



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: December 21, 2018  
Comment Deadline: January 22, 2019  
Corps Action ID Number: SAW-2018-00170

The Wilmington District, Corps of Engineers (Corps or USACE) received an application from Mr. Wayne Smith of Tinsel Town, LLC, (Tinsel Town) seeking Department of the Army authorization for 2.68 acres of permanent open water impacts (fill and grading); 42 linear feet of permanent impacts to streams (stabilization) and 17 linear feet of temporary impacts to streams (stabilization) associated with the Tinsel Town Residential Development project in Sylva, Jackson County, North Carolina.

Specific plans and location information are described below and shown on the attached maps, figures, and 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. Wayne Smith  
Tinsel Town, LLC  
51 Bridge Street  
Sylva, North Carolina 28779

**AGENT (if applicable):** Mr. Clement Riddle  
ClearWater Environmental Consultants, Inc.  
32 Clayton Street  
Asheville, North Carolina 28801

## 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 intersection of U.S. Highway 23/74 and Ferguson Road in Sylva, go north on Ferguson Road. The project site 150 feet north of the intersection on the west side of Ferguson Road.

Project Area (acres):	22.31
Nearest Town:	Sylva
Nearest Waterway:	Unnamed Tributary (UT) Scott Creek, Scott Creek and Blanton Branch
River Basin:	Tuckasegee [Hydrologic Unit Code (HUC) 06010203]
Latitude and Longitude:	35.39390 N, 83.18460 W

## Existing Site Conditions

Tinsel Town owns approximately 22.31 acres (PIN 7652-34-1635), located north to northwest of the intersection of U.S. Highway 23/74 and Ferguson Road, laying between Ferguson Road and Scott Creek. The project site consists primarily of a man-made pond and wetlands within an abandoned quarry. The quarry was reported to have been used to mine road material (sand and gravel). Between 1967-1978, the quarry was abandoned and the former pit filled with water. The northern portion of the site is rural residential (single home) and open pasture. Some existing cleared area is currently utilized for a small commercial building and gravel parking lot in the south corner of the property. The project site is surrounded by commercial development, developed rural residential, agricultural lands, and undeveloped forested lands.

The project area is situated in the Blue Ridge physiographic province and in the Southern Crystalline Ridges and Mountains Ecoregion of North Carolina. Blue Ridge province is a mountainous zone that extends northeast-southwest from southern Pennsylvania to central Alabama. The physiography of the Jackson County consists of high, intermediate, and low mountains; floodplains; and low stream terraces. The site is relatively flat with an average elevation of approximately 2,150 feet above mean sea level (msl).

Waters at the project site are part of the Tennessee River system and are within the Tuckasegee River watershed (HUC 06010203). UT of Scott Creek, Scott Creek, Blanton Branch, open water pond, and wetlands are located at the project site. Streams at the site generally drain to the northwest and west. Scott Creek flows into the Tuckasegee River approximately 5 mile downstream of the site. As designated by the North Carolina Department of Environmental Quality (NCDEQ) – Division of Water Resources (DWR), streams at the site are classified as secondary recreation and fresh water class C and trout waters. Most of the project site is in a FEMA regulated floodway (Zone AE). The applicant received a Floodplain Development permit from the Jackson County Office of Permitting and Code Enforcement on February 9, 2018.

As noted above, there are wetlands located within the project site. The majority of wetlands are associated with one large contiguous mostly scrub-shrub with some emergent wetlands located northeast of the pond in the central portion of the site. The wetland area is a continuum between fringe emergent wetlands located adjacent to the open water. The proposed project site contains the following amounts of jurisdictional waters of the U.S. (WoUS):

### Summary of Jurisdictional Waters

Aquatic Resource	Amount
Stream	2,506 lf
Wetland	5.53 ac
Open Water	3.33 ac

lf - linear feet; ac - acre

Two soil associations are present on the project site. The Chandler-Fannin-Cashers association is classified as soils having high content of mica and a loamy surface layer and subsoil which formed in material weathered from high-grade metamorphic rocks. The Braddock-Nikawasi-Dellwood-Cullowhee association, which is classified as soils that have a loamy surface layer and a clayey, loamy, or sandy subsoil. This association has formed in old and recent alluvium and colluvium along major streams. The soil series present on the site include, Dellwood gravelly fine sandy loam, Fannin fine sandy loam, Slater loam, Udorthents loamy, and Udorthents-Urban land complex.

