



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: April 6, 2015  
Comment Deadline: May 6, 2015  
Corps Action ID Number: SAW-2013-01863

The Wilmington District, Corps of Engineers (Corps) received an application from HDC-Wendover-Greensboro Partners, LP seeking Department of the Army authorization to discharge fill material into waters of the United States, associated with constructing access and infrastructure for Phase II (outparcel) of the Wendover Commons commercial development in Guilford 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:** HDC-Wendover-Greensboro Partners, LP  
Mr. Key Kasravi  
12335 Kingsride Lane, Suite 280  
Houston, Texas 77024

**AGENT (if applicable):** Pilot Environmental, Inc.  
Mr. Michael Brame  
Post Office Box 128  
Kernersville, North Carolina 27285

## 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



## **Background**

Phase I of the Wendover Commons was authorized under Nationwide Permit 39 on July 31, 2015. This authorization included permanent fill in 0.464 acre of riparian wetlands and 274 linear feet (0.025 acre) of stream channel. Compensatory mitigation was required for these impacts including purchasing 0.8 riparian wetland credits and 382 warm water stream credits from the North Carolina Ecosystem Enhancement Program (NCEEP).

Given that the current proposed impacts to Waters of the U.S., in combination with impacts from the earlier phase, exceed the Nationwide Permit threshold, the current proposal to construct Phase II of Wendover Commons is subject to Individual Permit review.

## **Applicant's Stated Purpose**

The purpose of the project is to build a fitness center and associated parking on a site that meets required siting criteria in an area that has been identified as having marketplace demand to support the development.

## **Project Description**

The applicant has proposed to discharge fill material into an additional 0.571 acre of riparian, non-riverine wetlands to construct Phase II of the Wendover Commons commercial development, consisting of a fitness center and parking lot. No temporary impacts are proposed. The proposed impacts to Waters of the U.S. are the direct result of fill for the fitness center building pad and parking lot expansion.

If authorized, cumulative impacts for phases I and II of Wendover Commons would include permanent fill in 1.035 acre of riparian, non-riverine wetlands and 274 linear feet (0.025 acre) of stream channel.

The applicant submitted an Alternatives Analysis that includes No Action, On-site, and Off-site Alternatives. This information has been included with this Public Notice as well. Supplemental documentation including project plans and a narrative can be found on the District Website at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx>.

## **Avoidance and Minimization**

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

In an effort to avoid and minimize impacts to streams and wetlands, a 1.01 acre tract on the northwestern portion of the site is being placed into a conservation easement. Approximately 88 linear feet of stream channel, the associated buffer and 0.132 acres of adjoining wetlands are being avoided and protected. Headwalls are being used to avoid

impacts to the stream and associated buffers and minimize the wetland impacts. Additionally, 2:1 slopes have been designed adjacent to the wetland impacts to minimize additional impacts associated with the proposed development. The utilization of retaining walls to reduce impacts to wetlands by reduction of 2:1 fill slopes, on the fill side of the proposed project was determined to not be feasible due to the existing topographic constraints when compared to the proposed fill slopes would only allow for a negligible amount of wetlands to be avoided and thus likely would still considered as “take” by the USACE even if proposed to be avoided.

The proposed alternative has been designed to include the construction of an approximate 15 to 20 foot tall retaining wall around the southern and southwestern portions of the site to allow for the overall site plan to be shifted to the maximum extent possible in efforts to avoid the impact to wetlands located on the site. The proposed retaining wall increases the anticipated costs of construction by approximately 80 to 100 thousand dollars but results in an overall reduction of impact to jurisdictional features, including the stream and associated buffer located north of the development area.

In addition to the on-site measures to avoid and minimize impacts, an approximate 30 acre parcel has been purchased down-gradient in the site’s watershed, which allows the site to off-set the proposed Build-Up Area (BUA) of the proposed site development. This parcel will remain in a protected easement, which not only off sets the calculated BUA of the site but also benefits down-gradient waterbodies within the site watershed. Thus, any potential jurisdictional features located on the approximate 30 acre parcel will not be impacted by future development.

To further minimize impacts to down-gradient water bodies, sediment and erosion control measures will be implemented to avoid indirect impacts due to sediment runoff during construction. Silt fencing will be used to prevent erosion and capture sediment. Disturbed areas will be reseeded promptly to prevent future erosion and sedimentation runoff. Stockpiling excavated soil will be avoided where possible.

While it has been determined that additional avoidance and minimization is not practical for this project, it should be noted that the wetland that is being impacted contains silted soil conditions and is typical of wetlands that form in drained ponds or other man altered landscapes such as stormwater treatment devices, similar to the one that will be constructed on the southern portion of the site. The stormwater treatment device will continue functioning to remove sediment from stormwater runoff.

A stormwater pond has been designed in non-jurisdictional areas of the site. The stormwater pond has been designed to treat 90% total suspended solids, preventing sediment discharge from impervious surfaces that will be constructed on the site.

## Compensatory Mitigation

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

Impacts to the wetlands will be compensated through mitigation payment to the NCEEP. A 2:1 mitigation ratio is proposed for the wetland impacts associated with Phase 2.

## 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 effect 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.
- 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 applicant submitted additional site-specific information on federally protected threatened and endangered species, which can be found on the District Website at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx>.

### **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 April 27, 2015 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 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 6, 2015. Comments should be submitted to David E. Bailey, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 554-4884 extension 30.