



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: May 26, 2023
Comment Deadline: June 25, 2023
Corps Action ID Number: SAW-2021-01104

The Wilmington District, Corps of Engineers (Corps) received an application on May 16, 2023, from Envision Homes seeking Department of the Army authorization to discharge dredged or fill material into a pond within The Preserves at Holland residential development in Fuquay-Varina, 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: Envision Homes
Attn: Josh Swindell
4441 Six Forks Road
Raleigh, North Carolina 27609

AGENT (if applicable): Mitchell Environmental, PA.
Attn: Scott Mitchell
1501 Lakestone Village Lane, Suite 205
Fuquay-Varina, North Carolina 27526

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 south of Holland Road and north of the intersection of Chimney Ridge Drive and Harvest Point Drive in Fuquay-Varina, in Wake County, North Carolina.

Project Area (acres): ~1.03 acres

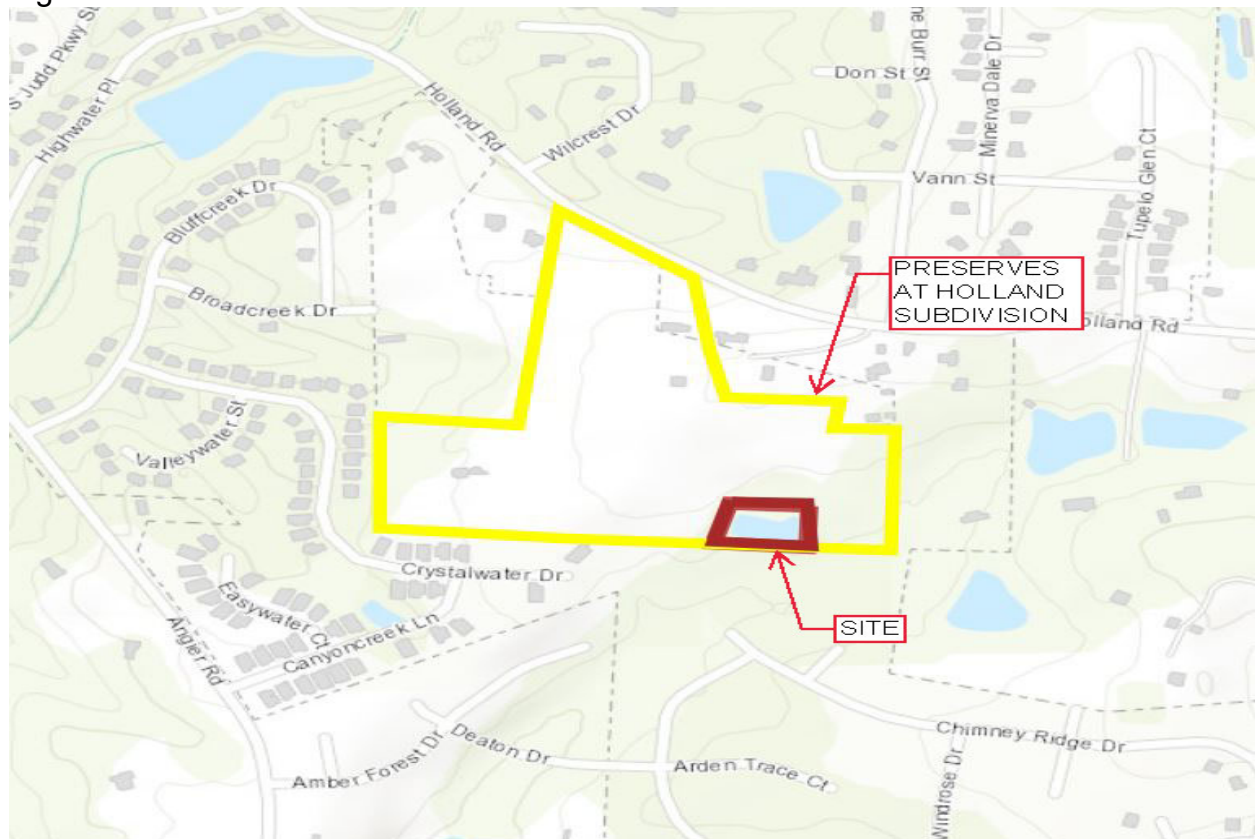
Nearest Town: Fuquay-Varina

Nearest Waterway: UT to Kenneth Creek

River Basin: Cape Fear

Latitude and Longitude: 35.568989 N, -78.780729 W

Figure 1



Existing Site Conditions

The project area (Site) consists of and is immediately bound by undeveloped woodlands. These woodlands are bound by the Preserves at Holland, Morgan Creek, and Amber Ridge residential developments to the north, west and south, respectively. Undeveloped woodlands and a single-family homestead are located east of the site.

The Site is within the Buies Creek-Cape Fear River sub-watershed in the Cape Fear River Basin (Hydrologic Unit Code [HUC] 03030004). The site drains to Kenneth Creek

(Stream Index 18-16-1(1)) which is a designated Class C water (Aquatic Life, Secondary Contact Recreation, Fresh Water) by the North Carolina Department of Environmental Quality (NCDEQ).

Based on information obtained from the United State Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey for Wake County, soils within the Site are mapped as Bibb sandy loam, 0 to 2 percent slopes, frequently flooded (BbA).

Based on information obtained from the Wake County Soil Survey issued November 1970, vegetation typically found within the BbA soil group consists of loblolly pine (*Pinus taeda*), green ash (*Fraxinus pennsylvanica*), Shumard oak (*Quercus shumardii*) and cherrybark oaks (*Quercus pagoda*), yellow poplar (*Liriodendron tulipifera*), sycamore (*Platanus occidentalis*) and swamp tupelo (*Nyssa aquatica*).

