



PUBLIC NOTICE

**US Army Corps
Of Engineers**
Wilmington District

Issue Date: July 8, 2024
Comment Deadline: August 7, 2024
Corps Action ID Number: SAW-2021-00289

The Wilmington District, Corps of Engineers (Corps) received an application on June 14, 2024 from 35 North Land Holding, LLC seeking Department of the Army authorization to permanently impact 1.64 acres of wetlands, 240 linear feet (0.06 ac) of jurisdictional ditches, and to temporarily impact 0.3 acre of wetlands. This work is to facilitate the completion of the older platted Bolivia Heights Subdivision located in the northwest corner of Old Highway 17 East and Galloway Road, in Bolivia, Brunswick County, North Carolina. Plans include lot fill for residential homes, construction of four platted residential Town streets (Ashe Street NE, Elm Street NE, Cherry Street NE, and Walnut Street NE) for access to 122 existing platted residential lots, installation of water and sewer line, and construction of a pump station .

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:

35 North Land Holding, LLC
2030 Eastwood Rd - Suite 5
Wilmington, NC 28403

AGENT (if applicable):

Rick Trone
WithersRavenel
115 MacKenan Drive
Cary, NC 27511

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: North of intersection of Galloway Road (Highway 906)/US Highway 17 Business (Old Ocean Highway E).
Project Area (acres): 27.27
Nearest Town: Bolivia
Nearest Waterway: Middle Swamp
River Basin: Lumber
Latitude and Longitude: 34.06417N, - 78.15417W

Existing Site Conditions

The project area consists of undeveloped land containing wetlands, a stream, and jurisdictional ditches. The applicant purchased the 122 lots on 4/27/2021, however the previous owner retained the timber rights and logged the uplands project area in 2023 to harvest the timber. The current site conditions consist of cutover uplands and pocosin wetlands.

The vegetative composition of the cutover uplands consists of loblolly pine saplings (*Pinus taeda*), sweetgum saplings (*Liquidambar styraciflua*), red maple saplings (*Acer rubrum*), water oak saplings (*Quercus nigra*), American holly (*Ilex opaca*) horsesugar (*Symplocos tinctoria*), gallberry (*Ilex glabra*), greenbriar (*Smilax rotundifolia*), blackberry (*Rubus floricomus*) and bracken fern (*Pteridium aquilinum*). The pocosin wetlands have a vegetative composition of loblolly pine, loblolly bay (*Gordonia lasianthus*), red maple, sweet bay (*Magnolia virginiana*), red bay (*Persea borbonea*), way myrtle (*Myrica cerifera*), giant cane (*Arundinaria gigantea*), cinnamon fern (*Osumunda cinnamomea*) and netted chain fern (*Woodwardia areolata*).

The site is comprised of mainly of Goldsboro- fine sandy loam soils which are moderately well drained, A small area to the south contains Lynchburg – fine sandy loam soil that are somewhat poorly drained. Additionally, there is an area along the north of the project area that contains Muckalee loam soil which is a poorly drain hydric soil

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Applicant’s Stated Purpose

The purpose of the proposed project is to construct the infrastructure and lot fill needed to complete the development of a residential subdivision that was historically platted and approved.

Project Description

The Bolivia Heights subdivision was originally platted in 1901 (Plat Book: 1; Page: 52) which established 130 residential lots and the 50' right of ways (ROWs) for Ashe Street NE, Elm Street NE, Cherry Street NE, and Walnut Street NE. The 1901 recorded plat has been provided as an attachment. The lot numbers and ROWs have remained the same since they were originally platted. Please note that each lot is its own parcel and has a specific Brunswick Count parcel number (PIN). The applicant plans to construct homes on 84 of the 117 buildable lots they own. The remaining lots are under different ownership and some of those lots currently have homes.

The proposed project consists of construction of five residential roads (Ashe Street NE, Elm Street NE, Cherry Street NE, Walnut Street NE, Tram Road) within the existing platted 50' ROWs, construction of water lines, sewer lines, a sewer pump station and construction of homes on 84 of the existing platted 119 buildable lots the applicant owns. Ashe Street NE, Elm Street NE, Cherry Street NE, Walnut Street NE will provide access from Old Ocean Hwy (US 17). The roads are designed as 26' wide two-lane roads with grass swales along each side, which will be constructed within the existing platted ROW.

The construction of Elm Street NE, Cherry Street NE and Walnut Street NE will result in permanent impacts to wetlands and jurisdictional ditches. The construction of Ashe Street NE and Tram Road will not require impacts to jurisdictional features. The sewer and water lines will be constructed mostly within the roadways to minimize impacts. However, temporary wetland impacts are required to construct the sewer line between Ashe Street NE and Cherry Street NE. The construction of the pump station will not require impacts to jurisdictional features.

The applicant plans to build houses on 84 of the 117 buildable lots within the Bolivia Heights subdivision. Of the 84 lots proposed to be constructed on, 63 lots consist entirely of uplands, and 20 lots will require wetland impacts to construct the houses.

The proposed impacts consist of 1.64 acres of permanent wetland impacts, 240 lf (0.06 ac) of permanent jurisdictional ditch impact and 0.3 acres of temporary wetland impacts. The construction of the proposed roads will result in 0.86 acres of permanent wetland impacts and 240 linear feet (0.06 ac) of permanent impacts to jurisdictional ditches for construction of Walnut St and Cherry St. Please note that the entirety of ditch 1 & ditch 2 will be impacted by Elm Street.

Construction of the houses on the 20 lots requiring wetland impacts will result in 0.78 acres of permanent wetland, which are required for lot grading to construct the houses.

Additionally, 0.30 acres of temporary wetland impacts are proposed for the installation of sewer lines between Ashe Street and Cherry Street.

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 has removed the construction of the ROW for Tram Road due to wetland impacts, which resulted in the loss of 7 potential lots, and the inclusive of the pump station in uplands has resulted in the loss of 1 lot. This brings the total lots available for construction of houses to 109 lots. The currently proposed impacts for construction of houses on lots with wetlands is 0.78 acres of permanent wetland impacts. The applicant removed the potential development of all platted lots due to the increase of wetland impacts. Full development of the entire platted lots would bring the cumulative permanent wetland impacts to 3.44 acres. By limiting wetland impacts associated with lot development, the total cumulative impacts to wetlands and waters were reduced to the proposed 1.8 acres of permanent impacts.

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 1.64 acres of permanent wetland impacts through the purchase of offsite mitigation credits at a 2:1 ratio, resulting in the purchase of 3.36 acres of nonriparian wetland mitigation credits. WithersRavenel checked the USACE RIBITS database and the NCDMS list of approved mitigation banks and site, and there are no private mitigation banks or DMS mitigation sites servicing this basin. Currently, the applicant proposes to provide the 3.36 acres of non-riparian wetland mitigation through the purchase of credits from NCDMS.

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:

- No resources listed in or eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work; however, the permit area has not been formally surveyed for the presence of cultural resources. Additional work may be necessary to identify and assess any cultural

resources that may be present. This notice serves as a request to SHPO, THPO, and/or other interested parties to provide any information they may have regarding historic properties.

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.
- 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
-Northern Long Eared Bat
- 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. *Add Additional Information If Necessary*
- The Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete. *Add Additional Information If Necessary*
- The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete. *Add Additional Information If Necessary*

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 180 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 (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 requests, via the public notice, 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, August 7, 2024. Comments should be submitted to David Moose, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, or via email at David.e.moose@usace.army.mil. The Corps Project Manager can be contacted at (910) 251-4810. Comments may also be submitted to WilmingtonNCREG@usace.army.mil.