



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: May 1, 2015
Comment Deadline: June 1, 2015
Corps Action ID Number: SAW-2006-32842

The Wilmington District, Corps of Engineers (Corps) received an application from American Asset Corporation seeking Department of the Army authorization to grade and fill 0.58 acres of wetlands and 910 linear feet of stream, associated with the construction of Phases II and III of Alston Town Center mixed-use residential and commercial development located in Cary, Wake 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: American Asset Corporation
Mr. Joe Dye
7990 Arco Corporate Drive, Suite 109
Raleigh, North Carolina 27617

AGENT (if applicable): Mr. George Buchholz
McAdams Company
2905 Meridian Parkway
Durham, North Carolina 27713

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 Alston Town Center project site is approximately 109 acres in size located in the southwest corner of the NC Highway 55 and Interstate 540 intersection in Cary, North Carolina. PIN: 0735397193.

Project Area (acres): 109

Nearest Town: Cary

Nearest Waterway: Nancy Branch

River Basin: Cape Fear

Latitude and Longitude: 35.8373N, 78.8852W

Existing Site Conditions

The majority of the project site is forested with some maintained and cleared areas. The project site is located within the Cape Fear River Basin and contains a portion of Nancy Branch, which drains into the B. Everett Jordan Reservoir, a Traditional Navigable Water of the United States.

Distribution and composition of plant communities throughout the property reflect variations in topography, soils, hydrology, and past and present land use practices. Historically, portions of the project site nearest to NC Highway 55 have been used for agriculture, livestock, and silviculture. These activities have since been abandoned. Currently, approximately 95 percent of the project site can be characterized as undeveloped forested land, while the remaining 5 percent can be characterized as maintained land that is associated with dirt road trails and easements. The undeveloped forested land can be generally characterized as a Dry Mesic Oak-Hickory Forest according to the North Carolina Natural Heritage Program classification system (Schafale and Weakley, 1990).

The project site contains gradual to moderate relief with elevations ranging from ± 300 feet to ± 360 feet. Topographic relief and surface drainage is generally directed into Nancy Branch. Nancy Branch is generally centrally located within the project site; and therefore, relief from the western side of the project site is directed east and relief from the eastern side of the project site is directed west.

The project site is located within the Piedmont Physiographic Province of North Carolina. A review of the Ecoregions of North Carolina and South Carolina (Griffith *et al.*, 2002) shows that the geology in the area of the property is comprised of quaternary to tertiary red sandy loam to silty clay decomposition residuum, sandstone, conglomerate, mudstone, shale, coal, dikes, and sills within the Triassic Basin. The Triassic Basin has unusual Piedmont geology of unmetamorphosed shales, sandstones, mudstone, siltstones, and conglomerates. Soils tend to be clayey with low permeability, and streams will have low base flows. The clay has a high shrink-swell potential.

There are six jurisdictional stream features located within the project site that total 4,164 linear feet. As a part of Alston Town Center Phase 1, 28 linear feet of Stream Feature S3 was previously authorized to be impacted under Nationwide Permit 39 (Corps Action ID: SAW-2006-32842 dated July 21, 2014). Nomenclature for Stream Feature S3 was divided into S3-1 and S3-2. S3-1 represents the remaining length of Stream Feature S3. S3-2 represents the 28 linear feet authorized to be impacted as a part of Alston Town Center – Phase 1. Therefore, the total length of remaining existing stream features within the project site that have not been previously authorized to be impacted is 4,136 linear feet.

