



PUBLIC NOTICE

**US Army Corps
Of Engineers**
Wilmington District

Issue Date: October 16, 2023
Comment Deadline: November 15, 2023
Corps Action ID Number: SAW-2015-01551

The Wilmington District, Corps of Engineers (Corps) received an application on October 6, 2023, from Mingo Creek Investments III, LLC and Fred Smith Company seeking Department of the Army (DA) authorization to discharge fill and dredged material, associated with Mingo Creek Phase 7 and 12 residential development in Knightdale, in Wake 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. Fred J. Smith, Jr.
Mingo Creek Investments III, LLC
2102 Pritchard Road
Clayton, NC 27527

AGENT (if applicable): Ms. Deborah E. Shirley
Soil & Environmental Consultants, PA (S&EC)
8412 Falls of the Neuse Road, Suite 104
Raleigh, NC 27615

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 proposed project (Project) is located to the west of North Carolina Highway 540 and north of Interstate 87, south of the existing Norfolk Southern railroad, and east of the existing Mingo Creek residential development, in the Town of Knightdale, Wake County, NC. The Project is located within the Neuse River basin (Hydrologic Unit Code [HUC]: 03020201) and onsite waters drain to Mingo Creek through an unnamed tributary (UT).

Project Area (acres): 21.82

Nearest Town: Knightdale, NC

Nearest Waterway: UT to Mingo Creek

River Basin: Neuse River / 03020201

Latitude and Longitude: 35.775252 N, -78.511287 W

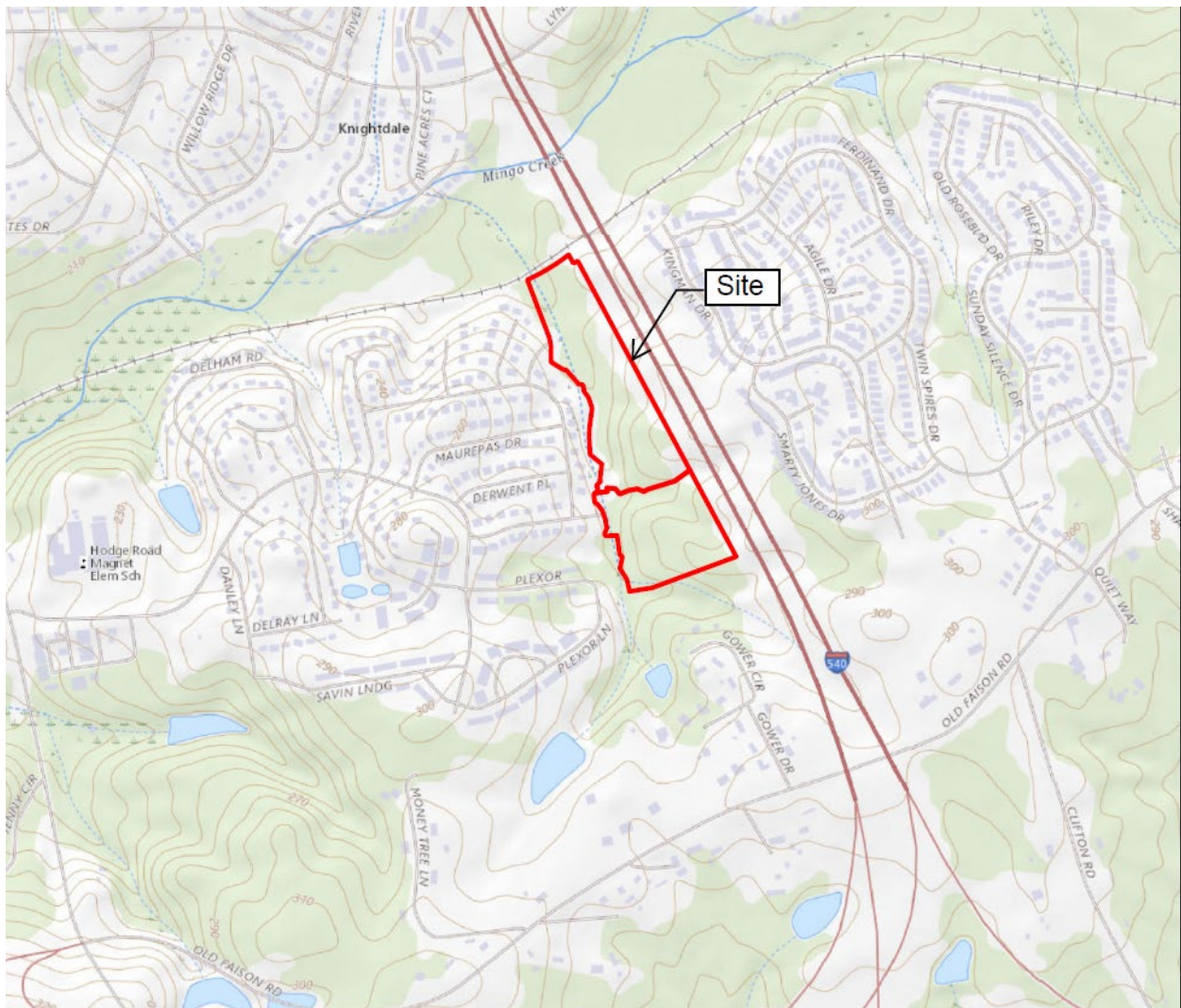


Figure 1

Existing Site Conditions

The project area (Site) is bound by an existing Norfolk Southern railroad to the north, single and multi-family residential properties to the south and west, and North Carolina Highway 540 to the east.

The Site consists of mature, mixed pine/hardwood forest dominated by tulip popular (*Liriodendron tulipifera*), red maple (*Acer rubrum*), loblolly pine (*Pinus taeda*), white oak (*Quercus alba*), and sweetgum (*Liquidambar styraciflua*).

The Site is situated in the Piedmont Physiographic Province, with elevations ranging from 200 to 260 feet above mean sea level.

Based on information obtained from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey for Wake County, soils within the Site are mapped as four soil series summarized below in Table 1.

Table 1

Map Unit Symbol	Map Unit Name
ChA	Chewacla and Wehadkee soils, 0 to 2 % slopes, frequently flooded
RgC	Rawlings-Rion complex, 6 to 10 % slopes
RgD	Rawlings-Rion complex, 10 to 15 % slopes
WgC	Wedowee-Urban land complex, 6 to 15 % slopes

The Site is located within the Neuse River Basin in the Mingo Creek-Neuse River sub-watershed (12-digit HUC 030202010705). A UT flows within the west side of the Site north to Mingo Creek (Stream Index Number 27-32). The mapped FEMA 100-year floodplain along Mingo Creek is located outside of the Site.

