US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: June 18, 2018
Comment Deadline: July 19, 2018
Corps Action ID Number: SAW-2018-01122

The Wilmington District, Corps of Engineers (Corps) received an application from Lake View Park Commission seeking Department of the Army authorization to dredge/excavate sediment from Beaver Lake, in Asheville, Buncombe 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:
Lake View Park Commission
Attn: Mr. Mike Nery
Post Office Box 8332
Asheville, North Carolina 28814

AGENT (if applicable):
McGill & Associates, PA
Attn: Ms. Barbara Wiggins
1013 State Farm Road
Boone, North Carolina 28607

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 existing Beaver Lake is located on the south side of Merrimon Avenue, across from the Midland Road intersection, in Asheville, Buncombe County, NC.

Project Area (acres): 50 acres Nearest Town: Asheville
Nearest Waterway: Beaverdam Creek River Basin: French Broad
Latitude and Longitude: 35.634186N, -82.559242W

Existing Site Conditions

The site is an existing 47-acre lake that was constructed in the 1920's with low density residential areas surrounding the lake to include grassed open areas for a community park and forested lake shore where residential lots are adjacent to the lakeshore. The lake impounds Beaverdam Creek which is a perennial stream channel that ultimately drains to the French Broad River.

Applicant's Stated Purpose

As stated by the applicant, the purpose of this project is to restore and maintain the water depth for recreational uses to include non-motorized boating, fishing, and wildlife observation. The project will also repair and maintain banks around the lake from erosion.

Project Description

Lake View Park Commissioners (LVPC) has proposed a long term management plan for the sediment control in Beaver Lake. This will involve regular excavation of sediment in the dry from the confluence of the creeks entering the lake. Shallow areas that have experienced excess aquatic plant growth will be deepened and associated nutrients removed from the lake. Shoreline bank erosion will be addressed and vegetation planted to stabilize the areas. In addition, a fore bay of a deeper excavated area would provide the ability to catch sediments before they entered the lake proper, and consolidate them in an area where future excavation would be more efficient with less impact to the rest of the lake. Smaller sediment fans at the mouth of UT tributaries on the north side of the lake will be addressed from the lake or exposed shoreline. The boat launch area needs restoration of depth next to the docks. There are also areas of shoreline erosion around the lake edge that need restoration and maintenance, with grading in the dry to a reasonable slope, installation of soil lifts, and replanting to stabilize the shoreline. This would be done from the dry upland access or exposed shoreline during drawdown. These activities would be done over the term of the permit in phases that address sediment deposit at the mouth of Beaverdam Creek and South Creek and address new locations as appropriate.

Table 1 – Lake Dredging Areas and Schedule

Beaver Lake Sediment Removal Schedule			
Location*	Amount Cu Yds.		Schedule
	Removed	Filled	
Mouth of Beaverdam Creek	10,000		2018
Mouth of Beaverdam Creek	up to 10,000		As Needed every 3-5 years
Mouth of South Creek	5,000		2018
Mouth of South Creek	2-3,000		As Needed every 3-5 years
Culvert Crossings (temporary)		900	2018
Boat Launch	800		Future Phase 3-5 years
UT Delta at Merrimon	200		Future Phase 3-5 years
Edgewater Stormpipe Delta	100		Future Phase 3-5 years
Lakeshore bank stabilization	100	700	Future Phase 3-5 years
*See Lake Dredging Areas on Map for individual locations			

In the first phase, LVPC proposes to perform dry excavation using a trackhoe with a 75' arm and track mats and temporary roadbeds to access the areas proposed for excavation. LVPC can lower the lake level with good control down as much of 14' from current water levels. The water level of the lake will be lowered through the use of a gate valve located on the side of the outlet structure. The gate valve can be fully opened for maximum discharge, or can be partially opened for a more controlled release of flow. For this project, the lake will be lowered to a maximum of 11' over approximately 10 days depending on the inflow rate. For the remaining duration of the project the gate valve will be closed down to the point where the lake is maintained at 11' below full pool and minimum flows downstream are maintained. This will allow access to the sediment in the headwaters and to dry out the lake bottom in the project area as much as possible. The drawdown will begin at least 2-3 weeks before the project begins. Project start date is proposed sometime between October 2018 and March 2019. The attached map shows the areas to be excavated, the access point to the lake, and the general disposal area that will be utilized. The excavated sediment will be placed in a dump truck and carried to the disposal site immediately adjacent to the lake as noted on the map.

The trackhoe and track mats will be utilized for access to the sediment excavation areas in the headwaters of the lake. The normal flow of the two streams will be maintained through the project area during the excavation period and will be protected by culvert crossing from the equipment traffic. Each culvert will be 20' linear feet of stream crossing and span 10' width. The locations of the culvert crossings on the two streams will be determined on site after drawdown. A total amount of permanent fill for the two culverts will be 900 Cu Yds. These culverts will remain in the lake and will be utilized for future sediment maintenance of the headwaters of Beaver Lake.

Future phases will involve similar sediment removal from the mouth of Beaverdam Creek and South Creek as needed, removal of sediment from deltas at stormwater culvert outfalls, deepening the water at the boat launch area, removal of old swimming pool wall structure that is collapsing, and maintenance/restoration of shoreline and trails along the edges of the lake.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: With regards to the control of the drawdown and the maintenance of the minimum flow downstream of the outlet structure, the drawdown will be controlled as discussed above through the use of the gate valve on the outlet structure. It will provide control of the amount of discharge, and the ability to throttle back on the discharge while allowing a minimum flow to continue discharging. With regards to preventing the discharge of sediment downstream, the project will utilize several levels of control. First level of control will be by installing temporary culverts over the two creeks for trackhoe access to avoid impacts to the flowing water. Staging the sediment removal around the creeks as much as possible before turning the creek flows into the new lake bed elevation will also reduce sediment re-suspension. The historic creek channels will not be disturbed in the lake bed and will allow for minimal re-suspension of sediments. There will also be a buffer area of exposed lake bottom between the active excavation area and the lake water level during the project as shown on the attached map. The second level of protection will be provided by the actual excavation of material starting at the north end, creating shallow level spreaders or depressions as the sediment is dug out. These depressions will act as catch basins if any high water event causes lake levels increases in the project area. Third, the contractor will be monitoring weather conditions and will pull out of the lake prior to any heavy storms and stabilize current areas to help prevent re-suspension of sediment. Finally, the lake itself will provide additional settling of any sediment that is disturbed during the project, preventing downstream impacts below the dam. LVPC and its contractors will monitor the water quality of the lake, the downstream discharge and upstream water quality during this project. Turbidity will be the primary parameter that will be most impacted. LVPC will visually monitor the water quality of the discharge from the spillway and from the inflow from all creeks entering the lake. LVPC will monitor and prevent any excessive increase in turbidity over the inflow conditions from the excavation project through the measures noted above, up to and including work stoppage as necessary.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: There is no compensatory mitigation being proposed for this project.

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 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-indentified 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 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 July 19, 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 work, as outlined above, until 5pm, July 19, 2018. Comments should be submitted to Ms. Amanda Jones, Asheville Regulatory Field Office , 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006 , at (828) 271-7980, extension 4225.