PUBLIC NOTICE

US Army Corps
Of Engineers
Wilmington District

Issue Date: November 7, 2022
Comment Deadline: December 7, 2022
Corps Action ID Number: SAW-2022-00119

The Wilmington District, Corps of Engineers (Corps) received an application on October 31, 2022, from Land Acquisition and Development Services, LLC seeking Department of the Army authorization to discharge dredged or fill material into approximately 0.30 acre of riparian non-riverine wetlands, associated with constructing the Amberly Townhomes multi-family residential development in Guilford 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:
Mr. David Michaels
Land Acquisition and Development Services, LLC
Post Office Box 9147
Greensboro, North Carolina 27429

AGENT:
Mr. Brad Luckey
Pilot Environmental, Inc.
Post Office Box 128
Kernersville, North Carolina 27285

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 area is located on the east side of Springwood Church Road, approximately 0.6 mile north of its intersection with US Highway 70, in Gibsonville, Guilford County, North Carolina.

Project Area (acres): ~27 Nearest Town: Gibsonville
Nearest Waterway: Unnamed Tributary (UT) to Michael Branch
River Basin: Cape Fear; Hydrologic Unit Code (HUC) 03030002
Latitude and Longitude: 36.088218 N, -79.544939 W

Existing Site Conditions

Although the total 39.6-acre property owned or optioned by the Applicant includes all or portions of five parcels, the proposed project site (Site) includes the western-most 27-acre portion of the property. The Site is located in the Piedmont Physiographic Province and includes moderate slopes along two ridgelines. A topographic drainage extends generally northeast to southwest through the middle of the Site. Elevations within the Site range from 625 feet above mean sea level (MSL) to 686 feet MSL. The soils encountered in this area are the residual product of in-place chemical weathering of rock presently underlying the site.

Soils mapped on the property are presented in the table below:

Soil Type	Map Unit Symbol	Hydric Rating (% of mapping unit)
Chewacla loam, 0-2% slopes, frequently flooded	ChA	5
Coronaca clay loam, 2-6% slopes	CrB	0
Enon loam, 6-10% slopes	EsC	0
Enon fine sandy loam, 2-6% slopes	EnB	1
Enon fine sandy loam, 6-10% slopes	EnC	0
Enon clay loam, 6-10% slopes	EoC2	0
Mecklenburg sandy clay loam, 2-6% slopes	MhB2	0
Mecklenburg sandy clay loam, 6-10% slopes	MhC2	0
Wehadkee loam, 0-2% slopes, frequently flooded	WhA	95

Among the 9 soil types that occur within the property, Wehadkee loam, Chewacla loam, and Enon fine sandy loam are listed as hydric or partially hydric. Average annual precipitation for Guilford County is 41.99 inches of rainfall and 10.3 inches of snowfall.

The Site was historically used for farming or pasture, with the topographic drainage portion remaining primarily forested. A pond was constructed in this drainage between 1955 and 1968. Farming on the Site appears to have been abandoned in the 1970s or 1980s. Between 2001 and 2006, the pond was drained and filled, the majority of the Site was graded using heavy construction equipment, and the topographic drainage was re-routed into a sediment control pond and beyond to the southwestern property

corner via a series of swales. Since that time, the Site has remained unaltered and re-vegetated naturally.

Vegetation within the Site predominantly consists of regenerative forest, estimated to be no older than 20 years in age, and early successional fields containing sporadic hardwood saplings. Dominant species observed include: common fescue (*Schedonorus arundinaceus*), meadow fescue (*Schedonorus pratensis*), bermudagrass (C*ynodon dactylon*), Bahiagrass (*Papsalum notatum*), Crabgrass (*Digitaria sp*.), goose grass (*Eleusine indica*), johnsongrass (*Sorghum halepense*), (broomsedge (*Andropogon virginicus*), saw-tooth blackberry (*Rubus argutus*), Korean lespedeza (*Kummerowia stipulacea*), Palmer amaranth (*Amaranthus palmeri*), horsenettle (*Solanum carolinense*), common pear (*Pyrus communis*), willow oak (*Quercus phellos*), sweet gum (*Liquidambar styraciflua*), loblolly pine (*Pinus taeda*), Virginia pine (*Pinus virginiana*), persimmon (*Diospyros virginiana*) and eastern red cedar (*Juniperus virginiana*).

Land use surrounding the Site primarily consists of forested lands and low-density residential uses, as well as sporadic commercial/light industrial and warehousing uses. Land uses bordering the Site include: the Gibsonville Cemetery to the north, ZAG Equipment Sales commercial building and parking area to the south, Springwood Church Road to the west, and undeveloped forested land to the east. Note that a portion of the land east of the Site is owned/optioned by the applicant and contains an approximately 0.2-mile-long fill pad constructed by a previous owner between 2001 and 2006; the planned use of this fill pad may have been as a runway for small aircraft, however this work was abandoned and appears to be unrelated to the proposed Project.

