



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: 06/29/2018
Comment Deadline: 07/31/2018
Corps Action ID Number: SAW-2015-01412

The Wilmington District, Corps of Engineers (Corps) received an application from Duke Energy seeking Department of the Army authorization to impact approximately 0.55 acre of wetland and 979 linear feet of stream channel of the jurisdictional waters associated with the redirection of stormwater around an ash basin on Marshall Steam Station (Marshall) in Catawba 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: Duke Energy
Mr. Steve Cahoon
411 Fayetteville Street, Mail Code: NC14
Raleigh, NC 27601
Steve.cahoon@duke-energy.com
919-546-7457

AGENT: Amec Foster Wheeler Environmental & Infrastructure, Inc.
Mr. Richard Harmon
4021 Stirrup Creek Drive, Suite 100
Durham, NC 27703
Richard.harmon@amecfw.com
919-801-8990

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: The project site is located within Marshall property which is located on NC Highway 150 in Catawba County, North Carolina.

Project Area (acres):	~185	Nearest Town: Sherrills Ford
Nearest Waterway:	South Potts Creek	River Basin: Yadkin
Latitude and Longitude:	35.74072 N, -80.34455 W	

Existing Site Conditions

The Proposed Project area occurs within the Marshall property boundary. The Marshall property consists of the following features: 1). Power generation facility and associated operations buildings, trailers, sheds, and parking areas; 2). Contractor parking area and trailers; 3). Utility rights-of-way; 4). Paved and unpaved roadways; 5). Ash basin; 6). Materials and equipment yard; 7). Maintained areas (grassed or landscaped); and 8). Natural vegetated areas (including forested uplands, wetlands, and streams). Specifically, the Proposed Project area primarily consists of upland hardwood forest. The canopy vegetation is comprised of white oak (*Quercus alba*), northern red oak (*Quercus rubra*), southern red oak (*Quercus falcata*), post oak (*Quercus stellata*), sweetgum (*Liquidambar styraciflua*), American beech (*Fagus grandifolia*), and mockernut hickory (*Carya alba*). Understory vegetation includes American holly (*Ilex opaca*), sourwood (*Oxydendrum arboreum*), red maple (*Acer rubrum*), ironwood (*Ostrya virginiana*), eastern red cedar (*Juniperus virginiana*), Chinese privet (*Ligustrum sinense*), common greenbrier (*Smilax rotundifolia*), Japanese honeysuckle (*Lonicera japonica*), blackberry (*Rubus sp.*), wild onion (*Allium canadense*), and Christmas fern (*Polystichum acrostichoides*).

Applicant's Stated Purpose

As stated by the applicant, the purpose of the Proposed Project is to redirect stormwater to ensure the long-term integrity of Coal Combustion Residual (CCR) materials and facilitate future ash basin closure activities within the Marshall Steam Station.

Project Description

The Proposed Project will redirect stormwater from existing culverts within the structural fill area to a perimeter channel that will be constructed around the western boundary of the structural fill area. The redirected stormwater will be discharged into two temporary stormwater ponds. The stormwater would be pumped from the two temporary stormwater ponds to an approved outfall location.

In addition to the redirection of stormwater, stream flow will also be redirected. The proposed method for implementing stormwater and natural stream flow will incorporate

both gravity and pumped flow. The redirection measures are estimated to occur by the end of 2019.

Descriptions of the various Proposed Project components are as follows:

