



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: November 20, 2012
Comment Deadline: December 20, 2012
Corps Action ID #: SAW-2009-01847

The Wilmington District, Corps of Engineers (Corps) has received an application from Dr. Arnold Sobol of AFTEW Properties, LLC seeking modification to the Department of the Army authorization issued June 11, 2012 for the discharge of fill material into 1.11 acres of wetlands adjacent to Mott's Creek, associated with the completion of the Village at Mott's Landing residential development. The applicant is proposing to impact an additional 0.12 acre for the construction of three (3) single family dwellings and one (1) multi-family unit. The 262 acre project area is located along River Road and Sanders Road, New Hanover 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

Applicant: AFTEW Properties, LLC
Attn: Dr. Arnold Sobol
2020 South Churchill Drive
Wilmington, North Carolina 28403

Agent (if applicable): Southern Environmental Group, Inc.
Attn: David Syster
5315 South College Road, Suite E
Wilmington, NC 28412

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 (33 U.S.C. 1344).

Location

The 262 acre project area is located along River Road and the north side of Sanders Road, Wilmington, North Carolina. The site contains approximately 64 acres of jurisdictional wetlands

and 2,025 linear feet of stream adjacent to Motts's Creek, a tributary to the Cape Fear River, a Navigable Water of the United States. Site coordinates are 34.1276°N, -77.9136°W.

Existing Site Conditions

The proposed project area is the existing Village at Motts Landing residential subdivision. This project was initially permitted February 15, 2005 under Individual Permit SAW-2001-01165 that authorized permanent impacts to 1.52 acres of non-riparian wetlands and temporary impacts to 0.034 acre of non-riparian wetlands. Upon expiration of the permit on December 31, 2008, only 0.16 acre of impacts had been completed; this discharge of fill was associated with the construction of roads and infrastructure for Phase IA of the development. On June 11, 2012, an Individual Permit was issued for an additional 1.11 acres of wetland impacts associated with Phases IB and II of the development, bringing cumulative impacts to 1.27 acres.

Phase IB of the property is currently under construction. The majority of this section has been prepped for development and several single family homes are currently under construction. Phase 3 of the property has remained relatively undisturbed. This area is primarily forested with several finger drains (jurisdictional wetlands) connecting to Mott's Creek. The majority of the soils underlying this area are Kureb, Leon and Lynn Haven with smaller areas of Dorovan, Pamlico and Torhunta. According to the United States Department of Agriculture Soil Survey of New Hanover County (April 1977) and Soil Conservation Service Technical Guide, Section II-A-2 for New Hanover County (June 1991), Leon sand, Lynn Haven fine sand, Torhunta mucky fine sandy loam, Dorovan and Pamlico muck are all very poorly drained soils that have been classified as hydric soils for New Hanover County. These wetlands support woody vegetation which mainly consists of pond pine (*Pinus serotina*), sweetbay magnolia (*magnolia virginiana*), and red maple (*Acer rubrum*), and an understory of fetterbush (*Lyonia lucida*), gallberry (*Ilex coriscea*) and swamp cyrilla (*Cyrilla racemiflora*). Upland soils consist mainly of Kureb sand (excessively-drained, non-hydric). Vegetation includes a canopy of turkey oak (*Quercus laevis*) and loblolly pine (*Pinus taeda*) along with southern blueberry (*Vaccinium tenellum*) and wiregrass (*Aristida stricta*).

Applicant's Stated Purpose

The primary purpose of the modification is to allow for the redesign of Motts Forest Drive and the construction of three (3) single family dwellings and one (1) multi-family unit within the Village of Motts Landing residential subdivision. These impacts are necessary to address the concerns of the New Hanover County Planning Department and provide adequate building area for the 4 subject structures.

Project Description

The applicant has proposed to discharge fill material into an additional 0.12 acre of wetlands with the development of lots 90, 90A and 91(Impact Areas 1 & 2, attached) and one of the

duplex structures (Impact Area 5, attached). Project plans and narrative have been included with this Public Notice. The applicant submitted an Alternatives Analysis that includes a No Action and Alternate Site alternative. This information has been included with this Public Notice as well.

Avoidance and Minimization

Due to the County's request to realign Motts Forest drive, the Applicant reconfigured the site plan to best fit the new road alignment and replace townhouses with duplexes. Originally, the Applicant intended to construct 241 townhouse units and 24 duplex units, however, as a result of the realignment, the Applicant reduced the total number of units by 42. Part of this reduction was necessary to avoid impacting 0.17 acre of wetlands (noted as Impact Areas 3 & 4, attached).

In addition, the applicant proposed additional impacts at a Pre-Application meeting with the Corps on August 10, 2012 shortly after the Individual Permit was issued. This included 3 new wetland crossings within riparian wetlands adjacent to Motts Creek located beyond the terminus of Mount Carmel Parke (noted as Impact Areas 6, 7 & 8 attached). These impacts (acreage undetermined) have been avoided in the most recent modification request.

With regard to the proposal to construct (3) single family dwellings and one (1) multi-family unit within the Village of Motts Landing residential subdivision, the Corps will evaluate all alternatives, which may result in further avoidance and minimization of wetland impacts, including any upland alternatives.

Compensatory Mitigation

To offset wetland impacts associated with the additional impacts, the Applicant proposed to purchase wetland mitigation credits at a 2:1 ratio for a total of 0.24 acre of non-riparian wetland restoration credit in the Cape Fear River watershed (03030005).

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 the 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, Raleigh, North Carolina 27699-1650 Attention: Mr. Ian McMillan by December 20, 2012.

Coastal Area Management Act

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 cannot 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 not have an effect on any federally listed species or their formally designated critical habitat. According to comments made by the Natural Heritage Program in letters dated 12/12/2011 and 1/25/2012, the proposed project may have an effect on the following State listed species found in the area: Carolina Gopher Frog, Southern Hognose Snake, Glossy Crayfish Snake and Venus flytrap. A final determination on the effects of the proposed project will be made 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.

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 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).

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, December 20, 2012. Comments should be submitted to Emily B. Hughes, 69 Darlington Avenue, Wilmington, North Carolina, 28403-1398, telephone (910) 251-4635.