



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: September 24, 2008  
Comment Deadline: October 23, 2008  
Corps Action ID #: 200400320

The Wilmington District, Corps of Engineers (Corps) has received an application from Food Lion, LLC and Funston Land & Timber, LLC seeking Department of the Army authorization to impact 0.24 acres of jurisdictional wetlands associated with construction of an Ocean Club on 61<sup>st</sup> Street, Oak Island, Brunswick 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 [www.saw.usace.army.mil/wetlands](http://www.saw.usace.army.mil/wetlands).

**Applicant:** Jeff Earp  
Funston Land & Timber, LLC and Food Lion, LLC  
1007 Evangeline Drive  
Leland, North Carolina 28451  
(910) 383-1425

**AGENT (if applicable):** Mark Westerndorf  
Land Management Group, Inc  
PO Box 2522  
Wilmington, North Carolina  
(910) 452-0001

## Authority

The Corps will evaluate this application and decide whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of Section 404 of the Clean Water Act.

## Location

The project site is located at the far end of 61st Street, between 61st and 59th Street, adjacent to the Atlantic Ocean, in Oak Island, Brunswick County. Latitude 33° 54' 33.65596"; Longitude 78° 06' 13.38366".

## **Existing Site Conditions**

The property is located on an artificial barrier island in the coastal plain physiographic province. This barrier island was separated from the mainland during the excavation of the Intracoastal Waterway. Elevations for the property range from 5 to 15 feet above mean sea level. There are four soil mapping units mapped as occurring on the property. The hydric soil mapping units are Leon fine sand (Aeric Haplaquods) and Duckston fine sand (Typic Psammaquents). The nonhydric soil mapping units that may contain inclusions of hydric soils for the subject property are Wando fine sand (Typic Udipsamments) and Newhan fine sand (Typic Quartzipsamments). The hydric inclusions associated with these mapping units are Leon fine sand and beaches, respectively. No nonhydric soil mapping units are mapped for the subject property.

The upland plant community present on the property consists of Maritime Deciduous Forest. This community is located on the northern portion of the property and contains an open canopy dominated by live oak (*Quercus virginiana*) and an understory composed of mockernut hickory (*Carya tomentosa*), black cherry (*Prunus serotina*), and Florida dogwood (*Cornus florida*). Herbaceous vegetation throughout this community includes partridge berry (*Mitchella repens*) and greenbrier (*Smilax smallii*).

The two-wetland plant communities present on the property are Interdune Pond and Maritime Swamp Forest. The Interdune Pond community is located on the southern portion of the property and is a monotypic stand of common reed (*Phragmites australis*). The Maritime Swamp Forest community is located in the central portion of the subject property and grades into the adjacent plant communities to the north and south. The canopy in this community is composed of black gum (*Nyssa sylvatica*), swamp tupelo (*N. biflora*), water oak (*Quercus nigra*), and red maple (*Acer rubrum*). Herbaceous vegetation includes netted chain-fern (*Woodwardia areolata*), royal fern (*Osmunda regalis*), and cinnamon fern (*O. cinnamomea*).

## **Applicant's Stated Purpose**

The purpose of the project is to construct a community beach club, consisting of an extension of SE 61st Street, two buildings, an elevated access bridge/driveway, a retaining wall, parking lot, gazebo and beach access way to serve the Brunswick Forest subdivision.

## **Project Background**

The original DA permit was issued on June 23, 2005 to construct a Food Lion Store (fill 0.48 acres of wetlands), place a culvert and construct a road (0.04 acres of wetlands) and develop residential lots (0.24 acres of wetlands). As compensatory mitigation for the 0.76 acre of unavoidable wetland impacts resulting from construction of the Food Lion,

Food Lion LLC was required to provide a minimum of 0.76 acre of wetland creation and 5.50 acres of wetland preservation on-site. Construction of the Food Lion and the associated mitigation site has been completed. The remaining portions of the project associated with the 4 residential homes along the oceanfront were not completed. Subsequently, the Funston Land & Timber have become co-applicants to the proposal to construct the proposed project. The proposed project replaces the authorized development of four residential lots with a beach club to serve the Brunswick Forest community and will result in a slight increase in wetland impacts of (0.01 ac).

## **Project Description**

The applicant is requesting to modify its original Department of the Army (DA) Permit issued on June 23, 2005 to allow for the construction of a beach club to serve the Brunswick Forest community. Brunswick Forest is located off NC Hwy-17 in Leland, Brunswick County and is approximately 4,900 acres in area.

The proposed beach club facility consists of two covered clubhouses, each measuring 1,870 square feet in area, with a 6' wide beach access walkway leading to a 21' in length by 10' in width platform. The platform would then lead either south onto the beach via a set of steps, or would continue west to a 9' in length by 8' in width extension, terminating in a covered gazebo, measuring 14' in length by 14' in width.

The clubhouses would be accessed via an extension of 61st Street SE leading to an elevated, wooden bridge. A culvert, measuring 36" in diameter, would replace a 24" culvert along the existing road right-of way and two retaining walls would be installed on either side of (parallel to) the road for stabilization. The access bridge would be elevated approximately 3' over the jurisdictional wetlands. A separate bridge approach/ramp, approximately 600 square feet in area, would lead from the extension of 61st Street SE onto the bridge. A bulkhead would be located immediately seaward of the bridge to allow for the construction of the parking area. The road extension, bridge, bulkhead and resulting wetland fill area were previously authorized under to allow access to the four residential lots originally proposed. Total wetland impacts previously authorized for the residential lots are 0.24 ac. Total wetland impacts associated with the proposed project is 0.25 ac (11,022 square ft). As stated above, the proposed project replaces the development of four residential lots with a beach club to serve the Brunswick Forest community and will result in a slight increase in wetland impacts of (0.01 ac).

According to the applicant, a modification of the State Stormwater Permit (# SW8 040113) was approved for the proposed development on January 22, 2008.

## **Other Required Authorizations**

This notice and all applicable application materials are being forwarded to the appropriate State agencies for review. The Corps will generally not make a final permit decision until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice combined with appropriate application fee at the North Carolina Division of Water Quality central office in Raleigh will constitute initial receipt of an application for a 401 Water Quality Certification. A waiver will be deemed to occur if the NCDWQ fails to act on this request for certification within sixty days of the date of the receipt of this notice in the NCDWQ Central Office. Additional information regarding the Clean Water Act certification may be reviewed at the NCDWQ Central Office, 401 Oversight and Express Permits Unit, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1650 Mail Service Center, and Raleigh, North Carolina 27699-1650 Attention: Ms Cyndi Karoly by October 15, 2008.

The applicant has not provided to the Corps, a certification statement that his/her proposed activity complies with and will 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 can not issue a permit for the proposed work until the applicant submits such a certification to the Corps and the North Carolina Division of Coastal Management (NCDCM), and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification.

## **Essential Fish Habitat**

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Corps' initial determination is that the proposed project will not adversely impact 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 has consulted the latest published version of the National Register of Historic Places and is not aware that any registered properties, or properties listed as being eligible for inclusion therein are located within the project area or will be affected by the proposed work. Presently, unknown archeological, scientific, prehistoric, or historical data may be located within the project area and/or could be affected by the proposed work.

## **Endangered Species**

The Corps has 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 has determined pursuant to the Endangered Species Act of 1973, that the proposed project will have no effect on federally listed endangered or threatened species or their formally designated critical habitat.

## **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 consolidate 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.

Written comments pertinent to the proposed work, as outlined above, will be received by the Corps of Engineers, Wilmington District, until 5pm, October 23, 2008. Comments should be submitted to Dave Timpy at (910) 251-4634.