



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: February 15, 2023  
Comment Deadline: March 17, 2023  
Corps Action ID Number: SAW-2018-01073

The Wilmington District, Corps of Engineers (Corps) received an application from North Carolina Department of Transportation (NCDOT) seeking Department of the Army authorization to discharge dredged or fill material into waters of the United States, associated with the proposed U.S. 158 improvements from Acorn Hill Road to the Pasquotank County Line in Gates County, North Carolina. NCDOT has identified this project as R-5808.

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:** North Carolina Department of Transportation (NCDOT)  
Division 1  
Attn: Paul Williams  
113 Airport Drive, Suite 100  
Edenton, North Carolina 27932

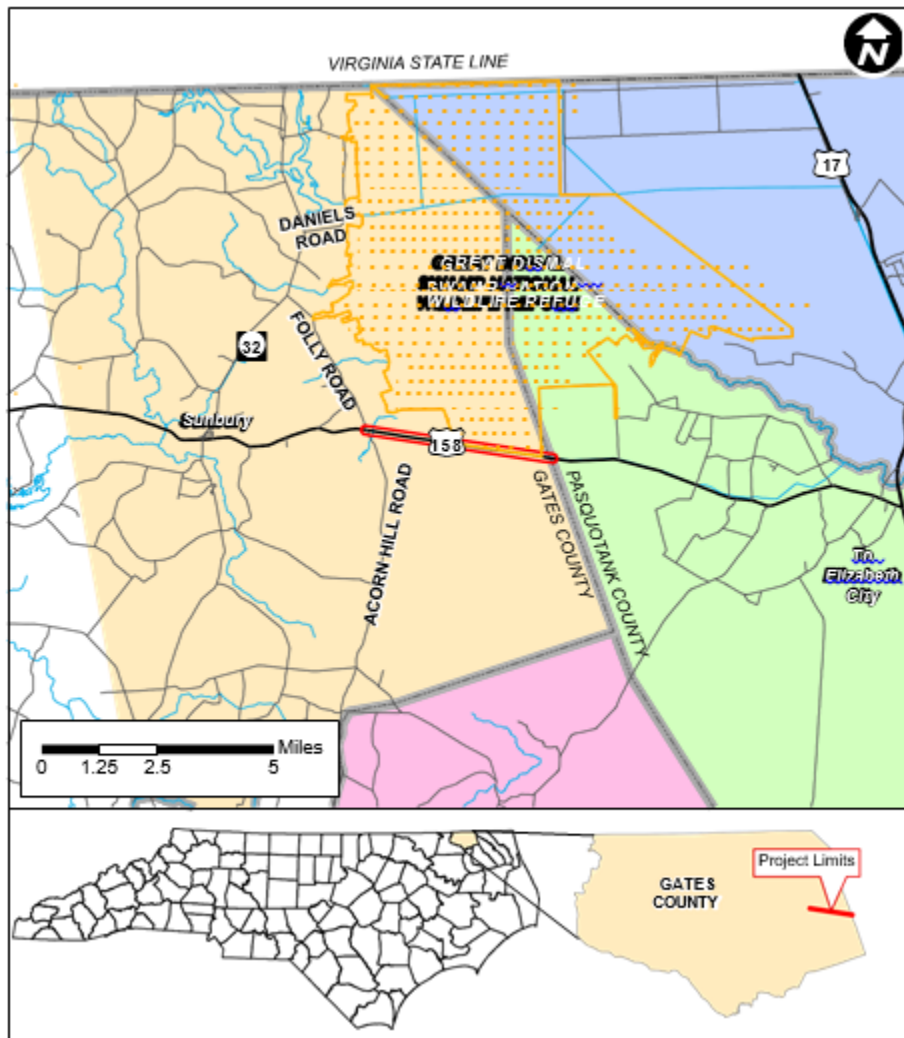
## Authority

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 area is a 4-mile segment of U.S. 158 from Acorn Hill Road (SR 1002) to the Pasquotank County Line in Gates County, North Carolina. This segment is east of the town of Sunbury and northwest of the town of Elizabeth City.



