



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: August 4, 2015
Comment Deadline: September 4, 2015
Corps Action ID Number: SAW-2013-00556

The Wilmington District, Corps of Engineers (Corps) received an application from TDO Land Holdings, LLC seeking Department of the Army authorization to discharge fill material into waters of the United States, associated with constructing access and infrastructure for phase II of the Triad Business Park (TBP) development in Guilford 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: TDO Land Holdings, LLC
Mr. Brian Hall
309 Gallimore Dairy Road, Suite 102
Greensboro, North Carolina 27409

AGENT: Pilot Environmental, Inc.
Mr. Brad Luckey
Post Office Box 128
Kernersville, North Carolina 27285

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 proposed project area is located in an undeveloped tract of land south of West Market Street and north of I-40 Business, between the Guilford/Forsythe County line and Bunker Hill Road in Colfax, Guilford County, North Carolina.

Project Area (acres): 180 acres (phase II only) Nearest Town: Colfax
Nearest Waterway: UT to West Fork Deep River River Basin: 03030003
Latitude and Longitude: 36.109174°N, -80.024339°W

Existing Site Conditions

The proposed project area is located within the Charlotte Belt of the Piedmont Physiographic Province. This region's geology is dominated by plutonic rocks with some large areas of meta-volcanic rocks. The phase II site geomorphology generally includes two upland ridges bisected from northeast to southwest by the UT to West Fork Deep River valley, with several smaller drainages down cutting from the uplands to the valley. Elevation across the site ranges from approximately 971 feet above mean sea level (MSL) in the north extent of the property along the rail road track, to 886 feet MSL along UT to West Fork Deep River. Soils are mapped as Chewacla loam (ChA), Nathalie sandy loam (NaB) and Poplar Forest sandy loam (PaC) and clay loam (PpD2). The Chewacla series consists of somewhat poorly drained, moderately permeable soils that occur on floodplains of the Piedmont and Coastal Plain river valleys; this series is identified on the 2014 National Hydric Soils List for Guilford County, North Carolina as having hydric inclusions of the un-drained Wehadkee component. The Nathalie series consists of well drained, moderately permeable soils that occur on hills and ridges of Piedmont uplands. The Poplar Forest series consists of well drained, moderately permeable soils that occur on gently sloping to steep Piedmont uplands. Average annual precipitation for Guilford County is 43.1 inches.

Historically, the site used for farming, with forested areas on the steeper slopes and bottomlands and several ponds. Currently the central, eastern, and southern portions of the site consist of grassed fields of fescue (*Festuca spp.*) and Bermudagrass (*Cynodon dactylon*), and mixed deciduous forested areas including oak (*Quercus spp.*), hickory (*Carya spp.*), beech (*Fagus grandifolia*), elm (*Ulmus spp.*), red maple (*Acer rubrum*) and sweetgum (*Liquidambar styraciflua*). Two ponds exist as well, one in the northern and western portions of the site, respectively. Commercial/industrial business complexes have been constructed in the northern and western portions of the site in the last seven years, including large buildings, parking lots, sewer and waterlines, and stormwater treatment facilities.

A paved access road extends from Old Greensboro Road east to a cul-de-sac located just west of the UT to West Fork Deep River valley to service these facilities. The property is bordered to the west by phase I of TBP (referenced above), to the south by I-40 Business, to the east by Bunker Hill Road and small residential properties, and to the north by West Market Street, and to the north by a Norfolk-Southern railroad, and mixed wooded-maintained property. General area land use includes commercial and industrial development to the west in the vicinity of Kernersville, mixed residential-agricultural land north and south, and medium density residential and forested land immediately east, with heavy industrial property slightly farther west.

Pilot Environmental, Inc., consultant for the applicant; conducted a jurisdictional delineation for the site in 2014. The jurisdictional boundaries, including 9 streams and adjacent wetlands were verified by the Corps, and a Jurisdictional Determination (JD) was approved on September 8, 2014, (SAW-2013-00556). All streams on site are considered Relatively Permanent Waters, which flow via West Fork Deep River to the Deep River, a Traditionally Navigable Water. These streams all carry the NC Division of Water Resources (NCDWR) best usage classification of “WS-IV”; this classification refers to those waters used as sources of water supply for drinking, culinary, or food processing purposes where a WS-I, II or III classification is not feasible. WS-IV waters are generally in moderately to highly developed watersheds or Protected Areas. There are no designated Outstanding Resource Waters (ORW), High Quality Waters (HQW), Water Supply I (WS-I), or Water Supply (WS-II) waters within 1.0 mile of the project area. The wetlands within the phase II project area are all of the Headwater Forest wetland type, according to the North Carolina Wetland Assessment Method (NCWAM). These features contain a mix of plant assemblages, with the wetland area abutting the main UT to West Fork Deep River, Wetland WC, containing sweetgum, black willow (*Salix nigra*), green ash (*Fraxinus pennsylvanica*), silky dogwood (*Cornus amomum*), red maple, green briar (*Smilax sp.*) and various sedges (*Carex sp.*) and rushes (*Juncus sp.*). Soils within this feature are primarily loamy with a low chroma (2.5Y 4/1) matrix and bright (5YR 4/6) redoximorphic concentrations. Typical of wetlands in stream valleys, this wetland displays hydrology indicators such as water-stained leaves seasonal saturation, and occasional flooding.

