



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: December 12, 2013  
Comment Deadline: December 27, 2013  
Corps Action ID Number: SAW-2007-04137

The Wilmington District, Corps of Engineers (Corps) received an application from **Partners Equity Group** seeking Department of the Army authorization to mitigate for **permitted impacts to 1.53 acres** of non riparian wetlands by **preserving 32 acres** of riparian wetlands in Johnston County, North Carolina. The applicant is also requesting the **modification of a condition** requiring the remaining wetlands on site to be preserved by restrictive covenants.

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:** Partners Equity Group  
Mr. John Shallcross, Jr.  
Post Office Box 1524  
Smithfield, North Carolina 27577

**AGENT:** Law Offices of F. Bryan Brice, Jr.  
Mr. Bryan Brice  
127W. Hargett Street, Suite 600  
Raleigh, North Carolina 27601

## 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 located north of Industrial Park Drive and east of South Equity Drive, north of the intersection of US Hwy 70 Business and I-95, Smithfield, Johnston County, North Carolina. The site is located within a 50.9 acre watershed that drains to Polecat Branch, which is a tributary to a navigable reach of the Neuse River Basin (HUC 03020201) and the Atlantic Ocean.

Project Area (acres): 45.3  
Nearest Town: Smithfield, North Carolina  
Nearest Waterway: Polecat Branch  
River Basin: Neuse  
Latitude and Longitude: 35.5066N, 78.3215W

## **Existing Site Conditions**

The 45.3 acre site is comprised of 19 commercial lots and associated transportation/utility infrastructure, configured and developed as originally proposed in the early 1990s. General land use in the immediate vicinity is commercial/retail, resulting in approximately 60% of the area being comprised of impervious surface. The project site is currently undeveloped and vegetated with grass, briars, sparsely planted tree saplings and several mature trees along the property boundary. The wetland type is a wet, pine flat. The site drains through a series of ditches constructed throughout the project to Polecat Branch.

## **Applicant's Stated Purpose**

The overall purpose of this project is to complete a commercial and light industrial development to achieve a balance of community goals and market dynamics for this highly commercialized corridor bordering Interstate 95, east of Smithfield, NC.

## **Project Description**

The permitted project involves the placement of fill material into 1.53 acres of the remaining 2.64 acres of wetlands located on the original 45.3 acre development. The proposed project would require the discharge of 44,443 cubic yards of fill material in conjunction with the filling and grading of the subject lots for the proposed construction of retail or commercial development and their associated parking.

The original permit required the applicant to mitigate at a 2:1 ratio for impacts to non-riparian wetlands, and a 1:1 ratio for impacts to a mitigation site associated with AID 1997-08043, by payment to the NC Ecosystem Enhancement Program (NCEEP) in the

amount determined by NC EEP, sufficient to perform restoration of 4.59 acres of non riparian wetlands in the Neuse River Basin, Cataloging Unit 03020201. The applicant is requesting to modify this condition due to financial constraints as the applicant stated that due to the NC EEP tiered system for the Neuse 01 HUC, the changed circumstances from the time of the original permit issued in 2009 and the subsequent real estate market crash, that purchase from that program is not practicable.

The applicant proposes preservation of approximately 30.925 acres adjacent to the Rudolph Buffer/Nutrient Offset Mitigation Site which is located approximately 12.4 miles from the project site in Johnston County in the Upper Neuse River Basin within the USGS HUC 03020201. This would result in a mitigation ratio of 6.9 to 1.

The proposed preservation site contains approximately 31 acres of a mixture of Headwater Wetlands and Bottomland Hardwood Forest riparian wetlands. Water from the site drains through existing channelized ditches flowing to Moccasin Creek, a tributary of the Neuse River. This proposed preservation area is within a 48.3 acre property that contains stream features and some wetland area that may be proposed to be further enhanced/restored and connected to these wetlands. The areas that may be proposed for future mitigation are not within the applicant's proposed preservation area.

The current permit also requires the applicant to place the remaining wetlands on site in preservation through the use of Restrictive Covenants. The applicant is requesting to modify this condition, due to concerns about trees, the integrity of the buildings and adjacent properties, and line of site for signage. The applicant is proposing to plant this area with appropriate lower growing species, and to maintain vegetation within the southern part of the wetland for line of site purposes. This plan will be provided, reviewed, and approved prior to finalization of the DA permit action.

### **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 December 27, 2013 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.

## **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, December 27, 2013. Comments should be submitted to Thomas Brown, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina, 27587, at (919) 554-4884 x22.