The Site was delineated by S&EC for potential waters of the United States (WOTUS) on December 21, 2022, and a Preliminary Jurisdictional Determination (PJD) request was submitted to the Corps on February 18, 2022. Four streams (Streams A, B, C, and Z) and six wetlands (Wetlands W1-W5 and LW1) were delineated on the Site. Two streams (Streams A and B) enter the Site along the southern boundary and merge in the southwest corner of the Site, the main stem (Stream A) of which runs along the western side of the Site north to Mingo Creek. Three of the wetlands (Wetlands W1, W3, and LW1) are associated with Stream A. The remaining two streams (Streams C and Z) are located in the southern portion of the Site, with Stream C entering the Site from the eastern boundary and connecting with Stream A along the western site boundary. Stream Z originates at Wetland W2, to the south of Stream C, and flows in a northwest direction to connect with Stream C. Wetlands W4 and W5 are located in the northern portion of the Site. Based on the PJD, the Site contains 3,967 linear feet (lf) of potential non-wetland waters and 0.35 acre (ac) of potential wetland waters.

The wetlands identified within the Site are primarily Bottomland Hardwood/Headwater Forest wetlands (type per the North Carolina Wetland Assessment Method [NCWAM]) dominated by sweetgum, tulip poplar, red maple, white oak, and loblolly pine. Hydrologic indicators such as water-stained leaves, drainage patterns and crayfish burrows were observed within wetlands. Soils within the Wetland W5 at the data form location consisted of chroma 2 loams/clayey soils with distinct and prominent redox concentrations indicating a depleted matrix.

Applicant's Stated Purpose

The applicant's stated Project purpose is to construct the infrastructure (i.e., roads and utilities) that would support the remaining phases 7 and 12 of the adjacent existing residential development. The applicant states that the overall purpose is to complete the remaining two phases of Mingo Creek subdivision residential development, owned by Mingo Creek Investments III, LLC and Fred Smith Company. Impacts to WOTUS associated with the development include roads and sanitary sewer. The applicant stated that the proposed activities are required to access high ground.

Project Description

The Project, Mingo Creek Phases 7 and 12, entails infrastructure construction (i.e., roads and utilities) that would support the last two phases of the residential development, Mingo Creek. Mingo Creek Phases 7 and 12 totals ± 21.82 ac and is currently owned by the applicant, Mingo Creek Investments III, LLC and Fred Smith Company. Specifically, the Mingo Creek Phase 7 and 12 project is intended to be the completion of the Mingo Creek subdivision residential development located in the Town of Knightdale, Wake County, NC. These phases of the residential development are intended to have 100 townhome units. The project consists of two road crossings and one aerial sanitary sewer crossing. The two proposed road crossings and the one sanitary sewer crossing intend to cross two potential non-wetland waters. The project would result in the permanent discharge of fill material within 0.086 ac (351 lf) of stream channel, of which 0.075 ac (299 lf) would result in a loss and the temporary discharge of dredged or fill material within 0.012 ac (33 lf) of stream channel.

