



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: May 8, 2023
Comment Deadline: June 8, 2023
Corps Action ID Number: SAW-2022-01855

The Wilmington District, Corps of Engineers (Corps) received an application on April 25, 2023 from 421 Sand, LLC seeking Department of the Army authorization to impact approximately 2.04 acres of waters and wetlands to facilitate the expansion of an existing sand mine off Highway 421, north of Wilmington, in New Hanover 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: 421 Sand, LLC
Jeff Earp
1007 Evangeline Drive
Leland, NC 28541

AGENT (if applicable): *Davey Resource Group, Inc.*
Kim Williams
3805 Wrightsville Avenue, Suite 15
Wilmington, NC 28403

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 existing sand mine is located at 5401 North US Highway 421 in the northwestern part of New Hanover County, NC. Hwy 421 forms the site's northeastern boundary and the Cape Fear River is located along the site's southwestern boundary.

Project Area (acres): 587 Nearest Town: Wilmington
Nearest Waterway: Cape Fear River/Fishing Creek River Basin: Cape Fear
Latitude and Longitude: 34.330930N, -78.004161W

Existing Site Conditions

Habitat

The existing sand mine is located at 5401 North US Highway 421 in the northwestern part of New Hanover County, NC.

Hwy 421 forms the site's northeastern boundary and the Cape Fear River is located along the site's southwestern boundary. A 150'-wide Progress Energy Right-of-Way easement transects the site. A large contiguous section of river swamp wetlands is located adjacent to the river and encompasses the southwestern half of the site. These wetlands predominantly support black gum (*Nyssa sylvatica*), green ash (*Fraxinus pennsylvanica*), and red maple (*Acer rubrum*). The upper reaches of these wetlands, including some wetlands located along the northern property boundary, are riverine wetlands, but have been affected by perimeter ditching and other site development that surrounds them. Most of the uplands within this site are currently being mined or have previously been mined and contain pits.

The 587-acre Tree Shaker project area is located just north of the existing sand mine. Similar to the existing sand mine, an easement transects the site and a large contiguous section of river swamp wetlands encompasses most of the site that is southwest of the easement. The upper reaches of these wetlands, including the wetlands located northeast of the easement, are a mix of bottomland hardwood and headwater wetland pockets that support a canopy of mostly red maple and pond pine (*Pinus serotina*) trees with a dense shrub layer of titi (*Cyrilla racemiflora*), red maple, loblolly bay (*Gordonia lasianthus*), and fetterbush (*Lyonia lucida*). A review of aerial photographs shows that uplands within the northern and eastern portions of the Tree Shaker site were timbered in the early 2000s. These areas now support young longleaf pine (*Pinus palustris*) trees that are approximately 4" to 6" diameter at breast height (DBH) and no shrub layer. Uplands located in the northwestern part of the site have not been cut recently and support older and larger longleaf pines mixed with some turkey oaks (*Quercus laevis*) in the understory. Pine trees are generally 10" to 18" DBH.

Davey Resource Group (DRG) staff performed a wetland delineation within the Tree Shaker site in 2022 and it was approved by the US Army Corps of Engineers on November 21, 2022 (Action ID# SAW-2022- 01855). DRG also delineated the

northwestern portion of the 421 Sand Mine site in 2022 and it was approved by the Corps in April of 2021 (Action ID# SAW-2017-01954).

Most of the property along Highway 421 is zoned Industrial. Adjacent land use consists of the existing sand mine to the south, undeveloped and forested land to the east across from Highway 421, a Pender County Wastewater Treatment Plant to the north, and the Cape Fear River and its adjacent wetlands to the west.

Water Resources

According to the topographic quadrangle for this area, the 404 wetlands on site flow west to the Cape Fear River.

The Cape Fear River is classified by the NC Division of Water Resources as C; Sw in this location. Class C Waters are protected for uses such as secondary recreation, fishing, wildlife, fish consumption, aquatic life including propagation, survival and maintenance of biological integrity, and agriculture. Secondary recreation includes wading, boating, and other uses involving human body contact with water where such activities take place in an infrequent, unorganized, or incidental manner. The Sw classification stands for Swamp Waters and is a supplemental classification intended to recognize those waters which have low velocities and other natural characteristics which are different from adjacent streams.

Applicant's Stated Purpose

The applicant's purpose for the project is to expand the existing 421 Sand Mine site in northwestern New Hanover County to serve the coarse sand material needs of the area.

Project Description

421 Sand, LLC (Applicant) proposes to expand their existing sand mine operation located at 5401 North US Highway 421, NC to include an adjacent tract named the Tree Shaker site. This expansion is within an 88.7-acre parcel of the overall tract and is located just north of the existing pit and between the powerline and Highway 421. Final target excavation of the mine is approximately -35 feet. The mine site's proposed footprint will impact 1.51 acres of jurisdictional wetlands. Additionally, approximately 0.53 acres of jurisdictional open water ditches will be included in this permit request due to being previously impacted without authorization during their current mining operation. The applicant is requesting an after-the-fact authorization within this permit submittal to cover those ditch impacts. Total impacts to Waters of the U.S. is approximately 2.04 acres.

Avoidance and Minimization

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

following alternatives were considered during planning; no action alternative, off-site alternatives, and 4 on-site alternatives. For more details related to these alternatives see the attached project narrative and drawings attached to the public notice.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: To mitigate for the wetland impacts, the applicant plans to buy wetland credits from the Northeast Cape Fear Umbrella Mitigation Bank at a 1:1 mitigation to impact ratio.

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, not likely to adversely 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 applicant's agent completed a technical assistance correspondence with the USFWS (Project Code# 2023-0065133) with a determination key result of "may affect, but not likely to adversely affect". The Corps believes this to be the correct result since the site will involve tree clearing of trees greater than 3" DBH within the range of the Northern Long Eared Bat.

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 the 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 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 8, 2023 to:

NCDWR Central Office
Attention: 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, June 8, 2023. Comments should be submitted to Brad Shaver, Project Manager, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, at (910) 251-4611. Comments may also be submitted to Brad.e.Shaver@usace.army.mil