



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: December 7, 2016
Comment Deadline: January 6, 2017
Corps Action ID Number: SAW-2016-02360

The Wilmington District, Corps of Engineers (Corps) has received an application from Clemmons TC, LLC seeking Department of the Army authorization to permanently impact 636.7 linear feet of jurisdictional stream channel and 0.105 acre of forested jurisdictional wetlands of a tributary of Johnson Creek associated with the proposed construction of the Clemmons Town Center (CTC) located off of 2394 Lewisville-Clemmons Road, in Clemmons, Forsyth 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: Clemmons TC, LLC
Attn: Mr. Steven Hankins
16501 Northcross Drive, Suite D
Huntersville, North Carolina 28078

Agent: Pilot Environmental, Inc.
Attn: Mr. Brad Luckey
P.O. 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

Directions to Site: The project site is a proposed lifestyle shopping center, herein referred to as Clemmons Town Center (CTC), located on an approximate 16.3 acre tract at 2394 Lewisville-Clemmons Road in Clemmons, Forsyth County, North Carolina. Coordinates (in decimal degrees) for the site are 36.036403° North, -80.387654° West. The site is located in the Yadkin River Basin (8-Digit Cataloging Unit 03040101).

Project Area (acres): 16.3 Nearest Town: Clemmons
Nearest Waterway: Johnson Creek River Basin: Yadkin
Latitude and Longitude: 36.036403N, -80.387654W

Existing Site Conditions

The land use in the immediate area surrounding the project consists of existing commercial retail or townhouse residential. The project site itself is a wooded undeveloped lot.

The project area that will be altered by the proposed development contains undeveloped, wooded land and previously disturbed areas. The previously disturbed areas contain current/former stormwater retention devices, access roads and borrow areas. These areas are dominated by mixed grasses and weeds. The area of impact within the previously cleared/graded area includes the following species: fescue-Kentucky 31 (*Schedonorus arundinaceus*), meadow fescue (*Schedonorus pratensis*), bermudagrass (*Cynodon dactylon*), Bahiagrass (*Paspalum notatum*), Crabgrass (*Digitaria sp.*), Common Dandelion (*Taraxacum officinale*), broomsedge (*Andropogon virginicus*), white clover (*Trifolium repens*), horsenettle (*Solanum carolinense*), horseweed (*Conyza canadensis*), common ragweed (*Ambrosia artemisiifolia*), wild garlic (*Allium canadense*) and common lespedeza (*Lespedeza cuneata*).

The wooded land, located within the upland areas of impact, contains mixed hardwood species including various oak, hickory, beech, elm, cedar and gum and maple species within the tree/sapling stratum. Understory vegetation includes Christmas fern (*Polystichum acrostichoides*), Japanese honeysuckle (*Lonicera japonica*), green briar (*Smilax rotundifolia*), muscadine grape (*Vitis rotundifolia*), Virginia creeper (*Parthenocissus quinquefolia*) and ebony spleenwort (*Asplenium platyneuron*).

The wooded land located within the jurisdictional areas of impact are dominated by the following species:

Table 4: Vegetation		
Species	Stratum	Wetland Indicator
<i>Acer rubrum</i> Red Maple	Canopy/Midstory Tree/Sap	FAC
<i>Fraxinus pennsylvanica</i> Green ash	Canopy/Understory Tree/Sap	FACW
<i>Carpinus caroliniana</i> American Hornbeam	Canopy/Understory Tree/Sap	FAC
<i>Salix nigra</i> Black Willow	Midstory/Understory Tree/Sap	OBL
<i>Lonicera japonica</i> Japanese Honeysuckle	Midstory/Understory Vine/Herb	FAC
<i>Vitis rotundifolia</i> Muscadine grape	Midstory/Understory Vine/Herb	FAC
<i>Toxicodendron radicans</i> Poison Ivy	Understory Vine/Herb	FAC
<i>Smilax rotundifolia</i> Green Briar	Understory Vine/Herb	FAC
<i>Woodwardia areolata</i> Netted Chain Fern	Understory Herb	OBL
<i>Boehmeria cylindrica</i> False Nettle	Understory Herb	FACW

Applicant's Stated Purpose

As stated by the applicant, the purpose of the proposed project is to develop a lifestyle shopping center that meets the siting requirements in an area that has been determined to have a demand in the market place for the development.

Project Description

The developer proposes to construct four buildings that will provide a total of approximately 166,300 square feet of commercial space and approximately 9,600 square feet of residential apartment space. The extension of Jessie Lane will funnel vehicular and pedestrian traffic to the proposed lifestyle shopping center while also providing the "Main Street" atmosphere critical to the success of the commercial occupants. Additionally, the developer is proposing 467 parking spaces for the proposed CTC lifestyle shopping center.

Avoidance and Minimization

Based on the alternative's analysis completed by the applicant, the preferred alternative was determined to be the least damaging to the environment while still meeting the applicant's purpose and need.