Site reconnaissance was conducted by the applicant's agent (Pilot) in September 2021, to determine and delineate the presence and location of potential waters of the U.S. (WOUS). The wetland delineations were performed in accordance with the Corps 1987 Delineation Manual and subsequently issued Regional Supplement to the 1987 Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0). The delineation was field verified by Mr. David Bailey of the Corps on February 8, 2022. Although no Jurisdictional Determinations (JDs) have been issued to date, an email from the Corps was sent confirming the locations of potential WOUS on March 21, 2022, and also acknowledging that grading activities within the Site likely impacted WOUS.

The Site is located in the Cape Fear River Basin, HUC 03030002. The only stream delineated within the Site is a 1st order feature with intermittent flow, approximately 0.01 acre (99 linear feet [lf]) in size, which appears to have been channelized in the previous decades with portions stabilized with rip rap likely between 2001 and 2006. This stream carries the North Carolina Division of Water Resources (NCDWR) best usage classification of "WS-V NSW." "WS-V" refers to waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters used by industry to supply their employees with drinking water or as waters formerly used as

water supply. These waters are also protected for Class C uses. "NSW" refers to Nutrient Sensitive Waters, which is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growths of microscopic or macroscopic vegetation. There are no designated Outstanding Resource Waters (ORW), High Quality Waters (HQW), Water Supply I (WS-I), or Water Supply (WS-II) waters within 1.0 mile of the Site.

Pond PA, an approximately 0.28-acre open water impoundment, was also delineated within the Site. This feature appears to have been formed as the result of grading activities in the early 2000s, specifically as a sediment containment pond, based on the material of the pond dam consisting of rock and stone similar to a typified Type B stone dam sediment basin. No State or local permitting documents have been found to support this assumption, however.

The 0.81 acre of wetlands delineated within the Site are of the Headwater Forest wetland type, according to the North Carolina Wetland Assessment Method (NCWAM). These features are generally small in size but occur frequently within narrow topographic drainages in this region. Wetland WB 1-18 and the lower reach of Wetland WD 1-33 are linear features occurring within swales graded for drainage purposes that range from two to six feet wide. Wetland WD 1-34 is located within a drainage swale up-gradient and adjacent to Pond PA. These wetlands were disturbed in the early 2000s by grading as described above, and were delineated using atypical situation techniques as described in the Corps 1987 Delineation Manual and applicable Regional Supplement. The upper reach of Wetland WD 1-33 was cleared in the early 2000s but apparently not graded to the same extent, and therefore displayed more typical parameters used for wetland delineation. Vegetation contained within and proximate to wetland areas on the Site included small trees and saplings of willow oak (*Qurcus phellos*), sweet gum (*Liquidambar styraciflua*), black willow (*Salix nigra*), and American sycamore (*Platanus occidentalis*), shrubs such as Chinese privett (*Ligustrum sinense*), vines including Japanese honeysuckle (*Lonicera japonica*), muscadine grape (*Vitus rotundifolia*), and green briar (*Smilax rotundifolia*), southern waxy sedge (*Carex glaucescens*), and herbaceous species such as slender woodoats (*Chasmanthium laxum*), sawtooth blackberry (*Rubus argutus*), common rush (*Juncus effusus*), Japanese stilt grass (*Microstegium vimineum*), fescue grass (*Schedonorus sp*.), horseweed (*Conyza canadensis*), dogfennel (*Eupatorium capillifolium*), false nettle (*Boehmeria cylindrica*), poison ivy (*Toxicodendron radicans*), and Netted-chain fern (*Woodwardia areolata*).

Pilot assessed the functional quality of the wetland areas on the Site proposed for impact using NCWAM, scoring these features as "Low." The Low rating of these features is due primarily to the previous grading activity.

Based on a review of aerial photography, LiDAR resources, and the Corps' site visit, the combination of grading, filling, and rerouting of drainage that occurred between 2001 and 2006, appears to have resulted in the loss of approximately 1.48 acres of wetlands and 0.012 acre (198 lf) of stream channel, a total of 1.492 acres of WOUS. Based on

the above estimated impact totals, permanent loss of WOUS on the Site exceeds the allowable impact thresholds under Nationwide Permit 29 or any other potentially applicable General Permit; this project is therefore subject to Individual Permit review.

Applicant's Stated Purpose

The project purpose, as stated by the applicant is to develop Amberly Townhomes, a 133-attached and detached unit townhome community. The Proposed Project is located in an area that has a been determined to have an existing and anticipated future demand for affordable housing proximate to Elon and north of US Highway 70.

Project Description

The Applicant provided the following project description, as shown on the plan sheet labeled "Amberly Townhomes, Alternative 3":

The Applicant proposes to construct Amberly Townhomes, a 133-unit attached/ detached townhome neighborhood (Project). The Project includes 73 attached and 60 detached townhome units, interior access roads, mail kiosk, community trash/recycling receptacles, parking areas, stormwater management pond, and landscaped areas.

The proposed 73 attached townhomes are one and one-half to two story homes ranging from 1,550 to 1,625 square feet in size. The homes would contain three to four bedrooms, two and a half baths, one to two car garages with variant layouts that include finished lofts, unfinished storage areas, and exterior patios.