There are seven wetland features located within the project site that total 35,522 square feet (0.81 ac). As a part of Alston Town Center Phase 1, wetland impacts of 2,644 square feet (0.06 ac) were previously authorized under Nationwide Permit 39 (Corps Action ID: SAW-2006-32842; July 21, 2014). W5 represents the 2,644 square feet (0.06 ac) authorized to be impacted as a part of Alston Town Center Phase 1. There are two wetland features, ISO1 and ISO2, determined to be isolated based on the most recent approved jurisdictional determination (Corps Action ID: SAW-2006-32842 dated February 4, 2014). The two isolated wetland features, combined, total 7,124 square feet (0.16 ac) and are not regulated by Corps under Section 404 of the CWA; however, they are regulated by the North Carolina Department of Environment and Natural Resources – Division of Water Resources (DWR) under the Isolated Wetland Rules (15A NCAC 2H.1300). Therefore, the total area of remaining jurisdictional wetlands within the project site that have not been previously authorized to be impacted and that are not isolated wetlands is 25,754 square feet (0.59 ac).

Applicant's Stated Purpose

The applicant's stated purpose is to provide a mixed-use, live and work community to this underserved region of western Wake County.

Project Description

The Alston Town Center project is divided into three phases, in which, Phase I is a commercial/retail development located in the southeastern section of the project site. Impacts to waters of the United States associated with Phase I were authorized on July 21, 2014, and include the permanent filling of 28 linear feet of stream and 2,644 square feet (0.06 ac) of wetlands (Corps Action ID SAW-2006-32842).

The current proposal includes Phases II and III and involves the grading and/or fill of 486 linear feet of intermittent stream, 422 linear feet of perennial stream, and 25,005 square feet (0.58 ac) of jurisdictional wetlands associated with the construction of a roadway network, greenways, storm-water BMP's, and a sewer network.

Avoidance and Minimization

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

The entire site plan was designed to minimize impacts to natural resources, while utilizing the remaining non-jurisdictional areas to achieve the project's purpose. Two formal pre-application meetings were conducted on August 21, 2014, and February 10, 2015, with Mr. James Lastinger and Mr. David Shaeffer of the Corps Raleigh Regulatory Field Office, Mrs. Jennifer Burdette of North Carolina Division of Water Resources, and the design team to receive input on the proposed jurisdictional stream and wetland impacts before submitting the Individual Permit Application. Alternative designs/options were proposed and reviewed for the Alston Town Center project, before the final design was rendered and approved by the Town of Cary.

As part of avoidance measures associated with the Phase I, Mahal Avenue was realigned to minimize impacts to Stream Feature S3, and associated buffers, in addition to providing interconnectivity to the Phases II and III of the Alston Town Center project. Impacts to jurisdictional streams, resulting from the Phases II and III road crossings,

would be associated with grading, filling, and the installation of culverts and headwalls. All stream crossings would be made as near perpendicular as practicable. Culvert installation would occur within the dry and will require a temporary coffer dam and diversionary channel to allow for continued aquatic organism passage. All temporary stream impacts would be removed and returned to natural conditions within 60 days of the determination that the temporary impact is no longer necessary. Culverts would be designed and installed so that original stream profiles are not altered and to allow for aquatic organism passage during low flow events. To allow for aquatic organism passage, installation of culverts would be below the streambed elevation by one foot for all culverts greater than 48 inches in diameter or 20 percent of culvert diameter for culverts less than 48 inches. In addition, culverts would require the installation of a dissipater pad, or riprap curtain, to reduce erosive velocity. Installation of dissipater pads would be buried, or “keyed in”, such that original streambed elevations are restored to allow for continued aquatic organism passage.

Compensatory Mitigation

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

Compensatory mitigation for unavoidable wetland, stream, and riparian buffer impacts would include the on-site preservation of the remaining onsite wetland, streams, Urban Transition Buffers not proposed to be impacted, open space, and storm-water management practices. A preservation mechanism would be prepared in the form of a deed restriction, declaration of restrictions, and/or a conservation easement to protect these areas in perpetuity. Additionally, the applicant would purchase the appropriate number and type of stream and wetland credits from the North Carolina Division of Mitigation Services and/or a private mitigation bank necessary to compensate for all impacts resulting in a loss of waters of the United States at a ratio of 2:1.

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:

- 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).

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.

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 May 22, 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

North Carolina Division of Coastal Management (NCDWM):

- 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, June 01, 2015. Comments should be submitted to David L. Shaeffer, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 554-4884 Ext. 31.