Project Area (acres): 86.4

Nearest Town: Sunbury

Nearest Waterway: Newland Drainage Canal & Jones Pond

River Basin: Pasquotank

Latitude and Longitude: 36.437800N, -76.511273W

### Existing Site Conditions

The existing U.S. 158 is a two-lane road with a paved surface width of approximately 26 feet (approximately 11-foot wide lanes and 2-foot paved shoulders) with little to no graded slopes. The project study area (PSA) is approximately four miles long and 170-foot wide (85 feet on either side of U.S. 158).

The Great Dismal Swamp National Wildlife Refuge, (GDSNWR), is adjacent to the project on the north side. The remaining portions of the PSA are agricultural and rural residential properties. Water resources including wetlands, open water, and streams

which are part of the Pasquotank River basin [U.S. Geological Survey (USGS) 8-digit HUC: 03010205] have been identified within the PSA.

Delineations of water resources north and south of U.S. 158 have been completed and confirmed by the USACE. A single stream (Jones Pond), a single canal feature (Newland Drainage Canal), three open water ditch features (OWA, OWB, OWC), and seven wetlands (WA through WG) have been identified in the PSA. There are no designated Primary Nursery Areas (PNA) or anadromous fish waters in or within 1.0-mile downstream of the PSA. The tree canopy, where present, is generally dominated by loblolly pine (*Pinus taeda*), red maple (*Acer rubrum*), and sweet gum (*Liquidambar styraciflua*). The understory is generally dominated by giant cane (*Arundinaria gigantea*), common greenbrier (*Smilax rotundifolia*), and Japanese honeysuckle (*Lonicera japonica*). The site appears to drain west to Jones Pond and northeast to the Newland Drainage Canal. Soils within the project area are comprised of moderately well drained (Altavista, Craven, Exum, Goldsboro, and Noboco soil series), poorly drained (Belhaven, Cape Fear, Nawney, Pungo, and Tomotley soil series), and undrained (Roper, Wasda, Pettigrew, Bibb, Muckalee, Grantham, Rains, Woodington, Arapahoe, Nimmo, Dragston, Cape Lookout, Deloss, Johnston, and Portsmouth soil series) soils.

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

The purpose of this project is to bring the U.S. 158 corridor adjacent to the Great Dismal Swamp up to NCDOT and American Association of State Highway and Transportation Officials (AASHTO) standards and stabilize the slopes from Acorn Hill Road to the Pasquotank County Line. Bringing US 158 up to standards will improve hurricane evacuation efficiency and improve safety along this corridor.

### **Project Description**

The proposed impacts to jurisdictional resources along the project corridor have been avoided and minimized to the extent practicable throughout the design process. However, the existing roadbed and embankments are too narrow to accommodate the proposed typical section of the roadway to meet current design standards and additional fill will be necessary alongside the existing embankment to provide sufficient space on a suitable surface for construction. The existing embankments are closely surrounded by water features on both sides, therefore requiring that the necessary fill be placed in these resources.

#### **Alternatives Analysis**

Four alternatives for R-5808 were evaluated, including a No Build Alternative and three build alternatives. The No Build Alternative does not meet the purpose and need of the proposed project but was carried forward for comparison. The following build alternatives were evaluated in detail for R-5808:

1. Alternative 1 proposed to widen the roadway to the south by holding the northern right-of-way line and side slopes. Rip rap (rock plating) was

proposed in areas of open water on the northern side slope to provide stability.

2. Alternative 2 proposed to widen the roadway to the north by holding the southern right-of-way line and side slopes west of the Great Dismal Swamp National Park Refuge (Refuge). Rip rap would be used on the proposed fill slope to provide slope stability. Where U.S. 158 runs adjacent to the Refuge, Alternative 2 proposed to widen to the south and maintain the existing northern side slope, as proposed in Alternative 1. Rip rap was proposed in areas of open water on the northern side slope.
3. Alternative 3 proposed to widen the roadway symmetrically west of the Refuge. Where U.S. 158 runs adjacent to the Refuge, this alternative proposed to only widen to the north to the extent possible while maintaining the permanent fill impacts within NCDOT right-of-way (approximately 4 feet). The remainder of the widening (approximately 5 feet) is proposed to the south. Rip rap (rock plating or a combination of rock embankment) would be used on the proposed fill slopes to provide slope stability.

