



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: April 20, 2018
Comment Deadline: May 21, 2018
Corps Action ID Number: SAW-2015-02160

The Wilmington District, Corps of Engineers (Corps) received an application from Mr. Andrew K. Sandman seeking Department of the Army authorization to permanently impact 200 linear feet of stream channel, 0.11 acre of scrub shrub wetlands, and 0.9 acre of open waters after-the-fact. Additional impacts to 93 linear feet of stream channel and 0.01 acre of forested wetlands are also proposed. Impacts to jurisdictional waters on site are associated with the construction of a residential subdivision, near the town of Apex, 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: Andrew K. Sandman
7101 Creedmoor Road, Suite 122
Raleigh, North Carolina 27613

Agent: Environmental Services, Inc.
Attn: Jeff Harbour
4901 Trademark Drive
Raleigh, North Carolina 27610

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: From the US HWY 64 / NC HWY 540 interchange in Apex, proceed west on US HWY 64 for 3 miles to New Hill Olive Chapel Road. Turn left onto New Hill Olive Chapel Road and proceed 0.5 mile. The project is located on the east side of New Hill Olive Chapel Road before its intersection with Olive Chapel Road.

Project Area (acres): 36.5

Nearest Town: Apex

Nearest Waterway: Beaver Creek

River Basin: Cape Fear (03030002)

Latitude and Longitude: 35.7346N, -78.9429W

Existing Site Conditions

The proposed 36.5 acre project site consists of primarily undeveloped land with mixed hardwood trees and loblolly pines. There are three unnamed tributaries that flow to Beaver Creek in the Cape Fear River basin. The tributaries are associated with forested riparian areas and headwater riparian wetlands. Topography on the site consists of gently sloping ridges and valleys with moderately steep slopes typical of the eastern Piedmont Physiographic Region. Elevations on the site range from approximately 270 to 310 feet above mean sea level. Ten individual soil mapping units are depicted as occurring on the site pursuant to the published USDA Soil Survey of Wake County, NC (Figure 2-Soils Map). Some of these include Augusta fine sandy loam, Creedmoor sandy loam of various slopes, Granville sandy loam of various slopes, Mayodan sandy loam of various slopes, White store sandy loam of various slopes, White store clay loam, and Worsham sandy loam.

Wooded upland areas on the site are vegetated by sweet gum (*Liquidambar styraciflua*), loblolly pine (*Pinus taeda*), American holly (*Ilex opaca*), eastern redcedar (*Juniperus virginiana*), red maple (*Acer rubrum*), hickory (*Carya sp.*), and flowering dogwood (*Cornus florida*). The wetland areas are vegetated by sweet gum, red maple, and dominated by Japanese stiltgrass (*Microstegium vimineum*), Japanese honey suckle (*Lonicera japonica*), common rush (*Juncus effuses*), and common greenbrier (*Smilax rotundifolia*), in the sapling/shrub, woody vines, and herbaceous layers.

Wetlands and streams on the site are piedmont headwater systems that primarily originate on the site and flow to Beaver Creek, and include riparian headwater wetlands that originate on-site and flow predominantly from north to south. Water resources in the study area are located within the Cape Fear River basin (USGS hydrologic unit 03030002). A Best Usage Classification (BUC) is assigned to waters of North Carolina based on the existing or contemplated best usage of various bodies of water. The waters occurring on the site are unnamed tributaries to Beaver Creek, which has a BUC of WS-

IV; NSW. Water Supply IV (WS-IV) are waters used as sources of water supply for drinking, culinary, or food purposes where a WS-I, II, or III classification is not feasible. WS-IV waters are generally in moderately to highly developed watersheds or Protected Areas. These WS-IV waters are also protected for Class C uses. Class C waters are protected for uses such as secondary recreation, fishing, wildlife, fish consumption, aquatic life including propagation, survival and maintenance of biological integrity, and agriculture in addition to primary recreation. Secondary recreational activities including wading, boating and other uses involving human body contact with water where such activities take place in an infrequent, unorganized, or incidental manner. Nutrient Sensitive Water (NSW) is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growth of microscopic or macroscopic vegetation.

The sources of wetland hydrology are from groundwater seepage, flooding of the streams, and collection of precipitation within the watershed. Jurisdictional areas on the site include approximately 2,219 linear feet of intermittent and perennial stream channel, along with approximately 0.24 acres of riparian forested wetlands. One pond constructed entirely within uplands has been drained. Another pond located on the eastern property line remains undrained, is also considered to be a pond dug entirely within uplands, and will remain undisturbed.

