



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: July 27, 2017  
Comment Deadline: August 25, 2017  
Corps Action ID Number: SAW-2013-00905

The Wilmington District, Corps of Engineers (Corps) received an application from the Town of Fuquay Varina in coordination with the North Carolina Department of Transportation (NCDOT) seeking Department of the Army (DA) authorization to discharge dredged or fill material into waters and wetlands in Hydrologic Unit Code (HUC) 03030004 (Cape Fear River Basin), associated with Transportation Improvement Project (TIP) No. U-5317 (Judd Parkway Extension), in Wake 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:** Ms. Tracy Stephenson  
Town of Fuquay Varina  
401 Old Honeycutt Road  
Fuquay Varina, North Carolina 27526

**Agent:** Mr. Ross Sullivan  
Kimley Horn  
421 Fayetteville Street, Suite 600  
Raleigh, North Carolina 27601

## 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**

Directions to Site: The proposed site is a new alignment linear transportation corridor from the intersection of North Carolina Highway (NC Hwy) 55 with Wilbon Road (SR 1110)/NE Judd Parkway (SR 5056) to the intersection of NC Hwy 42 with Southwest Judd Parkway (SR 2387) located north of Fuquay Varina, in Wake County, North Carolina.

Project Area (acres): 1.79 miles

Nearest Town: Fuquay Varina

Nearest Waterway: Kenneth Creek

River Basin: Cape Fear

Latitude and Longitude: 35.5952N, -78.8156W

## **Existing Site Conditions**

The proposed corridor contains primarily a combination of open, agricultural, and forested land use classifications, with single family residential land uses occurring throughout the corridor.

This project lies within the Piedmont Physiographic Province in the Cape River Basin (Hydrologic Unit Code 03030004). Jurisdictional features within the U-5317 project study area that would be impacted include 1 unnamed tributary (UT) to Kenneth Creek (North Carolina Division of Water Quality (NCDWQ) Classification C; NCDWQ Index No. 18-16-1-(1)), three riparian wetlands, and one jurisdictional pond.

There are no designated Outstanding Resource Waters (ORW), High Quality Waters (HQW), Water Supply I (WS-I), or Water Supply II (WS-11) waters within 1.0 mile of the project area. No waters within the project area and/or within a mile of the project area are listed on the 2012 303(d) Final List of Impaired Waters of North Carolina.

## **Applicant's Stated Purpose**

The purpose of this project is to improve roadway linkage. NW Judd Parkway would link NC Hwy 55 (to the north toward US 1/64) and NC Hwy 42 (to the southwest toward Sanford). It would also link to the existing Judd Parkway, a two-lane road which connects to US 401 (to the northeast toward Raleigh and to the south toward Lillington and Fayetteville), NC Hwy 42 (to the east toward I-40), and NC Hwy 55 (to the south toward Interstate 95 (I-95)). It would complete the Judd Parkway loop around Fuquay-Varina. Although the purpose of this project is not specifically to improve level of service on existing facilities, the proposed improvements would reduce delay at most intersections along the corridor.

## **Background**

### *Merger Process*

This project additionally has progressed through a collaborative process which includes multiple resource and other integral regulatory agencies known in the State of North Carolina as the Merger Process. This group of agencies reviewed key points in the project development and agreed to milestones relative to their agencies responsibilities. The Merger Team agreed to the following milestones:

The NEPA/404 Merger project team (Merger team) for this project was assembled in Raleigh in May 15, 2013, to discuss the purpose and need statement and study corridor, and team concurrence was confirmed by signature. In addition, the Merger team concurred on alternatives to be studied in detail on May 15, 2013. The Corps has reviewed NCDOT's wetland and stream delineations for this project in the field, and verified the accuracy of the delineations. The Merger team concurred with the Least Environmentally Damaging Practicable Alternative (LEDPA) on July 16, 2015. In April 2015, the Federal Highway Administration (FHWA) approved the Environmental Assessment (EA) for North Judd Parkway Northwest. On July 14, 2017, the Town of Fuquay Varina applied for a DA permit application to discharge fill material into waters of the United States for U-5317.

### **Project Description**

The town of Fuquay Varina proposes to construct on new alignment the north western section of the proposed NW Judd Parkway from NC Hwy 55 (to the north toward US 1/64) and NC Hwy 42 (to the southwest toward Sanford). The new road alignment would consist of a four-lane roadway with curb and gutter, a grassed median, and 4-foot bicycle lane and a 5-foot sidewalk in both directions. The estimated length of the project is 1.79 miles. This project is included in the North Carolina Department of Transportation's Transportation Improvement Program (TIP).

