



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: February 27, 2017  
Comment Deadline: March 13, 2017  
Corps Action ID Number: SAW-2009-01449  
TIP No. R-2707C

The Wilmington District, Corps of Engineers (Corps) has received an application for a modification to an existing Department of Army (DA) permit from the North Carolina Department of Transportation (NCDOT) seeking authorization to permanently impact 7,644 linear feet of stream, 0.94 acres of permanent impacts to wetlands and 3.09 acres of temporary stream impact associated with Section C of the Shelby Bypass. The Shelby Bypass was separated into sections A-E and the original permit, issued April 12, 2013, presented final impacts for R-2707A, R-2707B and preliminary impacts for R-2707C, R-2707D and R-2707E. This modification presents the final design impacts for R-2707C, a 4.79 mile section of the US 74 Shelby Bypass from West of NC 226 to west of NC 150 in Cleveland County, North Carolina.

Due to the large number of permit drawing plans associated with this proposal, they are not included with this Public Notice. This Public Notice is available on the Wilmington District Web site at <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

If you wish to review these plans in person, or to obtain additional information, please visit the U.S. Army Corps of Engineers Regulatory Field Office at 151 Patton Avenue, Suite 208; Asheville, North Carolina 28801 (Call ahead to arrange a time for review at (828) 271-7980, ext. 4234).

**Applicant:** North Carolina Department of Transportation  
Division of Highways  
Mr. Philip S. Harris III, P.E., C.P.M.  
Natural Environment Section Head  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

## 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**

The overall project site consists of five phases located along an approximate 19 mile corridor, from approximately 0.6 mile west of SR 1162 to east of SR 1162 as an upgrade/widening of existing US Highway 74, then on new location from east of SR 1161 to west of Buffalo Creek where the roadway would tie into existing US Highway 74. The project corridor is located to the west, north, and east of the town of Shelby in Cleveland County, North Carolina. Section C of this project is 4.79 miles long and runs from west of NC 226 to west of NC 150.

Project Area: Total project is 18.62 miles & Section C is 4.79 miles.

Nearest Town: Shelby

Nearest Waterways: First Broad River, Hickory Creek, Kings Mountain Reservoir

River Basin: Upper Broad Watershed; Santee River Basin (HUC 03050105)

Latitude and Longitude: 35.317300 N and -81.562577W

## **Existing Site Conditions**

The overall project study area is located within the Southern Piedmont Ecoregion.

Topographically, the study area is characterized as broad, gently rolling inter-stream areas and by steeper slopes along drainage ways. Elevations within the study area range from a topographic low of 660 feet above mean sea level (MSL) to a topographic high of 980 feet above MSL) with an average elevation of 820 feet. Soils in the study area are classified by the US Department of Agriculture Natural Resources Commission (NRCS). Three of the six classified soil types found in Cleveland County are located within the project study area: 1) Cecil-Pacolet-Applying Association, consisting of sandy loam or sandy clay loams found on well drained or eroded slopes; 2) Grover-Madison Association characteristic of gravelly, sandy loams found on steeper slopes; and 3) Chewacla-Wehadkee Association dominated by soils with hydric inclusions found within floodplains along Beaverdam Creek, Buffalo Creek, First Broad River, and numerous unnamed tributaries. The project study area is dominated by residential and commercial land uses with scattered forested and agricultural areas between developments. The project vicinity is mainly rural in nature except along existing US 74 on the western and eastern most reaches of the project where economic development is more commercial in nature.

All streams within the proposed project study area are classified as North Carolina Division of Water Resources (NCDWR) Class C waters, fresh waters protected for secondary recreation, fishing aquatic life including propagation and survival, and wildlife. The streams within the project study area are unnamed tributaries to Sandy Run Creek, Beaver Creek, Beaverdam Creek, Brush Creek, First Broad River, and Buffalo Creek. The overall project is located within sub-basins 030804 and 030805 of the Upper Broad River Watershed of the Santee River Basin (HUC 03050105). No Outstanding Resource Waters (ORW) or High Quality Waters (HQW) exist within the project area. Both Buffalo Creek and the First Broad River were listed on the North Carolina Department of Environment and Natural Resources (NC DENR) 2010 Final 303(d) List, however the 2012 Final 303(d) List no longer shows either creek as impaired. The project is also located within Water Supply Watersheds for Cleveland County and the City of

Shelby (WS III and WS IV). The proposed project is located approximately 0.5 mile upstream of the Water Supply Critical Area associated with the First Broad River. A portion of the eastern most section of the proposed bypass project is also located within the Water Supply Critical Area associated with the Kings Mountain Reservoir.