The Corps issued a preliminary jurisdictional determination (SAW-2021-01104) for an approximately 29-acre area, which included the entirety of the Site, on August 16, 2021. The Corps determination identified three potentially jurisdictional wetland waters (Wetland A, B and C) and one potentially jurisdictional non-wetland water (Pond 1). The Site itself contains Pond 1 (0.40 acre) and Wetland B (0.34 acre).

A Nationwide Permit 29 (Residential Developments) verification was issued for activities associated with the Preserves at Holland subdivision, on August 16, 2021. The verification authorized the temporary discharge of dredged material within, and the permanent conversion of, 0.071 acre of forested wetlands to herbaceous wetland for sewer utility installation.

Applicant's Stated Purpose

The applicant's stated purpose of the proposed project (Project) is to fill an existing, leaking farm pond (Pond 1) and adjacent wetland (Wetland B). The applicant stated that the pond poses a safety hazard as it currently sits, with a failing dam and non-functioning outlet.

Project Description

The Project would permanently discharge fill material within 0.75 acre of open water (Pond 1) and 0.071 acre of wetlands (Wetland B). Pond 1 and Wetland B are located within the area shown as "Open Space #3" depicted in the southeast corner of the "The Preserves at Holland - Overall Lot Layout" exhibit. According to the applicant, mature vegetation is established on the dam of Pond 1 causing degradation of the structure. Additionally, the applicant noted that the pond's outlet is non-functional resulting in water overtopping the dam. The permanent discharge of fill material within Wetland B was unavoidable based on its proximity to Pond 1 according to the applicant. Standard construction equipment would be used to complete the proposed activities.

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 stated that avoidance of Wetland B is not practical due to its proximity of the proposed fill within Pond 1.

Compensatory Mitigation

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

The applicant is not proposing compensatory mitigation since the proposed wetlands loss impact is less than 1/10th acre.

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 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 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 June 16, 2023, to:

NCDWR Central Office
Attention: Supervisor, 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, June 25, 2023. Comments should be submitted to George Lyle Phillips III, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 588-9200. Comments may also be submitted to RaleighNCREG@usace.army.mil.