky River Road, near the Town of Midland in Cabarrus County, NC.

Project Area (acres): Approximately 637 acres Nearest Town: Midland
Nearest Waterway: Caldwell Creek River Basin: Yadkin 03040105
Latitude and Longitude: 35.248225 N -80.607505 W

Existing Site Conditions

The project site consists of open fields, forested areas, and areas transitioning to early and mid-successional growth. The site is currently vacant. Open areas are maintained in agricultural pastureland and hayfields. Cabarrus County is located in the Piedmont physiographic province. The landscape is generally characterized by flat to moderately steep landscapes. The project area is characterized by flat to steep landscapes. Dominant soils (Cullen clay loam) are characterized by 2 to 8 percent slopes, moderately eroded.

The FEMA FIRMs mapping identifies portions of the project area as occurring within the 100-year floodplain. An aquatic resources delineation was completed within the project area. Subsequently, a request for an Approved Jurisdictional Determination (AJD) was submitted to the U.S. Army Corps of Engineers (USACE). The aquatic resources delineation was field verified by USACE on September 29, 2021. Waters of the US located on the property include approximately 27,145 linear feet of stream channel, 49.39 acres of wetlands, and 3.11 acres of open waters. Other waters on site that are not considered Waters of the US include approximately 0.938 acres of isolated wetlands and 0.242 acres of ponds. The site is located in the Yadkin Pee Dee River Basin. Project area waters drain to Caldwell Creek, a named tributary within the 03040105 United States Geological Survey (USGS) Hydrologic Unit Code (HUC).

Applicant's Stated Purpose

The applicant provided the following purpose statement:

"The basic project purpose is to develop residential housing for the Town of Midland submarket.

The overall project purpose is to develop residential housing to meet current and future demand in the Town of Midland submarket."

Project Description

The proposed project consists of a cluster-style development of a single-family residential detached community comprised of both Traditional development and Active Adult development types. Proposed impacts to Waters of the US associated with the

project include the permanent impact to 0.57 acres of wetlands and 1,235 lf of stream channel and the temporary impact to 0.43 acres of wetlands and 510 lf of stream channel. In detail, the proposed project consists of 1,216 single-family residences. The western portion of the proposed development consists of Traditional development, while the eastern portion consists of Active Adult development. An additional detached estate lot development is depicted west of Howell Center Drive. The proposed development includes appurtenant infrastructure such as internal circulation roads, amenities, stormwater control measures, and sanitary sewer. Amenities include (but are not limited to) a traditional amenity area, an Active Adult amenity area, pocket parks, and natural trails. Approximately 173.94 acres (25%) of open space (both active and passive) is proposed. Entrances to the development would be constructed off of Pioneer Mill Road, Morrison Road, Lower Rocky River Road, and Albemarle Road.

An 80-foot landscape buffer would be provided along project frontage on existing public roads (Lower Rocky River Road, Morrison Road, Pioneer Mill Road, and Albemarle Road). In numerous areas of the project, open space and undisturbed areas are combined with perimeter buffers to increase the contiguous acreage of preserved areas.

The project would be designed to Phase II stormwater standards, subject to review and approval by the State of North Carolina Division of Water Quality. While the stormwater plan has not been finalized, it is anticipated that 17 stormwater control measures would be required to satisfy the stormwater management needs of the site. Basins used for the sediment and erosion control plan would be converted to approved stormwater basins to ensure continuity of protection of surface waters. The project would be served by public water and sewer provided by the City of Concord.

Construction of the proposed project would require permanent and temporary impacts to Waters of the U.S. and Waters of the State to establish access to high-ground developable area, to grade and balance the site so that practicable development can occur, to construct residential units, and to establish sanitary sewer infrastructure within interior portions of the development and connect to existing sanitary sewer infrastructure to serve the development.

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's preferred alternative is the result of multiple site redesigns that consecutively reduced proposed impacts through site design and construction techniques. Avoidance and minimization efforts are detailed below.

Site Design

The proposed project is the result of three site redesigns that successfully reduced net permanent impacts with each consecutive redesign. With the current site plan, the number of single-family residences was reduced by 94 lots, and dwelling units per acre

(DUA) was reduced from 1.9 DUA to an average of 1.75 DUA. From the first site design to the current site design, proposed permanent impacts to streams were reduced by 6,314 linear feet and proposed permanent impacts to wetlands were reduced by 7.06 acres.

The PRD District zoning enables the applicant to construct the overall development in clusters, where the active area of disturbance is minimized to only the phase being currently constructed to completion, therefore minimizing the potential for downstream impacts to aquatic resources. The site design incorporates approximately 173.94 acres (25%) of open space, which is in excess of the 10% open space requirement by Town of Midland. Incorporating open space in excess of the requirement is a result of observing stream buffers and avoiding jurisdictional aquatic features. Designing the project to incorporate open space beyond the minimum necessary further minimizes potential impacts to the aquatic environment by minimizing disturbed areas and preserving habitat.

ADA-accessible sidewalks are required per Town of Midland development standards and zoning specifications, therefore impacts associated with the implementation of sidewalks at road crossings are unavoidable but have been minimized to the maximum extent practicable. The site plan has been designed with the minimum number of road crossings necessary to achieve the project purpose.

Retaining walls have been incorporated around the perimeter of residential lot development in stream buffer and floodplain areas to minimize impacts to the riparian buffer, regulatory floodplain, and high-quality wetlands in these areas.

Stormwater outfalls will be designed to discharge as far upgradient as is practicable at the top of tributaries to avoid dewatering of the channels and to avoid the potential loss of groundwater discharge as a result of development upslope. Stormwater Control Measure (SCM) outfalls will be designed to minimize flow velocities for storms that exceed the 50-year storm event through a combination of increased cross-sectional area with large riprap dissipator pads.

Streets and Road Crossings

Streets within the Extraterritorial Zoning Jurisdiction that will be maintained by the Town of Midland upon annexation of the completed development areas must be constructed to Town of Midland Technical Standards and Specifications Manual and the Town of Midland Development Ordinance. These standards directed street layouts, crossing designs, and the overall development design.

Compensatory Mitigation

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

The applicant proposes to compensate for 911 linear feet of permanent streambed loss due to fill for road construction at a 2:1 mitigation ratio, 1 acre of 404 riparian wetland loss and permanent conversion of forested wetlands at a 2:1 mitigation ratio, and 0.8 acre of non-404 basin wetland loss at a 2:1 mitigation ratio. A credit search of the Army Corps of Engineers RIBITS system returned with partial credit availability at the private commercial Upper Rocky Umbrella Mitigation Bank, which is in the same Hydraulic Unit Code (HUC) as the proposed project and in the Primary Service Area. If no additional credit releases from private mitigation banks within the Primary Service Area are available at the time a 404/401 permit is acquired, the applicant proposes to utilize the In-Lieu Fee (ILF) program for the remaining credit need.

The project proponent proposes a 10-year permit authorization to allow for flexibility to respond to market conditions over a build-out period of 10 years. The project proponent proposes phased mitigation.

Essential Fish Habitat

The project area occurs in the inland county of Cabarrus County, North Carolina, and therefore contains no Essential Fisheries Habitat. No adverse impacts to Essential Fish Habitat will result from the proposed project

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 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 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 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 12, 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):

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 12, 2022. 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, extension 4231. Comments may also be submitted to AshevilleNCREG@usace.army.mil