Existing US 74 within the study area, is mostly a four-lane divided highway with partial control of access and limited right-of-way. This highway includes commercial strip development that contains various retail uses and some light industry. This portion of US 74 has frontage roads and numerous intersections, driveways, and traffic signals which contribute to the increasingly congested, unsafe traffic conditions as traffic volumes increase. NC DOT anticipates future traffic congestion problems along the existing US 74 without the proposed project; level of service (LOS) for all intersections and the NC 150/18 interchange in the year 2020 would be LOS F. Existing US 74 from 0.3 mile west of SR 1162 to US 74 Business and from US 74 Business to SR 1001 exceeded the statewide crash rate from January 2000 to December 2002. Additionally, the existing US 74 Bypass section crash rate for that time period was nearly half of the statewide rate. Based on the information presented in the 2008 EA, the proposed alternative will reduce the number of rear end crashes at intersections. Rear end crashes accounted for over 50% of the type of incidents which occurred along existing U.S. 74 during the rating period.

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

The overall project purpose is to increase the capacity of the U.S. 74 corridor, improve safety and reduce traffic congestion along the existing U.S. 74, and improve Level of Service.

### **Project Description**

The original 2012 permit application (submitted July 9, 2012) and subsequent DA Individual 404 Permit, issued April 12, 2013, presented final impacts for R-2707A, R-2707B and preliminary impacts for R-2707C, R-2707D and R-2707E. Total impacts authorized to jurisdictional streams and wetlands in association with the construction of the entire Shelby Bypass were 21,224 linear feet of streams and 6.09 acres of wetlands. Proposed permanent open water impacts totaled 2.43 acres and temporary impacts totaled 0.17 acre of stream channel.

Impacts for sections C, D, and E were calculated using construction limits plus 25 foot slope stakes. Permit modification requests were required for sections C, D, and E as final design is completed for each section. This modification proposal presents the final design impacts for R-2707C.

The preliminary design impacts projected from the 2012 permit application for R-2707C were 7,274 linear feet of permanent stream impacts, 0.92 acres permanent impacts to wetlands and 2.96 acres of temporary stream impacts. Final design impacts for R-2707C are **7,644** permanent impacts to streams, **0.94 acres** of permanent impacts to wetlands and **3.09 acres** of temporary stream impacts.

The increases in impacts from preliminary to final design are due to the following:

- Two additional sites were added (Site 1 – bank stabilization for the First Broad River bridges & Site 20 – this jurisdictional stream crossing was not addressed in the preliminary design)
- Bank stabilization was added at upstream ends of major cross pipes

Given that the current proposed impacts to waters of the U.S. include an increase in stream impacts deemed significant to the public interest, the current proposal to construct R-2707C is being placed on Public Notice.

### **Avoidance and Minimization**

According to the applicant, they have avoided impacting many wetlands and streams and reduced impacts to wetlands and streams to the greatest extent practicable. In addition to all of the measures listed in the 2014 phased permit application, other specific examples of avoidance and minimization measures include:

- 2:1 slopes will be used in fill areas to reduce impacts to surrounding wetlands and jurisdictional streams.
- A Hazardous Spill Basin will be installed near the First Broad River to help protect Critical Area for Shelby's water intake.
- No deck drains will be used on the First Broad River Bridges.
- Drop structures will be installed in pipes where necessary to reduce outlet velocities.
- A Dry Detention basin will be utilized at station 599+50 -L- Right. This basin will serve to attenuate peak stormwater flows, promote settlement of suspended solids and reduce erosive velocities downstream.

### **Compensatory Mitigation**

Section C of the proposed project will permanently impact 0.94 acre of wetlands, 7,644 linear feet of streams (7,126 linear feet of permanent fill and 518 linear feet of bank stabilization), and temporarily impact 0.10 acre of streams.

The applicant proposes to purchase credits from the NC Division of Mitigation Services (NCDMS) as compensatory mitigation to offset unavoidable functional losses to the aquatic environment resulting in 0.94 acre of wetlands impacts and 7,126 linear feet of stream impacts from R-2707C.

### **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 affect 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).

Based on the originally approved permit, this project will not have an adverse affect on any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance based on letter and concurrence from SHPO dated October 19, 2000. (Concurrence form signed by NC DOT, FHWA, and SHPO).

- 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. The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

An Amended Biological Opinion issued November 9, 2012 from the USFWS continued the call of Not Likely to Jeopardize the Continued Existence of the Dwarf-flower Heartleaf from the 2004 Opinion. The 2012 Opinion outlines 8 Conservation Measures which supersede those identified in the 2004 Opinion and were incorporated as Special Conditions of this original permit. According to the applicant, as of April 2, 2015, the USFWS lists two federally protected species for Cleveland County. The only change since the 2012 permit application is the northern long-eared bat (*Myotis septentrionalis*) was added to the list for Cleveland County. A memo was sent to from NCDOT to USFWS on June 15, 2016 to satisfy 4(d) requirements.

- 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, Transportation 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 March 13, 2017 to:

NCDWR Central Office  
Attention: Ms. Amy Chapman, Transportation 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):**

Based upon all available information, the Corps has determined 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 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 shall 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 13, 2017. Comments should be submitted to Steve Kichefski, Regulatory Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980 extensioin 4234. Comments can also be emailed to [steven.l.kichefski@usace.army.mil](mailto:steven.l.kichefski@usace.army.mil) .