



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: September 6, 2018  
Comment Deadline: October 5, 2018  
Corps Action ID Number: SAW-2018-01494

The Wilmington District, Corps of Engineers (Corps) has received an application from Dream Catcher Hotels/Harrah's Cherokee Casino Resort, on behalf of the Tribal Casino Gaming Enterprise, seeking Department of the Army authorization to permanently impact 0.022 acre of wetland and temporarily impact 45 linear feet of stream in order to expand Harrah's Casino Resort on Qualla Boundary, Jackson County, North Carolina. The applicant also seeks after-the-fact authorization for impacts to 0.961 acre of on-site wetlands.

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:** Dream Catcher Hotels/Harrah's Cherokee Casino Resort  
Attention: Mr. Zeke Cooper  
777 Casino Drive  
Cherokee, North Carolina 28719

**Agent:** Clear Water Environmental Consultants, Inc.  
Attention: Mr. Clement Riddle  
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**

Nearest Town: Cherokee

Nearest Waterway: Soco Creek

River Basin: Little Tennessee

Latitude and Longitude: 35.4694 N, -83.3051 W

The project is located on Qualla Boundary and is adjacent to Harrah's Cherokee Casino Resort on Casino Drive, U.S. Highway 19, in Jackson County, North Carolina.

## **Existing Site Conditions**

The project site is located at Harrah's Casino Resort on Qualla Boundary. Qualla Boundary is the home of the Eastern Band of Cherokee Indians (EBCI) and is held in trust for the EBCI by the U.S. Government.

The majority of the project area is located on an on-grade parking facility that supports the existing Casino Resort; the remaining portions of the project site are uplands, waters, and support structures that surround the parking facility and resort. Because the majority of the project area is a parking facility, it primarily consists of concrete and asphalt impervious surfaces. Construction of the project would require relocating some utilities and grading an existing hillside. A few highly modified natural areas are located in the project area; these include two small wetlands, grassy swales, and a constructed wetland detention basin. A single jurisdictional stream, Stillwell Branch, is located in the project area.

The project is located in the flat geomorphic floodplain of Soco Creek, with an elevation of approximately 2000 feet above mean sea level (MSL). Stillwell Branch is a tributary to Soco Creek, which flows to the Oconaluftee River, then to the Tuckasegee River, then to Fontana Lake, and on to the Tennessee River. The Tuckasegee River is classified by the NC Division of Water Resources (DWR) as "WS-III" (drinking water supply), "class B" (Primary Recreation, Fresh Water), "Tr," (Trout waters), and "CA" (Critical Area). Both the Oconaluftee River and Soco Creek are "class C" (Secondary Recreation, Fresh Water), and "Tr." Stillwell Branch is "class C." The wetland proposed for permanent impact is a small headwater wetland that is adjacent to Stillwell Branch.

The soil series present on the site include: Dillard loam, Evard-Cowee complex, and Udorthents-Urban Land Complex.

## **Applicant's Stated Purpose**

According to the applicant, the purpose of the proposed project is to expand the range of services to the Harrah's Casino Resort, to include a conference center, hotel, and additional parking facilities.

## **Project Description**

In order to expand the current Casino Resort, the project would include construction of a conference/exhibition facility, a 725 key hotel, a 2,560 vehicle six story parking deck, and various other support facilities/spaces.

Construction of the proposed project would require the following impacts to waters of the U.S.:

- Permanent fill impacts to 0.022 acre of wetland (W2)
- Temporary impacts to 45 linear feet (lf) of streams

### After-the-Fact (ATF) Impacts:

Additionally, the applicant is seeking after-the-fact (ATF) authorization for permanent fill impacts to 0.961 acre of wetland. Work associated with the ATF impacts includes a parking lot built in 2007 in the vicinity of wetlands created for compensatory mitigation (W3 and W5), and a previous expansion of Harrah's Casino Resort, which resulted in filling of what remained of wetland W4 (0.1 AC).

Note that the total sum of ATF wetland impacts equals 1.004 acres; however, the applicant proposes to mitigate for 0.961 acre of impact. This is because W3, which still exists, was constructed as compensatory mitigation for the 1996 permitted impacts (along with W5), but was actually constructed 0.043 acre larger than originally planned/required by permit conditions. As a result, the applicant proposes that this difference is taken into account when determining the amount of required compensatory mitigation for the ATF impacts, and is therefore proposing to mitigate for 0.961 acre of ATF impacts vs. 1.004 acres.