During site visits in 2017 and 2018, ClearWater Environmental Consultants, Inc., (CEC) identified several habitat types at the Tinsel Town project site. The following is a summary of each of the habitat types identified on-site.

Mixed pine/hardwood forest habitat in low uplands. Hardwood trees dominate this habitat type. This habitat type has a dense understory and sparse herbaceous layer. Dominant canopy species include red maple (*Acer rubrum*), sweet birch (*Betula lenta*), mockernut hickory (*Carya tomentosa*), tulip poplar (*Liriodendron tulipifera*), Fraser magnolia (*Magnolia fraseri*), sourwood (*Oxydendrum arboreum*), white pine (*Pinus strobus*), Chestnut oak (*Quercus prinus*), blackjack oak (*Quercus marilandica*), and hemlock (*Tsuga canadensis*). Dominant saplings/shrub species include pignut hickory (*Carya glabra*), chestnut (*Castanea dentata*), witch hazel (*Hamamelis virginiana*), American holly (*Ilex opaca*), buffalo nut (*Pyrolaria pubera*), rhododendron (*Rhododendron maximum*), sassafras (*Sassafras albidum*), and blueberry (*Vaccinium* sp.). Dominant herbaceous species include fly poison (*Amianthium muscitoxicum*), spotted wintergreen (*Chimaphila maculata*), strawberry (*Fragaria* sp.), rattlesnake plantain (*Goodyera pubescens*), little brown jug (*Hexastylis arifolia*), Indian cucumber root (*Medeola virginiana*), partridge berry (*Mitchella repens*), Virginia creeper (*Parthenocissus quinquefolia*), Solomon Seal (*Polygonatum biflorum*), Christmas fern (*Polystichum acrostichoides*), New York fern (*Thelypteris noveboracensis*), poison ivy (*Toxicodendron radicans*), nodding trillium (*Trillium cernuum*), and Halberdleaf violet (*Viola hastata*).

Ruderal corridors habitat consists of road edges. It is considered a disturbed and/or transitional community type. These areas are dominated by early successional saplings, shrubs, and herbaceous plants. Dominant canopy species include red maple, tulip poplar, Fraser magnolia, white pine, and black locust (*Robinia pseudoacacia*). Dominant saplings/shrubs include devil's walking stick (*Aralia spinosa*), sweet birch, dogwood (*Cornus florida*), witch hazel, mountain laurel (*Kalmia latifolia*), rhododendron, multiflora rose (*Rosa multiflora*), blackberry (*Rubus sp.*), sassafras, and blueberry. Dominant herbaceous species include broomsedge (*Andropogon virginicus*), solitary pussy toes (*Antennaria plantaginifolia*), southern lady fern (*Athyrium filix-femina*), false nettle (*Boehmeria cylindrica*), virgin's bower (*Clematis virginiana*), hay scented fern (*Dennstaedtia punctilobula*), deer tongue (*Dichanthelium clandestinum*), trailing arbutus (*Epigaea repens*), strawberry, galax (*Galax urceolata*), ground ivy (*Glechoma hederacea*), hawkweed (*Hieracium sp.*), jewelweed (*Impatiens capensis*), dwarf dandelion (*Krigia sp.*), whorled loosestrife (*Lysimachia quadrifolia*), false Solomon Seal, Indian cucumber root, Japanese stiltgrass (*Microstegium vimineum*), partridge berry, Virginia creeper, Soloman Seal (*Polygonatum biflorum*), Christmas fern, greenbriar (*Smilax sp.*), goldenrod (*Solidago sp.*), dandelion (*Taraxacum sp.*), poison ivy, nodding trillium, sweet white violet (*Viola blanda*), and Halberdleaf violet.

