



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: February 09, 2015
Comment Deadline: March 10, 2015
Corps Action ID Number: SAW-2007-04137

The Wilmington District, Corps of Engineers (Corps) has received a request from Partners Equity Group to modify an individual Department of the Army permit issued under the above referenced file number on May 13, 2009. This permit expired on December 31, 2014. The revised project would involve the discharge of fill material in 1.68 acres of wetlands to facilitate the construction of three restaurants in Smithfield, in Johnston County, North Carolina. The applicant has also requested that the permit be extended for 5 years.

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, NC 27577

Agent: Law Offices of F. Bryan Brice, Jr.
Mr. Bryan Brice
5 W. Hargett Street, Suite 200
Raleigh, NC 27601

Authority

The Corps evaluates this application and decides 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 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, in Smithfield, in Johnston County, North Carolina. The site's geographical coordinates are 35.5066° N, 78.3215° W. 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.

Existing Site Conditions

The 45.3 acre commercial park is comprised of 19 commercial lots and associated transportation/utility infrastructure, configured and developed as originally proposed in the early 1990s. The commercial development originally contained approximately 3.95 acres of pine flat wetlands.

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, briers, sparsely planted tree saplings and several mature trees along the property boundary. The original wetland type was pine flat but has been substantially altered due to land clearing and the input of storm water from surrounding impervious surfaces. The site drains through a series of ditches constructed throughout the project to Polecat Branch.

Applicant's Stated Purpose

The applicant's stated purpose is to construct two buildings which would serve three national restaurant venues.

Project Description

The applicant proposes to discharge fill material in 1.68 acres of the remaining 2.13 acres of wetlands, located on Lots 18 and 19, to facilitate the construction of two buildings (totaling 8,692 square feet) and associated parking (152 spaces) which would house three national restaurant chains.

Project History

Partners Equity Group has received multiple Department of the Army permits to impact the original 3.95 acres of onsite wetlands including a Nationwide Permit 14 issued on July 15, 1994, for 0.33 acre of fill, an after-the-fact Nationwide Permit 26 issued on February 13, 1995, for 0.25 acre of fill, and a Nationwide Permit 26 issued on September 9, 1997, for 0.66 acre of fill. All wetland fills have been associated with the construction of road infrastructure and lot fill for restaurants and have resulted in a total loss of 1.24 acres of wetlands for the subdivision. These restaurants and other businesses within this commercial subdivision primarily serve visitors to the Smithfield Outlet Center, which attracts an average of 7 million customers per year.

On May 13, 2009, an individual Department of the Army permit was issued to Partners Equity Group authorizing the placement of fill material into 1.53 acres of the remaining 2.13 acres of onsite wetlands. The purpose of the fill was to facilitate the construction of one large commercial building with associated parking. The applicant was required to provide compensatory mitigation at a 2:1 ratio for the 1.53 acres of wetland impacts through payment to the North Carolina Ecosystem Enhancement Program (NCEEP). The

wetlands to be impacted were previously preserved through a deed restriction as a compensatory mitigation requirement of a Nationwide Permit 26 (AID 1997-08043). The deed restriction was removed by the property owner in order to develop Lots 18 and 19. In order to satisfy the compensatory mitigation requirement of AID 1997-08043, the applicant was required to provide an additional 1.53 acres of mitigation at a ratio of 1:1 through payment to NCEEP.

On September 25, 2012, the applicant requested modification to the compensatory mitigation requirement due to financial constraints. A Public Notice was issued on November 7, 2012, detailing the applicant's proposal to provide the required mitigation through the preservation of approximately 32 acres of wetlands adjacent to the Rudolph Buffer/Nutrient Offset Mitigation site located approximately 12 miles east of the project site. The applicant also requested that the permit condition, requiring the remaining onsite wetlands to be preserved by restrictive covenant, be removed. This modification was never approved.

On November 27, 2013, the applicant submitted an additional request to change the compensatory mitigation requirement. On December 12, 2013, a Public Notice was issued detailing the applicant's proposal to provide compensatory mitigation through the preservation of approximately 32 acres of wetlands adjacent to the Rudolph Buffer/Nutrient Offset Mitigation site located approximately 12 miles east of the project site. The applicant also requested that the permit condition requiring the remaining onsite wetlands to be preserved by restrictive covenant be modified to allow the maintenance of vegetation due to concerns about the integrity of adjacent buildings and line of site for signage. The applicant never finalized plans for onsite mitigation. On May 2, 2014, the applicant submitted revised plans showing two separate buildings rather than one larger building. The applicant was notified during a May 5, 2014, meeting with our office that the revised project plans would require an additional Public Notice and revised information on alternative sites and designs necessary for our office to complete the CWA 404(b)(1) analysis (40 CFR 230) .

On November 28, 2014, the applicant submitted a revised compensatory mitigation proposal and project plans for two building. The applicant also requested a five year extension to the time to complete work authorized by the individual permit issued on May 13, 2009.

Avoidance and Minimization

The applicant originally proposed to fill all 2.13 acres of wetlands on Lots 18 and 19. Following pre-application meetings associated with the original permit application, the applicant proposed to reduce their impacts to the minimum necessary to develop the property. They also proposed to preserve the remaining onsite wetlands on the east side of the property that connects with wetlands on the two adjoining properties.

Compensatory Mitigation

The applicant proposes preservation of 30.925 acres of land adjacent to the Rudolph Buffer/Nutrient Offset Mitigation Site which is located approximately 12.4 miles from the project site in Johnston County and within the Upper Neuse River Basin (USGS HUC 03020201).

The proposed preservation site contains 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 preserve the remaining 0.447 acres of onsite wetlands through a restrictive covenant. 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 to a maximum height of 8 feet.

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 historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area. 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 historic properties.

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 March 02, 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

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

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, March 10, 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.