These alternatives were selected by NCDOT in coordination with state and federal agencies as part of the NEPA/404 Merger Process.

Alternative 1 was determined to be the Applicant's Preferred Alternative, was supported by the NEPA/404 Merger Process, and was carried forward for final design of R-5808 due to:

- Lower potential for permanent direct impacts to the Great Dismal Swamp National Wildlife Refuge
- Fewer open water impacts
- Lower risk of future slope degradation and settlement due to construction in more suitable soils
- Greater use of standard construction equipment and practices. This would result in a shorter construction duration, less disruption to traffic during construction, a safer work zone environment, smaller footprint and impact to environmental resources, and a lower cost to construct. Additionally, fill materials would be able to be provided locally, resulting in less emissions and cost.

#### Proposed Impacts

Alternative 1 will result in permanent and temporary impacts to forested wetlands, open waters, and streams. The proposed impacts are spread across six impact sites, as shown in the attached Permit Drawings and detailed below. In total, Alternative 1 will result in the following impacts to jurisdictional features:

- 7.02 acres of permanent fill in jurisdictional wetlands
- <0.01 acre of permanent excavation in jurisdictional wetlands

- 3.35 acres of temporary hand clearing in jurisdictional wetlands
- 0.07 acre/60 LF of permanent impacts to jurisdictional streams
- 0.03 acre/23 LF of temporary impacts to jurisdictional streams
- 0.25 acre of permanent impacts to jurisdictional open waters
- 0.36 acre of temporary impacts to jurisdictional open waters

Impact Site 1 (Sheet 5)

Culvert replacement and road widening from Station -L- 21+88 to Station -L- 26+97.

- 0.25 acre of Permanent Fill in Wetland WA
- <0.01 acre of Permanent Excavation in Wetland WA
- 0.15 acre of Temporary Hand Clearing in Wetland WA
- 0.04 acre/21 linear feet of Permanent Stream Impact to Jones Pond Creek
- 0.03 acre/39 linear feet of Permanent No Net Loss Stream Impact to Jones Pond Creek
- 0.03 acre/23 linear feet of Temporary Stream Impact to Jones Pond Creek

Impact Site 2 (Sheets 6-15)

Road widening from Station -L- 44+47 to Station -L- 151+51

- 4.93 acres of Permanent Fill in Wetland WB
- 2.42 acres of Temporary Hand Clearing in Wetland WB

Impact Site 3 (Sheets 17 & 18)

Road widening from Station -L- 167+42 to Station -L- 186+61 (RT)

- 1.07 acres of Permanent Fill in Wetland WC
- 0.43 acre of Temporary Hand Clearing in Wetland WC

Impact Site 4 (Sheets 21 & 22)

Road widening from Station -L- 218+17 to Station -L- 234+00 (RT)

- 0.40 acre of Permanent Fill in Wetland WD
- 0.35 acre of Temporary Hand Clearing in Wetland WD

Impact Site 5 (Sheets 8-14)

Road widening from Station -L- 65+17 to Station -L- 130+26 (LT)

- 0.37 acre of Permanent Fill in Wetland WG

Impact Site 6 (Sheets 14-15; 17-19; 21)

Road widening from Station -L- 130+26 to Station -L- 222+43 (LT)

- 0.25 acre of Permanent Open Water Impact to Newland Drainage Canal
- 0.36 acre of Temporary Open Water Impact to Newland Drainage Canal

## **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The NCDOT has implemented avoidance and minimization techniques throughout development of the R-5808 project design. This included developing three total alignment alternatives that evaluated avoiding aquatic resources as much as possible, while also minimizing impacts to other resources, and maintaining a feasible, constructible, and practicable design. Overall, proposed impacts have been avoided and minimized by utilizing and widening the existing roadway corridor to the extent practical.

In coordination with the Interagency Merger Review Team, the NCDOT has agreed to implement the following strategies to avoid and minimize impacts to water resources along the R-5808 corridor:

- Fill embankments with 3:1 slopes were applied along the entire corridor rather than the original 6:1 slopes envisioned to reduce impacts to natural/environmental resources.
- Offset widening rather than symmetrical widening is proposed to minimize wetland impacts.
- Alignment has been selected to avoid impacts to the Great Dismal Swamp National Wildlife Refuge.
- Hand clearing has been proposed outside of the slope stakes to reduce permanent impacts to wetlands.
- Wing walls have been proposed at the culvert inlet and outlet along Jones Pond Creek to reduce the overall length of stream placed in the culvert.