Maintained pasture habitat includes predominantly herbaceous vegetation and land that is mowed at regular intervals. Tree and shrub species present are individuals and are dominated by red maple, dogwood, tulip poplar, red oak (*Quercus rubra*), mountain laurel, and sassafras. Dominant herbaceous species include yarrow (*Achillea millefolium*), ragweed (*Ambrosia artemisiifolia*), virgin's bower, field bindweed (*Convolvulus arvensis*), orchard grass (*Dactylis sp.*), fescue (*Festuca sp.*), strawberry, ground ivy, English ivy (*Hedera helix*), bluets (*Houstonia sp.*), yellow flag (*Iris pseudacorus*), oxeye daisy (*Leucanthemum vulgare*), sorrel (*Oxalis sp.*), Virginia creeper, pokeweed (*Phytolacca americana*), lanceleaf plantain (*Plantago lanceolata*), broadleaf plantain (*Plantago major*), cinquefoil (*Potentilla sp.*), buttercup (*Ranunculus sp.*), yellow dock (*Rumex crispus*), sage (*Salvia sp.*), dandelion, red clover (*Trifolium pretense*), white clover (*Trifolium repens*), vetch (*Vicia sp.*), sweet white violet, and violet (*Viola sp.*).

Wetland and lake fringe habitat at the project site is one large shrub-scrub/emergent wetland approximately 5.53 acres in size located in the central portion of the site. Dominant saplings/shrubs include tag alder (*Alnus serrulata*), red maple, elderberry (*Sambucus canadensis*), and chokeberry (*Aronia arbutifolia*). Dominant herbaceous species include swamp rose (*Rosa palustris*), jewelweed (*Impatiens capensis*), sedges (*Carex sp.*), cattails (*Typha latifolia*), and smooth rush (*Juncus effusus*).

Freshwater stream habitat include the streambeds and banks of UT to Scott Creek, Scott Creek, and Blanton Branch. These streams vary from 2 to 30 feet wide. Permanently rooted aquatic plants are practically non-existent in on-site streams. The stream bed substrate is predominantly sand, gravel, and cobble, with some boulders. The mixed pine/hardwood forest type is predominant adjacent to stream channels, except along Blanton Branch where the adjacent vegetation has been disturbed and is mostly shrub and vine species. Stream banks are dominated by hardwood species. Also, the open water pond area has approximately 3.33 acres of open freshwater habitat.

Terrestrial communities at the project site are comprised of forested lands with some open habitats that may support a diverse number of wildlife species. Representative mammal, bird, reptile, and amphibian species commonly occurring in the habitats noted above is listed in the following paragraph. Information on these species that typically use the habitats at the project site was obtained from relevant literature, mainly the Biodiversity of the Southeastern United States, Upland Terrestrial Communities (Martin et al. 1993).

Mammal species that commonly occur in these habitats include eastern cottontail (*Sylvilagus floridanus*); gray squirrel (*Sciurus carolinensis*); eastern chipmunk (*Tamias striatus*), southern flying squirrel (*Glaucomys volans*), various vole, rat, and mice species; raccoon (*Procyon lotor*); Virginia opossum (*Didelphis virginiana*); white-tailed deer (*Odocoileus virginiana*), and black bear (*Ursus americanus*). Bird species that commonly use these habitats include indigo bunting (*Passerina cyanea*), prairie warbler (*Dendroica discolor*), northern cardinal (*Cardinalis cardinalis*), field sparrow (*Spizella pusilla*), rufous-sided towhee (*Pipilo erythrophthalmus*), red-eyed vireo (*Vireo olivaceus*), scarlet tanager (*Piranga olivacea*), blue jay (*Cyanocitta cristata*), and Carolina chickadee (*Poecile carolinensis*). Predatory birds may include several hawk and owl species and turkey vulture (*Cathartes aura*). Reptile and amphibian species that may use the terrestrial community include copperhead (*Agkistrodon contortrix*), eastern corn snake (*Pantherophis guttatus*), eastern box turtle (*Terrapene carolina carolina*), eastern fence lizard (*Sceloporus undulatus*), five-lined skink (*Plestiodon fasciatus*), spring peeper (*Pseudacris crucifer*), timber rattlesnake (*Crotalus horridus*), and American bull frog (*Rana catesbeiana*). The dominant species of salamander in these habitats are dusky salamanders (*Desmognathus* spp.).