### 1996 Authorization:

On June 25, 1996, the Corps issued a Nationwide Permit (NWP) 26 verification letter to the EBCI which authorized impact (fill material) to 5.10 acres of waters of the U.S. for site preparation for the Casino; 4.25 acres of this impact involved filling a manmade pond. Part of the compensatory mitigation for these impacts was to create two wetland areas (W3 and W5) that would serve as site stormwater detention basins; W3 and W5 are discussed in more detail in the Compensatory Mitigation Section.

Additionally, the Corps has issued a number of NWP verification letters to the Casino since 1996; these have included authorizations for retaining walls, bank stabilization, and in-stream structures.

Table 1 below summarizes the currently proposed impacts and the ATF impacts. The 1996 column represents the acreage that existed after the 1996 permitted impacts, and the 2018 column represents what is actually on site now.

<b>Table 1. Proposed and after-the-fact impacts</b>			
Proposed Wetland Fill (W2)			0.022 AC
Proposed Stillwell branch outlet structure replacement (Soco Creek)		25 LF	
Proposed W3 outlet structure replacement (Soco Creek)		20 LF	
<b>TOTAL PROPOSED IMPACTS:</b>		45 LF	0.022 AC
<u>Wetlands</u>			
	<b>1996 AC</b>	<b>2018 AC</b>	<b>Loss</b>
Wetland (W1)	0.17 AC	0.074 AC	- 0.096
Wetland (W2)	0.11 AC	0.022 AC	- 0.088
Wetland (W4)	0.10 AC	(filled)	- 0.100
<b>Wetlands Sub-Total</b>	<b>0.38 AC</b>	<b>0.096 AC</b>	<b>- 0.284 AC</b>
<u>Compensatory Wetland Mitigation Areas (1996 Permit)</u>			
	<b>1996 AC</b>	<b>2018 AC</b>	<b>Loss</b>
W5 (central detention basin)	0.72 AC	(filled)	- 0.72
W3 (western detention basin)	0.29 AC	0.333 AC	+ 0.043
<b>Mitigation Sub-Total</b>	<b>1.01 AC</b>	<b>0.333 AC</b>	<b>- 0.677 AC</b>
<b>TOTAL AFTER-THE-FACT-IMPACTS:</b>			<b>- 0.961 AC</b>

### **Avoidance and Minimization**

According to the applicant, impacts to streams and wetlands have been minimized to the greatest extent practicable while still accomplishing the overall project purpose of constructing a financially feasible project. The proposed activities would impact 0.022 of the 0.429 acres of wetland onsite however 95% of the existing wetlands have been avoided, and no permanent impacts to streams are proposed. Locating the project within an area already impacted substantially by human modifications minimizes impacts on the natural environment, including wildlife, by avoiding construction impacts in a less impacted area.

Table 2 is a summary of avoidance and minimization measures:

<b>Table 2. Avoidance and minimization</b>			
<b>Feature</b>	<b>On-Site Total</b>	<b>Proposed Impact</b>	<b>Percent Avoided and Minimized</b>
Stream	44 LF	0 LF	100%
Wetland	0.429 AC	0.022 AC	95%

### **Compensatory Mitigation**

Proposed wetland impacts (0.022 acre – W2) and ATF impacts (0.961 acre) total 0.983 acre. According to the applicant, the proposed, permanent impact to W2 (0.022 acre wetland) is unavoidable.

The applicant’s consultant, Clear Water Environmental Consultants (CEC) completed an NC Wetland Assessment Method (NCWAM) form for this 0.022 acre wetland. The NCWAM form calculated an overall wetland rating of “LOW”. As such, the applicant proposes to provide compensatory mitigation at a ratio of 1:1 for the proposed loss of 0.022 acre of wetland (W2).

Additionally, the applicant proposes to provide compensatory mitigation for the 0.961 acre of ATF wetland impacts at a ratio of 2:1.

As noted above, because W3 was constructed to be 0.043 acre larger than originally planned/required by permit conditions, the applicant proposes that this difference is taken into account when determining the amount of required compensatory mitigation, and is therefore proposing to mitigate for 0.961 acre of ATF impacts vs. 1.004 acres.

The applicant proposes to mitigate for all wetland impacts through the NC Division of Mitigation Services (DMS). By letter dated June 19, 2018 DMS, indicated that they are willing to accept payment for all project-related, permanent wetland impacts.

<b>Table 3. Proposed DMS mitigation quantities</b>			
<b>Impact</b>	<b>Area (AC)</b>	<b>Ratio</b>	<b>Total Compensation</b>
Proposed	0.022	1:1	0.022
After-the-fact	0.961	2:1	1.922
		<b>Total</b>	1.944

The temporary stream impacts do not require compensatory mitigation.