## **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The NCDOT proposes to provide compensatory mitigation for the unavoidable permanent impacts to streams and wetlands resulting from the R-5808 project through payment to the North Carolina Division of Mitigation Services In-Lieu Fee Program. Compensatory mitigation is proposed at a 2:1 ratio for the permanent impacts to jurisdictional wetlands and will be debited from the R-5808 project fund upon approval of the Section 404/401 Permit and prior to construction of the project.

## **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 may affect, likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat.

### ESA Federally Protected Species within the Project Vicinity

Scientific Name	Common Name	Federal Status	Habitat Present	Biological Conclusion
<i>Myotis septentrionalis</i>	Northern long-eared bat	T	Yes	MA-LAA
<i>Perimyotis subflavus</i>	Tricolored bat	PE	Yes	Not Required
<i>Calidris canutus rufa</i>	Red knot	T	No	No Effect
<i>Picoides borealis</i>	Red-cockaded woodpecker	E	Yes	No Effect
<i>Alligator mississippiensis</i>	American alligator	T(S/A)	Yes	Not Required
<i>Haliaeetus leucocephalus</i>	Bald eagle	BGPA	Yes	Undetermined

MA-LAA – May Affect – Likely to Adversely Affect

PE – Proposed Endangered

E – Endangered

T – Threatened

T(S/A) – Threatened due to Similarity of Appearance

BGPA – Bald and Golden Eagle Protection Act

Northern long-eared bat, May Affect, Likely to Adversely Affect

The USFWS has revised the previous programmatic biological opinion (PBO) in



conjunction with the Federal Highway Administration (FHWA), USACE, and NCDOT for the northern long-eared bat (NLEB) in eastern North Carolina. The programmatic determination for NLEB for the NCDOT program remains “May Affect, Likely to Adversely Affect.” The PBO provides incidental take coverage for NLEB and will ensure compliance with Section 7 of the Endangered Species Act for ten years for all NCDOT projects with a federal nexus in Divisions 1-8, which includes Gates and Pasquotank Counties in Division 1, where STIP R- 5808 is located. This level of incidental take is authorized from the effective date of a final listing determination through December 31, 2030. Gates and Pasquotank Counties contain a current known/potential range of NLEB and are therefore subject to conservation measures. Conservation measures which will avoid/minimize mortality of NLEBs as included in the PBO are:

- 1) No tree clearing will occur within 150 feet of a known maternity roost tree May 1 – June 30 to protect non-volant young. Winter roost trees are not considered maternity roost trees.
- 2) At individual project sites where a total of 1.0 acre or more of tree clearing will occur, no tree clearing will occur during the portion of the day that the air temperature is <40 degrees Fahrenheit in order to protect NLEBs that may be in torpor.

Red-cockaded woodpecker, No Effect – Habitat Present

Suitable foraging and nesting habitat for the red-cockaded woodpecker (RCW) is present within the project study area within the sufficiently open and mature pine stands primarily located on the southside of U.S. 158. Kimley-Horn biologists conducted pedestrian surveys within areas of suitable habitat on May 6, 2020, and again on January 25, 2023, and no RCW individuals or nesting cavities were observed. Additionally, a review of the NCNHP database records (updated October 2022) indicates that there are no known RCW occurrences in or within 1.0 mile of the project study area. Due to the lack of observed individuals or nesting cavities and the lack of known occurrences, it has been determined that the proposed project will have “No Effect” on the RCW.

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

### **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, Transportation 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 March 8, 2023, to:

NCDWR Central Office  
Attention: Ms. Amy Chapman, Transportation 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.

**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, March 17, 2023. Comments should be submitted to Kyle Barnes, Washington Regulatory Field Office, 2407 West Fifth Street , Washington, North Carolina 27889, at (910) 251-4584. Comments may also be submitted to [NCDOT\\_REG@usace.army.mil](mailto:NCDOT_REG@usace.army.mil)