



PUBLIC NOTICE

**US Army Corps
Of Engineers**
Wilmington District

Issue Date: February 9, 2024
Comment Deadline: March 9, 2024
Corps Action ID Number: SAW-2024-00143

The Wilmington District, Corps of Engineers (Corps) received an application on January 17, 2024 from Rocky Point Properties, LLC, c/o: Mark Maynard Jr. seeking Department of the Army authorization to permanently impact and fill 0.456-acres of wetlands, 0.24-acres of open water ditch and 160 linear feet of stream, associated with the development and construction of a single family residential subdivision (Falls Mist) on Highway 117 in the community of Rocky Point in 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. Mark Maynard Jr.
Rocky Point Properties, LLC
10 South Cardinal Drive
Wilmington, NC 28403

AGENT (if applicable): Ms. Dana Lutheran
Southern Environmental Group, Inc. (SEGI)
5315 South College Road, Suite E
Wilmington, NC 28412

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: Location Description

Project Area (acres): 218
Nearest Town: Rocky Point
Nearest Waterway: Turkey Creek
River Basin: Cape Fear
Latitude and Longitude: 34.42123 N, -77.89667 W

Existing Site Conditions

This 218-acre site is located off NC Highway 117 in the Rocky Point area of Pender County, NC. The parcels that will be developed include 3234-24-6900-0000, 3234-53-1216-0000 & 3234-53-1216-0000. The project site is mostly flat uplands that were historically managed and used for forestry and silviculture. The land abuts Turkey Creek and its Forested Wetlands on the west and in a portion of the southern boundary. There are two unnamed tributaries of Turkey Creek that flow through a large portion of the western side of the project. In total the site contains 69.06-acres of wetlands, 8108 linear feet of stream, and 4444 linear feet of open water ditches.

Soils within the lower, wetland areas consist of Muckalee (MK) and Grifton loamy fine sand (Gt) with upland areas being mapped as Marvyn (McC), Craven (McC), Goldsboro fine sandy loam (GoA), Foreston loamy fine sand (Fo) and Norfolk loamy fine sand (NoA).

The Corps' previous history with this area includes the issuance of a NWP in 2008 to impact 0.18-acres of waters of the U.S. (WOTUS). For various reasons this project never got started. In 2022, the applicant again applied and received authorizations (NWP 29 & 401 Individual Certification) to impact 0.386-acres of wetlands and 0.018-acres of stream impacts. This project is known as Falls Mist Gardens. (See Falls Mist Supplemental Attachments page 2).

Applicant's Stated Purpose

The applicant's purpose as disclosed in the application is to develop roughly 218-acres of land to provide single family homes within the rocky Point Community. The project will provide 563 lots/homes to a fast-growing section of Pender County.

Project Description

The proposed project will discharge fill material into 0.47-acres of Bottomland Hardwood Forest wetlands, 0.0127-acres of stream bed and .24-acres of Open Water Ditch

impacts. The combined impacts are required for the construction and installation of road crossings, utilities, and for lot development. (See Falls Mist Supplemental Attachments pages 6, 7 & 8)

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 evaluated several off-site and on-site alternatives and determined that the preferred project is the least environmentally damaging yet practicable alternative.

The applicants stated minimization efforts included that the wetlands and stream impacts will be for road crossings to access upland areas for development within the project site. The open water ditch impact is unavoidable since it runs across the middle of the project site.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant proposes to purchase wetland mitigation credits from the Northeast Cape Fear Umbrella Mitigation Bank to offset the permanent wetland loss..

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.

N/A

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 (i.e., properties listed in or eligible for inclusion in the National Register of Historic Places) be present within the Corps' permit area, the proposed activity requiring the DA permit (the undertaking) is a type of activity that has no potential to cause an effect to an historic property.
- No historic properties (i.e., properties listed in or 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. The Corps subsequently requests concurrence from the SHPO and/or THPO.

- 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.
- Historic properties (i.e., properties listed in or eligible for inclusion in the National Register of Historic Places), 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 and/or THPO.
- Historic properties (i.e., properties listed in or eligible for inclusion in the National Register of Historic Places), 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 and/or THPO.
- 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

- 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
- For the proposed project, the Corps has made the following determination for 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: Select the Affects/Effects Determination
- 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 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, **March 9, 2024**. Comments should be submitted to Gary Beecher, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403, or via email at gary.h.beecher@usace.army.mil. The Corps Project Manager can be contacted (910) 251-4694. Comments may also be submitted to WilmingtonNCREG@usace.army.mil.