



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: January 25, 2018  
Comment Deadline: February 26, 2018  
Corps Action ID Number: SAW-1997-02095

The Wilmington District, Corps of Engineers (Corps) received an application from Lake Tahoma, Inc. seeking Department of the Army authorization for the discharge of dredged material into Lake Tahoma, an impoundment of Buck Creek for the Lake Tahoma Dredge Project located north of Hwy 80, approximately 0.6 miles northwest of the intersection of Hwy 80 with Toms Creek Road, northwest of Marion, in McDowell 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 <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Mr. Mike Butrum  
Lake Tahoma, Incorporated  
1219 Fallston Road  
Shelby, North Carolina 28150

**AGENT (if applicable):** Mr. Jeffrey Brown  
Brown Consultants, PA  
30 Ben Lippen School Road, Suite 202  
Asheville, North Carolina 28806

## 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: Lake Tahoma is an impoundment of Buck Creek and is located north of Hwy 80, approximately 0.6 miles northwest of the intersection of Hwy 80 with Toms Creek Road, northwest of Marion, in McDowell County, North Carolina.

Project Area (acres): Approximately 5 acres  
Nearest Waterway: Buck Creek and Little Buck Creek  
Latitude and Longitude: 35.729293 N, --82.085767W

Nearest Town: Marion  
River Basin: 03050101

### **Existing Site Conditions**

The Lake Tahoma property is 3,500 acres and includes a 162 acre lake (an impoundment of Buck Creek) with a hydro-electric dam as well as multiple streams and wetland systems. The land additionally consists of residential properties and forested land. There are two sediment retention structures, one where Buck Creek enters the lake, and the other where Little Buck Creek enters the lake, that function to prevent sedimentation of the lake by collecting and storing sediment as it is transported into the lake from upstream waters. These structures, as well as lake dredging to remove sediment, were authorized by permits issued in 1997 and 1998 and require periodic maintenance to remove sediment to ensure storage capacity isn't exceeded which would result in the sediment flowing into the lake. There are wetlands located within the vicinity where dredging is proposed at both Buck Creek and Little Buck Creek, however no impacts to wetlands are proposed.

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

The applicant stated the project purpose as follows:

“The project purpose of the proposed dredging at Lake Tahoma is to remove excessive sediment deposition from Buck Creek and Little Buck Creek as they enter the lake, and to remove sediment accumulation from two areas within the lake.”

### **Project Description**

The proposed project involves dredging in approximately 3.35 acres of open-water using a dragline with the sediment being transported by truck to designated spoil areas. The applicant proposes to dredge Buck Creek resulting in the removal of approximately 9,000 cubic yards of sediment upstream of the sediment retention structure and approximately 16,000 cubic yards of sediment downstream of the sediment retention structure. The applicant additionally proposes to dredge Little Buck Creek resulting in the removal of approximately 3,000 cubic yards of sediment up-stream of the sediment retention structure. Sediment would be relocated to one of four designated spoil areas located around Lake Tahoma. There are six access areas proposed along the eastern bank of Buck Creek. The vegetation will be cleared from these areas in order to give dredging equipment access to the dredging areas. A temporary bridge across Little Buck Creek will be used to bring dredging equipment along the western bank of Little Buck Creek to conduct the proposed dredging in this area.

### **Avoidance and Minimization**

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

Avoidance:

“The only option to avoid the proposed impacts would be to refrain from dredging at all. This would result in the continued accumulation of sediment, the further degrading of Buck Creek and Little Buck Creek, and further loss of water storage capacity in Lake Tahoma.”

Minimization:

Measures to be used to minimize impact of the dredging are as follows:

- “First, the dredging will be done using a bucket and dragline that can be cast from a small crane arm. This prevents the need for machinery such as backhoes to compromise the banks, or enter the water.”
- “Finally, the immediate stabilization and re-vegetation of all work areas will insure that any impact to the stream banks and riparian buffers are temporary and minimal.”

### Compensatory Mitigation

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

“Because the proposed dredging will not involve any permanent impacts, no mitigation should be required.”

### Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps’ initial 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:

- 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 federally listed endangered or threatened species or their formally designated critical habitat.
  - The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - 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 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. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. 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 February 26, 2018 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 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 (NCDWM):**

- 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, February 26, 2018. Comments should be submitted to Crystal Amschler, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006 at (828) 271-7980 ext 4231.