Applicant's Stated Purpose

The purpose of the project is to construct residential housing for the local senior (55+) market within Apex, and to address the unauthorized activities that occurred prior to the applicant's involvement through the after-the-fact permitting process.

Background

The property has been historically used for agriculture. A delineation was performed by another consulting firm and the Corps reviewed and concurred with the delineation in 2015, as part of another entity's due diligence process prior to purchasing. Additionally, the Town of Apex also conducted a riparian buffer determination at that time to identify those water features that are subject to buffers. Based on the results of the 2015 delineation the developer elected to not move forward with purchasing of the property.

Between 2016 and 2017, there was an unauthorized discharge of fill material into waters of the U.S. including wetlands. This unauthorized activity was discovered by the current applicant during their due diligence process which began in 2017.

As a result, property is currently the subject of a Department of the Army Notice of Violation (NOV) (SAW-2015-02160), dated December 21, 2017, that identifies several unauthorized discharges into waters of the U.S. including wetlands. These unauthorized

impacts, as defined by the Corps include the following: 0.11 acre of herbaceous, riparian wetlands, 0.9 acre of manmade surface waters (pond), and 200 linear feet of a tributary that received the occasional overflow from the pond. The Corps determined that these waters and wetlands are subject to the permit requirements of Section 404 of the Clean Water Act.

Project Description

The project is a proposed residential development on a 36.5 acres site consisting of one parcel in Apex, Wake County, North Carolina (Parcel # 0712626316). The proposed residential development would include 86 lots with associated roadways, utilities, and stormwater management facilities, and result in permanent impacts to 200 linear feet of stream channel, 0.11 acre of scrub shrub wetlands, and 0.9 acre of open waters after-the-fact. Additional impacts to 93 linear feet of stream channel and 0.01 acre of forested wetlands are also proposed in order to construct a road crossing necessary to reach developable land along the eastern property line. The proposed crossing would consist of two, 60-inch reinforced concrete pipes. The proposed 0.01 acre of riparian forested wetland impact is due to lot grading and cul-de-sac construction.

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 has avoided and minimized the proposed impacts as much as possible through the current site design. Previous iterations of the site design contained more single-family lots and different roadway configurations but did not necessarily impact any additional jurisdictional wetlands or streams. This is primarily due to the onsite wetlands being almost entirely located inside the Apex buffers and the fact that a north-south road crossing over Stream SHA was deemed unnecessary for site development. The single crossing over Stream SXA that is proposed is necessary to reach usable uplands on the east side of the perennial stream. The engineer has explored the use of a bridge to span Stream SXA to completely avoid impacts. However, the cost associated with such a bridge is estimated to cost approximately 5x more than the culverted crossing resulting in that option being deemed not practicable. Additionally, the need to cross the stream with both water and sewer also resulted in the engineer deeming the culvert crossing more practical. Streams SHA and SHB are not being impacted by the project nor is Wetland WXB. All applicable erosion and sedimentation measures will be employed throughout the duration of the project to prevent detrimental effects to downstream waters of the U.S. The width of the roads in the development have been minimized as much as practicable. Side slopes have also been minimized as much as practicable based on currently accepted engineering requirements.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant proposes to mitigate for the loss of 293 linear feet of stream channel and 0.12 acre of wetlands through the purchase of stream mitigation credits from the North Carolina Division of Mitigation Services.

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 may affect, but not likely to adversely 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, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat. Pursuant to the Endangered Species Act (ESA) of 1973, our office has examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. According to information provided by the U.S. Fish and Wildlife Service, Raleigh Office, there are documented occurrences of Northern Long-eared Bat in Wake County. The proposed project would involve clear cutting of hardwood forest within the Corps action area; potential habitat for the Northern Long-eared Bat. Based on this information, the Corps believes the proposed project may affect, not likely to adversely affect the Northern Long-eared Bat or its formally designated critical habitat. The Corps has determined that the proposed action does not require separate consultation on the grounds that the proposed action is consistent with the final Section 4(d) rule, codified at 50 C.F.R. § 17.40(o) and effective February 16, 2016.

- 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 May 11, 2018, to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650

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, May 21, 2018. Comments should be submitted to James Lastinger, Regulatory Specialist, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 ,Wake Forest, North Carolina 27587, at (919) 554-4884, Ext 32.