The two proposed road crossings would be constructed with Reinforced Concrete Pipes (RCP) with headwalls and riprap dissipator pads. The RCPs are proposed to be buried 12-inches and the riprap dissipator pads are to be constructed such that the top elevation of the riprap would not exceed the pre-construction elevation of the stream bed. The sanitary sewer crossing is an aerial crossing with concrete piers outside of the ordinary high water mark (OHWM) and top of bank.

Avoidance and Minimization

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

The first road crossing (Impact Area A) is proposed to cross Stream C at a perpendicular angle and would utilize headwalls to minimize stream impacts to the maximum extent practicable. A temporary diversion pump, impervious dikes, dewatering pump, and discharge hose would be utilized during construction to divert stream flows and minimize the release of sediments during construction activities. Additionally, riprap dissipator pads are proposed to minimize stream velocities and stream degradation.

The second crossing (Impact Area B) is proposed to cross Stream A at a perpendicular angle and would utilize headwalls to minimize stream impacts to the maximum extent practicable. A temporary diversion pump, impervious dikes, dewatering pump, and discharge hose will be utilized during construction to divert stream flows and minimize the release of sediments during construction activities. Additionally, riprap dissipator pads are proposed to minimize stream velocities and stream degradation.

The aerial utility crossing (Impact Area C) is proposed to cross Stream A at a perpendicular angle to minimize stream impacts to the maximum extent practicable. The permanent easement is limited to 20-foot wide, and the sanitary sewer would be an aerial crossing; therefore, temporary stream impacts are needed for construction purposes only.

Compensatory Mitigation

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

The applicant proposed a mitigation ratio of 2:1 for the proposed permanent loss of stream channel. Compensatory mitigation for the project would total 598 stream credits over a phased timeline based on the two project phases (7 and 12). The proposed mitigation amounts and ratios are shown Table 2 below.

Table 2

Phase Number	Stream	Proposed Stream Credits	Mitigation Provider
Phase 7	A	402	Restoration Systems, LLC
Phase 12	C	196	Restoration Systems, LLC

The applicant proposes to purchase in-kind stream credits from a private mitigation bank with available credits in this HUC. A statement of availability from Restoration Systems, LLC for the stream mitigation was included with the application.

Essential Fish Habitat (EFH)

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:

- Cultural resources that have been determined not eligible for inclusion in the National Register of Historic Places are present within the Corps' permit area; therefore, there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO and/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:

- For the proposed project, the Corps has made the following determination for federally listed endangered or threatened species or their formally designated critical habitat: May Affect, Not Likely To Adversely Affect

The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

The applicant included the following effect determinations for federally listed species presented in Table 3. below, which were also provided to the U.S. Fish and Wildlife Service (Service) via email on December 6, 2021.

Table 3

Species / Resource Name	Conclusion	ESA Section 7 / Eagle Act Determination	Notes / Documentation
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Red-cockaded Woodpecker (<i>Picoides borealis</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Neuse River Waterdog (<i>Necturus lewisi</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Carolina Madtom (<i>Noturus furiosus</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Atlantic Pigtoe (<i>Fusconaia masoni</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Dwarf Wedgemussel (<i>Alasmidonta heterodon</i>)	Suitable habitat present, species not present	May affect, not likely to adversely affect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Michaux's Sumac (<i>Rhus michauxii</i>)	Suitable habitat present, species not present	No effect	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	Unlikely to disturb nesting Bald Eagles	No Eagle Act permit required	Preliminary habitat survey completed by S&EC staff on December 17, 2021.
Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	Suitable habitat present, species not present	May affect, not likely to adversely affect	Preliminary habitat survey completed by S&EC staff on December 17, 2021. Relying upon the findings of the 1/5/2016 Programmatic Biological Opinion for Final 4(d) Rule on the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions to fulfill our project-specific section 7 responsibilities.
Critical Habitat	No critical habitat present	No effect	

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 should do so in writing, within 30 days of the issue date of the notice by emailing comments to publiccomments@deq.nc.gov with the subject line of "401 Water Quality Certification" or by mail to:

NCDWR Central Office
Attention: Stephanie Goss, 401 and Buffer Permitting Branch
(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 (NCDQM):

- ☒ 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 WOTUS, 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 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 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, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, November 15, 2023. Comments should be submitted to Laura J. Meyer, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, or via email at laura.j.meyer@usace.army.mil. The Corps Project Manager can be contacted at (919) 634-1595. Comments may also be submitted to RaleighNCREG@usace.army.mil.