#### *Summary of Impacts:*

Proposed impacts for U-5317 project include permanent impacts to 250 linear feet of stream channel (250 linear feet of permanent fill), 1.812 acres of wetlands (1.559 acres of permanent fill, 0.005 acre of temporary fill, and 0.248 acre of mechanized land clearing), and 0.045 acre of open water impacts (0.022 acre of permanent fill, and 0.023 acre of temporary fill). Proposed project impacts are listed in the tables below:

Permit Site No.	Stream Name/JD Packet ID	I/P Flow Status	Impact Type	Permanent Impacts (ft)	Impacts requiring USACE mitigation (ft)	USACE Mitigation Ratio <sup>1</sup>	Temp Impacts (ft)
1	UT to Kenneth Creek/SE	P	Fill	250	250	2:1	0
			BS	0	0	N/A	23 <sup>1</sup>
<b>TOTALS (ft)</b>				<b>250</b>	<b>250</b>		<b>23</b>

Permit Site No.	JD Package ID	Permanent Impact (ac)	Temporary Fill (ac)	Mechanized Clearing (ac)	Total Impacts (ac)
1	WB	1.131	0	0.154	1.285
2	WB	0.428	0	0.094	0.522
5	WA	0	0.005	0	0.005
<b>TOTALS (ac)</b>		<b>1.559</b>	<b>0.005</b>	<b>0.248</b>	<b>1.812</b>

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Activities resulting in permanent fill in streams include culvert installation and bank stabilization activities. Activities resulting in permanent impacts in wetlands include roadway fill, excavation in association with a fill activity, and mechanized land clearing without a specified wetland restoration plan. Temporary impacts proposed are those associated with construction access and dewatering activities, as well as stormwater tie-ins, where the impact areas would be returned to pre-construction grade and contour following construction.

### Avoidance and Minimization

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

Existing drainage patterns and outfalls have been maintained where possible. Best Management Practices (BMPs) would be utilized during construction to attempt to reduce the stormwater impacts to receiving streams and wetlands due to erosion and runoff. Measures have been taken throughout the project to limit impacts to wetlands and surface waters. These additional measures have been taken:

- NCDOT's Best Management Practices (BMPs) for the protection of surface waters would be enforced.
- Impacts to wetlands, streams, and open waters were avoided and/or minimized by adjusting alignments and slopes.
- Site 12: Lowery Mill Creek is hydraulically a culvert-sized crossing; however, NCDOT has agreed to bridge this stream as a minimization effort.
- 2:1 slopes or less are used in most wetland areas
- All storm drainage would be diffused and designed for non-erosive velocities before entering stream and wetland areas to the maximum extent practicable
- Rip rap stabilization on banks of jurisdictional streams would be implemented to prevent erosion

### **Compensatory Mitigation**

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

For U-5317, 250 linear feet of permanent warm water stream impacts are proposed. Of the 250 linear feet of permanent stream impacts, NCDOT proposes to provide compensatory mitigation at a 2:1 ratio. Compensatory mitigation for the 1.559 acres of U-5317 wetland impacts is proposed at a 2:1 ratio. NCDOT proposes to provide the above compensatory mitigation through purchasing stream and wetland credits from the NC Division of Mitigation Services (NCDMS).

### **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 US Fish and Wildlife Service (USFWS) lists four federally protected species for Wake County: red cockaded woodpecker (*Picoides borealis*), dwarf wedgemussel (*Alasmidonta heterodon*), Michaux's sumac (*Rhus michauxii*), and Northern long-eared bat (*Myotis septentrionalis*). No habitat exists within the project study area for the red-cockaded woodpecker and dwarf wedgemussel. Surveys for Michaux's sumac found no individuals within the project study area.

- 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 USFWS has developed a Programmatic Biological Opinion (PBO) in conjunction with the FHWA, the Corps, and NCDOT for the Northern long-eared bat in eastern North Carolina. The PBO covers the entire NCDOT program in Divisions 1-8, which includes Wake County, where U-5317 is located.

- 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 August 16, 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 (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 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, August 25, 2017. Comments should be submitted to James Lastinger, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 554-488 ext. 32.