CEC conducted a file review of records maintained by the US Fish and Wildlife Service (FWS) and the North Carolina Natural Heritage Program (NHP). The desktop literature review involved a review of the FWS list of protected species in Jackson County and the NHP Element Occurrence Data on which NHP identifies current and historic occurrences of listed species for a specific locale. The FWS lists 10 species as occurring in Jackson County that are subject to Endangered Species Act (ESA) Section 7 consultation (see table below).

<b>Common Name</b>	<b>Scientific Name</b>	<b>Federal Status</b>
Bog turtle	<i>Glyptemys muhlenbergii</i>	T (S/A)
Carolina Northern Flying Squirrel	<i>Glaucomys sabrinus coloratus</i>	E
Gray bat	<i>Myotis grisescens</i>	E
Indiana Bat	<i>Myotis sodalis</i>	E
Northern Long-Eared Bat (NLEB)	<i>Myotis septentrionalis</i>	T
Appalachian elktoe	<i>Alasmidonta raveneliana</i>	E
Rusty-patched bumble bee	<i>Bombus affinis</i>	E
Spruce-Fir Moss Spider	<i>Microhexura montivaga</i>	E
Small Whorled Pogonia	<i>Isotria medeoloides</i>	T
Swamp Pink	<i>Helonias bullata</i>	T
Rock Gnome Lichen	<i>Gymnoderma lineare</i>	E

T – threatened; E – endangered; S/A - threatened due to similarity of appearance. Taxa listed as T(S/A) are not biologically endangered or threatened and are not subject to Section 7 consultation.

CEC consulted the FWS’s NLEB consultation area map for Jackson County. The Site is in a HUC identified as having known occurrences of hibernation or maternity sites. The applicant is coordinating development efforts with the FWS Asheville Field office to comply with the 4(d) rule. No percussive activities are proposed for use during construction and there is proposed a minor amount tree removal for development of the site.

The NHP reviewed the area encompassed the project site and a 1-mile radius of the site. The receiving waters of Scotts Creek contains the “LTN/Tuckasegee River Aquatic Habitat,” a NHP Natural Area, and the project is located 5 river miles upstream of the Tuckasegee River itself, which contains critical habitat and known element occurrences of the federally endangered Appalachian elktoe (*Alasmidonta raveneliana*). However, there are no known element occurrences of this species documented within a 1-mile radius of the site. The wetland areas on site comprise the NHP Natural Area “Beta Wetland,” which is a Mountain Semi-permanent Impoundment including the open water subtype, montane marsh subtype, and shrub subtype. No federally threatened or endangered species are documented within a 1-mile radius of the project site. However federal species of concern Eastern hellbender (*Cryptobranchus alleganiensis*) and Little Tennessee crayfish (*Cambarus georgiae*) have both been documented within the project area.

CEC conducted a habitat survey and protected species survey on May 15, 2017, February 9, 2018, and August 14, 2018, to determine the potential for occurrences of animal and plant species listed as endangered or threatened by current federal regulations. CEC observed potential suitable habitat for the bog turtle, swamp pink, and suitable summer habitat for NLEB. A survey was conducted



within these habitats to determine the presence or absence of the threatened or endangered species. Potential flora and fauna were identified to the taxonomic unit level necessary to determine if the observed specimen was a protected species. No threatened or endangered species were identified on the project site.

CEC reviewed the National Park Service National Register of Historic Places (NRHP) GIS Public Dataset and the North Carolina State Historic Preservation Office (SHPO) HPOWEB GIS Web Service. This review indicted two sites/areas on the study list for the NRHP within 1 mile of the Tinsel Town project site. The John Pannel Farm (JK0161) is located approximately 0.4 mile to the north of the project site and the Oldfield Baptist Church (JK0289) is located approximately 0.6 mile to the south of the project site. These sites are not listed on the NRHP and may or may not be eligible for listing.