### **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**

The Corps is the lead federal agency for this project and, in accordance with Section 106 of the National Historic Preservation Act (NHPA), will make determinations of effect and request concurrence with these determinations from the Eastern Band of Cherokee Indian’s (EBCI) Tribal Historic Preservation Office (THPO). The Corps will also coordinate the project and consult with other interested federally recognized Tribes and parties.

CEC consulted the State Historic Preservation Office’s mapping utility (HPOWEB). Three areas on the study list (SL) for the National Register of Historic Places (NRHP) are in the project vicinity: Mac’s Indian village (JK0193) is located approximately 0.75 miles to the southwest of the project area, and Hayes mill (JK0191) and Olivet Methodist Church (JK0189) are both

located approximately one mile to the south of the project area. These sites are not listed on the NRHP and may or may not be eligible for listing. Given the distances from the project area, the Corps has determined that construction of the project has no potential to affect these resources.

Data recovery recently occurred at an archaeological site that is located in the project area. This site was recommended eligible for listing on the NRHP. The Corps consulted with the EBCI THPO and the Advisory Council on Historic Preservation (ACHP), and has determined that there is an adverse effect to this site. The EBCI THPO and the Corps will prepare a Memorandum of Agreement (MOA), and the Corps will coordinate the MOA with interested federally recognized Tribes and parties, in consultation with the EBCI THPO and the ACHP.

### Endangered Species

The Corps is the lead federal agency for this project and, in accordance with Section 7(a)(2) of the Endangered Species Act (ESA), will make determinations of effect to federally listed species and will request concurrence with these determinations, if other than “no effect”, from the U.S. Fish and Wildlife Service (Service).

CEC conducted a file review of records maintained by the Service and the North Carolina Natural Heritage Program (NHP) on May 23, 2018; this file review included the Service’s list of protected species in Jackson County and the NHP Element Occurrence Data. The Service lists 11 federally listed species that occur in Jackson County. The federally listed species identified by the Service and NHP are listed below in Table 4.

<b>Table 4 – Federally listed species listed in Jackson County, NC</b>		
Common Name	Scientific Name	Federal Status
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

E – Endangered  
T – Threatened  
T(S/A) – Threatened due to similarity of appearance

CEC conducted a habitat and protected species pedestrian survey on May 5, 2018, to determine potential for occurrences of animal and plant species listed as endangered or threatened by current federal regulations. Potentially suitable habitat for federally listed species, as noted in Table 4, were not found in within the project area.

The culverts proposed for modification on Stillwell Branch were not inspected for the presence of bats. CEC is of the opinion that the existing culverts on Stillwell Branch (twin 48" metal corrugated pipes), do not provide crevices suitable for roosting.

The Corps determined action area for this project is located within 0.25 mile of a red HUC. Percussive activities are proposed for use during construction of the Casino Resort Expansion, including excavation with rock hammers, and dynamite blasting. The proposed schedule for these percussive activities is to begin on or after October 15, 2018 and end on or before April 15, 2019.

The Corps has determined that the proposed project would have no effect on federally listed species identified in Table 4, with the exception of the NLEB. The Corps will consult with the Service in accordance with Situation 3 of the NLEB SLOPES procedure that was developed between the Corps, Wilmington District, and the Service's Asheville and Raleigh Offices.

### **Other Required Authorizations**

The Corps will forward this notice and all applicable application materials to the appropriate Tribal Departments and federal agencies for review.

**EBCI 401 Water Quality Certification:** The Corps will generally not make a final permit decision until the EBCI issues, denies, or waives Tribal Certification required by Section 401 of the Clean Water Act. The receipt of the application for this project and this public notice by the EBCI Water Quality Certification Office will constitute initial receipt of an application for a 401 Water Quality Certification. A waiver will be deemed to occur if the EBCI Water Quality Certification Office fails to act on this request for certification within sixty days of the date of the receipt of this notice in the EBCI Water Quality Certification Office on Qualla Boundary.

Additional information regarding the Section 401 Clean Water Act Certification may be reviewed at the EBCI Water Quality Office located at 2000 Old #4 Road, Cherokee, North Carolina, 28719. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so, in writing, by 5:00 pm, October 5, 2018 to:

EBCI 401 Water Quality Certification Office  
Attention: Mr. Michael Bolt  
PO Box 1925  
Cherokee NC, 28719

Or by email at [michbolt@nc-cherokee.com](mailto:michbolt@nc-cherokee.com)

## **North Carolina Division of Coastal Management (NCDCM):**

Based upon all available information, the Corps has determined that this application for a Department of Army 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, agencies and officials, 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, October 5, 2018. Comments should be submitted to Lori Beckwith, Regulatory Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006. Comments can also be emailed to [loretta.a.beckwith@usace.army.mil](mailto:loretta.a.beckwith@usace.army.mil).