1. Sources of Stormwater Requiring Redirection – Existing piping in the Proposed Project area will be capped, sealed, and left in place. The stormwater flow will then be diverted by the stormwater redirection channel (a.k.a. perimeter channel) by gravity flow around the perimeter of the ash basin into two temporary stormwater ponds.
2. Perimeter Channel – A trapezoidal-shaped channel designed with varying widths and depths to convey the 25-year, 24-hour storm event without overtopping its banks. The Perimeter Channel will be 4,200 feet long and will be lined with reinforced vegetative linear and concrete with the option to use synthetic turf in selected portions of the channel.
3. Norfolk Southern Railway Culvert - The replacement of an existing 40-inch culvert that currently conveys stormwater from the western side of the Norfolk Southern railroad tracks will be required. The reason for culvert replacement, is to maintain positive drainage toward the proposed Perimeter Channel. The replacement culvert (i.e., 42-inch steel pipe) is designed to convey the 100-year, 24-hour storm event with a headwater depth of less than 2.5 feet.
4. Temporary Stormwater Ponds – The two (east and west) temporary stormwater ponds will be constructed within the northern fingers/portion of the ash basin. The stormwater that is diverted around the structural fill area (via the Perimeter Channel) as well as stormwater from the industrial landfill exterior slopes, and flow from the northern ash basin tributary run-on areas will be managed by the temporary stormwater ponds. The geomembrane-lined ponds will be backfilled with controlled compacted soil to design grades and will be constructed above the groundwater surface. A pumping system will be constructed as the primary outlet for the stormwater ponds. Stormwater will be pumped to a new National Discharge Elimination System (NPDES) permitted stormwater outfall via a force main. The temporary ponds will remain in service until final cover is completed and closure of the ash basin allows conveyance of stormwater by gravity.

Avoidance and Minimization

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

Appropriate practicable steps to minimize potential adverse impacts to wetlands and streams were considered through analysis of the development concepts during project planning and the examination of the proposed action. To generate the final proposed action, further design modifications were complete for the Project. The complete avoidance of waters of the U.S. was not practicable as the excavation and disposal of CCR material at Marshall ultimately required under the Coal Ash Management Act of 2014 could not be accomplished without some impact to such waters. However, the

stormwater redirection operations will be conducted in a manner to reduce the potential for degradation of downstream waters.

Compensatory Mitigation

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

The applicant has attempted to avoid and minimize impacts where possible and will compensate to the extent practicable, for the remaining unavoidable losses with mitigation. The applicant proposes the following mitigation for the unavoidable impacts to water of the U.S. (Table 1):

Table 1. Mitigation Proposal

Impact Feature	Type of Impact	Proposed Mitigation Ratio	Impact Amount	Required Credits
Wetlands D, E, and F	Fill	1:1	0.16 acre	0.25 acre
Wetland G	Fill	1:1	0.39 acre	0.5 acre
Streams 7, 10, and 11	Fill	1.5:1	500 linear feet	750 linear feet
Streams 8 and 9	Fill	2:1	479 linear feet	958 linear feet

Wetlands D, E, F, and G have been classified as a low-quality wetland by NCWAM. Furthermore, based upon site observations and provided documentation, it is the opinion of the Applicant that the mitigation ratio for Wetlands D, E, F, and G should not exceed a 1:1 ratio. At the ratio proposed, the applicant will purchase 0.75 acre of wetland credits, which will exceed mitigation credit requirements.

Streams 7, 10, and 11 have been classified as intermittent by NCDEQ Stream Identification Forms and low- to medium-quality by NCSAM. It is the option of the Applicant that the mitigation ratio for Streams 7, 10, and 11 should not exceed a 1.5:1 ratio. At the ratio proposed, the applicant will purchase 750 linear feet of credits for Streams 7, 10, and 11. Streams 8 and 9 have been classified as perennial by NCDEQ Stream Identification Forms and high-quality by NCSAM. The applicant proposed a ratio of 2:1 for these two streams. At this ratio, the applicant will purchase 958 linear feet of stream credits. In total, the applicant will purchase 1,708 linear feet of stream credits for impacts to Streams 7 through 11 (Table 1).

The applicant proposes to compensate for impacts associated with the Proposed Project by offering payment into the NCDEQ-Division of Mitigation Services (DMS). Private mitigation banks, within the watershed of the Proposed Project, did not have credits available at the time of the Applicant’s request.

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).
- 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.
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 - 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 September 28, 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 (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 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 Project, as outlined above, until 5pm, July 31, 2018. Comments should be submitted to Bryan Roden-Reynolds, Regulatory Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, ROOM 208, at (704) 510-1440.