The proposed 60 detached townhomes are two story homes that ranging from 1,780 to 1,980 square feet in size. The homes would contain three to four bedrooms, two and a half baths, one to two car garages with varying layouts that include finished lofts, unfinished storage areas, and exterior decks and patios.

The Project has been designed to be accessed from Springwood Church Road and contains five interior roads to provide access to the homes. Due to local development requirements based on the proposed number of units, secondary access to the property immediately east of the site is required. The Applicant is not aware nor has intentions to attempt to develop the property immediately east of the Site. The proposed homes would be provided water and sanitary sewer services from an existing water and sewer lines located along/beneath Springwood Church Road. These utilities would be extended into the Site within proposed interior access road fills.

The Project has been designed in accordance with applicable local development ordinances including:

- appropriate setbacks from parcels, adjoining properties, Springwood Church Road, and adjacent buildings;
- number of required parking spaces per unit; and
- general landscaping, stormwater, and transportation requirements.

The construction of the site would be completed in the following sequence:

- Flag and stake the approved disturbed limits and impact limits;
- Install temporary construction entrance and clear and grub only the areas needed to install the perimeter erosion control devices related to the stormwater management device that is to be used as a temporary sediment basin as well as the clean water bypass pipe within the impact limits. No other portions of the Site would be disturbed until both the temporary sediment basin and the clean water bypass pipes have been installed;
- Install remaining temporary sediment control devices, including temporary rock checks, sediment and erosion control basins, and silt fence;
- Clear and grub remainder of site;
- Begin placement of fill;
- Continue to fill to final grade;
- Fine grade buildings/parking area/roads and stabilize all site disturbed areas;
- Convert skimmer sediment basin to permanent stormwater pond;
- Seed and stabilize per North Carolina Division of Energy, Mineral, and Land Resources (NCDEMLR) requirements;
- Remove temporary erosion and sediment control devices;
- Seed temporary sediment and erosion control device areas.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

Through design and construction techniques, the Applicant has minimized impacts to WOUS and their associated State-regulated riparian buffers. Additionally, the Project has been designed to avoid fill and net loss of higher quality wetlands located on the southeastern portion of the site. The applicant has designed the Project to use three to one or flatter slopes, thus reducing fill impacts and additional net loss of wetlands.

The Project has been designed in a manner that avoids temporal impacts to WOUS and avoids net loss of function from conversion of forested wetlands to emergent wetlands associated with the installation of municipal water and sanitary sewer services.

The sequence of construction phases has been designed to minimize areas of exposed/bare soil. During construction, erosion control measures would be routinely inspected and maintained as needed to prevent erosion and capture sediment. Disturbed areas would be reseeded in accordance with NCDEMLR erosion control standards to prevent erosion and sedimentation runoff into down-gradient waters. Stockpiling excavated soil would be avoided where possible. If temporary stock piling is necessary, it would be bermed with bales of hay and or covered to prevent excessive run-off. Temporary stockpiles are not proposed within WOUS. Erosion control inspections would be conducted with the NCDEMLR as necessary.

The Project would use a post-construction stormwater pond. It would convert a temporary sediment and erosion control basin into a permanent post construction stormwater pond on the southwestern portion of the site. Off-site drainage, north of the site, would be maintained from Wetland WD 1-33 to Pond PA and from Pond PA to Stream SB through bypass piping. The bypass piping would continue hydration of down-gradient and unimpacted WOUS. The Applicant has designed the permanent stormwater pond and bypass piping to discharge at non-erosive capacity to further reduce potential for undermining and down-cutting of down-gradient WOUS.

Of the 0.16 acre (788 lf) of perennial stream channel, 0.01 acre (99 lf) of intermittent stream channel, 0.28 acre of open water pond, and 3.18 acres of wetlands located on property owned/optioned by the Applicant, the Project has been designed to avoid impacts to all streams and open water ponds, and the remaining 2.88 acres of wetlands.

Compensatory Mitigation

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

The applicant proposes to mitigate for the 0.30 acre of riparian non-riverine wetland impacts through the purchase of offsite mitigation credits at a 2:1 ratio, a total of 0.60 riparian non-riverine wetland credits in HUC 03030002. The applicant stated that, at the time of application submittal, the KCI Black Bull Stream and Wetland Mitigation Bank had 0.20 riparian non-riverine wetland credits available for purchase. Other approved private mitigation banks within the HUC do not have the amount or type of credits to satisfy the remaining balance of 0.40 riparian non-riverine wetland credits. Therefore, the applicant proposes to purchase an additional 0.40 riparian non-riverine wetland credits from the North Carolina Division of Mitigation Services (NCDMS). If at the time of authorization or mitigation payment, the 0.20 riparian non-riverine wetland credits are not available from Black Bull Stream and Wetland mitigation bank, then the applicant would purchase all 0.60 riparian non-riverine wetlands credits from NCDMS. Statements of Availability were provided from both KCI and NCDMS.

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.

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:

☒ 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).

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.

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 November 28, 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, November 7, 2022. Comments should be submitted to David E. Bailey, Raleigh Regulatory Field Office,
3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 817-2436. Comments may also be submitted to RaleighNCREG@usace.army.mil