The preferred alternative has far less negative impact to streams and wetlands than other considered alternatives. Additionally, the preferred alternative has significantly less impact to WoUS than former permit applications submitted for the site for the same proposed use. It is likely that other similar development of the site, if conducted at a later time, would result in significantly greater impact to WoUS than those proposed by the preferred alternative.

The applicant has incorporated the use of retaining walls at significantly increased construction costs in efforts to further minimize the impact to the environment and jurisdictional features. Two approximate 10 feet tall retaining walls are being proposed to avoid impact to the majority of streams and wetlands located on the western portion of the site. Additionally, approximate 10 feet tall head and end walls have greatly reduced additional impact to streams and wetlands located on the southern portion of the site associated with the culvert installation for the proposed extension of Jessie Lane.

Through design techniques, the applicant has attempted to minimize the amount of net loss of WoUS associated with project development. The applicant proposes to convert forested wetlands to emergent wetlands in areas in proximity to retaining walls. Additionally, the applicant is proposing to re-plant areas of temporary stream and wetland impact associated with the installation of the culvert's rip-rap dissipater pad. Finally, the applicant is proposing to "key in" the culvert's rip-rap dissipater pad to the existing stream bed and bank. This involves the permanent placement of fill beneath the ordinary high water mark; however, there will be no net loss of the stream's aquatic life or habitat.

The sequence of construction has been designed to minimize areas of exposed/bare soils. During construction of the project, erosion control devices will be routinely inspected and maintained to minimize the amount of sediment runoff into down-gradient streams and wetlands. Disturbed areas will be reseeded promptly, where possible, to prevent future erosion and sediment runoff into streams. Stockpiling excavated soil will be avoided where possible. If temporary stockpiling is necessary, the stockpiles be bermed and surrounded with silt fencing. Erosion control inspections will be scheduled with the City of Winston-Salem's Inspections Department as required. All construction activities will be conducted in accordance with the design specifications prepared by the engineer and approved by local and state regulating authorities.

There are approximately 1,351 linear feet of perennial stream channel, 637 linear feet of intermittent steam channel and 1.725 acres of wetlands located in the site. Impacts to 1,287.8 linear feet of perennial stream channel, 63.5 linear feet of intermittent stream channel and 1.572 acres of wetlands have been avoided. Additional impacts to jurisdictional features beyond those that are proposed in this project are not anticipated.

Compensatory Mitigation

The applicant has attempted to avoid and minimize impacts where possible and will compensate to the extent practicable, for the remaining unavoidable losses with mitigation. The applicant proposes the following mitigation for the unavoidable impacts to mitigable features below:

Table 7 Stream Mitigation Proposal				
Impact Feature	Type of Impact	Proposed Mitigation Ratio	Impact Amount	Required Credits
SA	Fill	1:1	573.5 LF	573.5 LF
SC	Culvert/Fill	2:1	19.3 LF	38.6 LF
SC	Rip-Rap/Fill	0	43.9 LF	0 LF
SA*	65	1:1	65 LF	65 LF
Stream Total			701.7 LF	677.1 LF

*denotes mitigation from previous impact to WoUS under SAW-2013-01201

Table 8 Wetland Mitigation Proposal				
Impact Feature	Type of Impact	Proposed Mitigation Ratio	Impact Amount	Required Credits
WA	Fill	2:1	2,343.7 SF	4,687.4 SF
WC	Fill	2:1	978 SF	1,956 SF
WC	Conversion	1:1	727 SF	727 SF
WC	Fill	2:1	526.3 SF	1,052.6 SF
WC/SA*	Fill	2:1	1,183 SF	2,366 SF
Wetland Total			5,758 SF 0.1322 Ac	10,789 SF 0.2477 Ac

*denotes mitigation from previous impact to WoUS under SAW-2013-1201

The applicant proposes to compensate for impacts for the construction of the proposed project by offering payment into the NCDEQ-Division of Mitigation Services (DMS) and/or private mitigation banks. In addition to impacts proposed in this application, the applicant proposes to provide mitigation for impacts associated with the development of the parcel south of the project area, Clemmons Town Center Apartments, LLC (SAW-2013-01201). Private mitigation banks, in the watershed of the proposed project, did not have credits available at the time of the applicant's request. According to a November 14, 2016 letter issued by the NCDEQ-DMS, the required mitigation credits are now available. A copy of the letter is included as an attachment.

At the ratios proposed, the applicant will receive 678 linear feet of stream channel credits and 0.25 acres of wetland credits, which will exceed mitigation credit requirements.

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.

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 6, 2017 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, January 6, 2017. Comments should be submitted to John Thomas, Regulatory Project Manager, Raleigh Regulatory Field Office 3331 Heritage Trade Drive, Suite 105 Wake Forest, North Carolina 27587 at (919) 554-4884 ext 25.