



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: April 22, 2022  
Comment Deadline: May 22, 2022  
Corps Action ID Number: SAW-2021-01958

The Wilmington District, Corps of Engineers (Corps) received an application from The Hutton Company, c/o Luke Hanson, seeking Department of the Army authorization to discharge dredged or fill material into waters of the United States, associated with the proposed construction of a carwash facility, located at 650 East Jackson Boulevard, in Erwin, Harnett 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:** The Hutton Company  
Mr. Luke Hanson  
736 Cherry Street  
Chattanooga, Tennessee 37402

**AGENT (if applicable):** Terracon Consultants, Inc.  
Mr. Jeff Harbour  
2401 Brentwood Road, Suite 107  
Raleigh, North Carolina 27604

## 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:

Project Area (acres): 1.09-acres                      Nearest Town: Erwin  
Nearest Waterway: Black River                      River Basin: Cape Fear  
Latitude and Longitude: 32.32289 N, -78.64433 W

### **Existing Site Conditions**

The project study area is located on the U.S. Geologic Survey (USGS) 7.5-minute topographic quadrangle of Erwin, NC. More specifically the site is located on the west side of Dunn, NC. Harnett County is in the western part of the coastal plain physiographic province of North Carolina. Elevations on the site range from a low of approximately 164 feet above mean sea level (MSL) within the wetland system to a high of approximately 170 feet above MSL near E. Jackson Boulevard. The proposed Erwin Modwash site is located in the Middendorf formation in the Cretaceous portion of the coastal plain physiographic region. The project study area is located in the Cape Fear River Basin.

The Soil Survey of Harnett County, North Carolina (Figure 2) depicts the following soil mapping units within the study area: Bibb soils, frequently flooded, and Lynchburg sandy loam, 0-2% slopes. These are combined into the Bibb-Wehadkee soil association, which is comprised of nearly level, poorly drained soils that have loamy and sandy underlying layers, on floodplains.

The project study area is in the Cape Fear River Basin and is located in USGS hydrologic unit 03030006. A Best Usage Classification (BUC) is assigned to waters of North Carolina based on the existing or contemplated best usage of various bodies of water. There are no stream channels within the project study area. The wetland located within the project study area is associated with the Black River. The Black River, from its source to South River (Stream Identification # 18-68-12-1), has a BUC of C;Sw. Class C waters are designated for aquatic life propagation and survival, fishing, wildlife, secondary recreation, and agriculture. The supplemental classification Sw designates waters that have natural characteristics due to topography, such as low velocity, dissolved, oxygen, or pH, that are different from streams draining steeper topography.

One wetland was identified onsite that is subject to Section 404 jurisdiction. This wetland system is abutting Black River east of the study area. This wetland system is characterized as Riverine Swamp Forest per the North Carolina Wetland Assessment Method (NCWAM).

### **Applicant's Stated Purpose**

The purpose of this project is to construct a carwash facility in a commercial area to meet market demand in the Erwin and Dunn, NC market. Specifically, the proposed facility is designed to allow for customers to obtain carwash services while maintaining efficient and safe traffic flow into, within, and out of the facility.

## **Project Description**

The applicant proposes to construct a Modwash Carwash facility at 650 E. Jackson Boulevard in Dunn, NC (Harnett County PIN # 1507-61-0840.00). Construction of the proposed Modwash facility involves unavoidable impacts to wetlands that are potentially subject to Section 404 regulations under the Clean Water Act (CWA). The applicant is requesting authorization to permanently fill 1.09 acre of wetlands pursuant to Section 404 of the CWA of 1972 (33 USC 1344).

## **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: As stated by the applicant, the proposed Erwin Modwash will be constructed on the smallest footprint practicable to allow for operation of the carwash facility and efficient and safe traffic flow into and out of the site; and further stating that the impacted wetlands cannot be avoided while still meeting their stated purpose and need.

## **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant has determined that there are no private mitigation banks in the service area capable of providing mitigation for this project. Therefore, the necessary mitigation will be provided by the North Carolina Division of Mitigation Services (NCDMS). An acceptance letter from the NC DMS was included with the permit application.

## **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 May 13, 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 22, 2022. Comments should be

submitted to Liz Hair, Wilmington Regulatory Field Office, 69 Darlington Avenue,  
Wilmington, North Carolina 28403 , at (910-251-4049) or by email at  
[sarah.e.hair@usace.army.mil](mailto:sarah.e.hair@usace.army.mil).