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

The purpose of the project is to convert the former quarry pond into upland area which will be used to construct a housing development, facilitating the housing accommodation of individuals/families within 20 dwelling units and associated infrastructure.

### **Project Description**

The applicant's proposed site development plan includes 20 duplex housing units and associated common space (playground), utilities, parking and road infrastructure. The development is divided into two portions, with 12 buildings proposed in the southern portion of the site and eight buildings proposed in the northern portion of the site. The construction of the project as proposed would require fill placed in WoUS, resulting in a 2.68-acre impact to open water in an abandoned quarry pit. Also, the project would have 42 lf of permanent impacts to streams and 17 lf of temporary impacts to streams for stream stabilization activities.

Material suitable for fill in WoUS is proposed to consist of suitable fill material and will not include any trash, debris, car bodies, asphalt, etc. The fill material used on site is to be clear and free of chemical contamination, and free of toxic pollutants in toxic amounts. It is proposed that suitable, off-site, clean fill material will be transported to the project. All the fill material needed at the site will be taken from specified locations at parcels located at 992 Old Cullowhee Road (PIN 7650-01-8096) and 3725 Skyland Drive (PIN 7652-88-7354). Proper sediment and erosion control devices, including floating silt curtains, will be installed prior to and during construction to ensure minimal impacts to streams and wetlands due to sedimentation.

The applicant understands that any construction in jurisdictional streams, wetlands, or open waters at the site would constitute a jurisdictional impact that is subject to permitting by the Corps and the DWR.

### Summary of Proposed Impacts to Jurisdictional Waters

Impact	Aquatic Resource	Type of Impact	Amount
<b>Stream Impacts</b>			
Stream Stabilization	UT Scott Creek	Temporary (pond drain outlet)	17 lf
Stream Stabilization	UT Scott Creek	Permanent (pond drain outlet)	42 lf
<b>TOTAL</b>			59 lf
<b>Open Water Impacts</b>			
Fill	Pond	Permanent	2.86 ac
<b>TOTAL</b>			2.86 ac

#### Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment. Pre-project site planning was conducted to delineate and field verify jurisdictional WoUS within the proposed project area. These features were used to select a viable alternative to avoid and minimize impacts to aquatic resources. A summary of the avoidance and minimization is as follows:

Aquatic Resources	On-Site Totals	Proposed Impacts	Percent Avoided and Minimized
Stream	2,506 lf	59 lf	98%
Open Water	3.33 ac	2.68 ac	20%
Wetland	5.53 ac	0 ac	100%

#### Compensatory Mitigation

The proposed project does involve temporary and permanent impacts to jurisdictional WoUS. The temporary and permanent impacts to streams will not result in functional losses to the aquatic environment within these jurisdictional resources and will not result in a permanent loss of jurisdictional WoUS. Therefore, compensatory mitigation will not be required for these impacts.

Upon completion and implementation of practical avoidance and minimization efforts, a total of 2.86 acres of permanent impacts to open water is associated with fill and grading are unavoidable. The Corps does not required mitigation for open water impacts to man-made impoundments. Therefore, the applicant does not offer compensatory mitigation for the open water impacts.



## 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.

SHPO and applicable tribal historic preservation offices (THPO) will be notified via Public Notice about the project and will be given the opportunity to comment on the project and its potential effects on cultural resources.

The District Engineer's final effect determination will be based upon submitted comments to this public notices from SHPO and/or THPO; and further 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' 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, but 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.
- 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.

The FWS will be notified via Public Notice about the project and will be given the opportunity to comment on the project and its potential effects on threatened and endangered species.

The District Engineer's final effect determination will be based upon submitted comments to this public notices from FWS; and further coordination with the FWS, as appropriate and required; and with full consideration given to the proposed undertaking's potential direct and indirect effects on federally threatened or endangered listed species and/or their formally designated critical habitat within the Corps' permit area.

### **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 January 22, 2019 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 NCDWM, and the NCDWM 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 NCDWM.
- 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, January 22, 2019. Comments should be submitted to:

Mr. David Brown  
USACE Wilmington District  
Asheville Regulatory Field Office  
151 Patton Avenue, Room 208  
Asheville, North Carolina, 28801-5006