Background

Phase I of TBP includes several activities authorized under Nationwide Permits (NWP), but considered as having cumulative impacts as part of the same single and complete project:

The FedEx ground package distribution project (SAW-2008-01894) was authorized under NWP 39 on July 31, 2008, including a permanent discharge of fill material into 225 linear feet of stream channel, 0.19 acre of riparian wetlands, and 0.22 acre of open waters habitat. Compensatory mitigation for these impacts was satisfied through the purchase of 450 stream credits and 0.19 wetland credits from the North Carolina Ecosystem Enhancement Program (NCEEP).

The Triad Business Park sewer project (SAW-2008-02092) was authorized under NWP 12 on September 12, 2008, and was constructed to service TBP. This authorization included the temporary discharge of dredged material into 125 linear feet of stream channel and 0.31 acre of riparian wetlands. Compensatory mitigation for wetland impacts was satisfied through the purchase of 0.62 wetland credits from the NCEEP, as well as a requirement to preserve a defined area of remaining waters of the US on site including wetlands and a 30 foot buffer around all streams and ponds, with the exception of those areas in the area of the FedEx ground package distribution project. The legal mechanism for protecting the preservation area was Restrictive Covenants, as recorded in the Guilford County Register of Deeds on December 31, 2008.

The Northeast Sewer Improvements phase I project (SAW-2008-01599), authorized under NWP 12 on October, 24, 2008, was constructed in part to connect to TBP. This authorization included a temporary discharge of dredged material into 199 linear feet of stream channel and 0.19 acre of riparian wetlands, including the permanent conversion of 0.13 acre of wetlands from a forested to an herbaceous state. Compensatory mitigation for the permanent wetland conversion impacts was satisfied through the purchase of 0.26 wetland credits from the NCEEP.

Given that the current proposed impacts to waters of the U.S., in combination with impacts from the earlier phases listed above, exceed the Nationwide Permit threshold, the current proposal to construct phase II of TBP is subject to Individual Permit review.

Applicant's Stated Purpose

The purpose of the project, as stated by the applicant, is to provide safe and adequate industrial access to phase II of TBP.

Project Description

The applicant has proposed to permanently discharge fill material into an additional 190 linear feet of stream channel and 0.59 acre of riparian, non-riverine wetlands, and temporarily discharge fill material into 45 linear feet of stream channel and 0.06 acre of riparian, non-riverine wetlands, to construct phase II of TBP. The proposed impacts to waters of the U.S. are the direct result of culvert and road fill installation and access for construction of a road crossing. The applicant proposes to dewater the relevant section of UT to West Fork Deep River via coffer dams and pump-around for construction access, install an 84-inch, 120-foot long culvert and 78-foot long rip rap energy dissipater pad, and backfill to road grade using clean fill material.

The side slopes would be stabilized by approximately 12 foot tall retaining walls on both the up- and down-gradient sides. The proposed road crossing would provide two approximately 17 foot wide paved travel lanes with curb and gutter.

Table 1. Existing and Proposed Waters of the U.S. Impacts Table

Authorization	Wetland Impacts (acre)		Open Water Impacts (acre)	Stream Impacts (linear feet)	
	Permanent	Temporary	Permanent	Permanent	Temporary
SAW-2008-01894: NWP 39; July 31, 2008	0.19	-	0.22	225	-
SAW-2008-02092: NWP 12; September 12, 2008	-	0.31	-	-	125
SAW-2008-01599: NWP 12; October 24, 2008	-	0.19	-	-	199
Phase I Authorized Total:	0.19	0.5	0.22	225	324

phase II Currently Proposed:	0.59	0.06		190	45
TBP Proposed Total	0.78	0.56	0.22	415	369

If authorized, cumulative impacts for phases I and II of TBP would include the permanent discharge of fill material in 415 linear feet of stream channel, 0.78 acre of riparian, non-riverine wetlands and 0.22 acre of open waters, and temporary discharge of fill material in 369 linear feet of stream channel and 0.56 acre of riparian, non-riverine wetlands.

The applicant submitted an Alternatives Analysis that includes No Action, On-site, and Off-site Alternatives. This information has been included with this Public Notice as well. Supplemental documentation including project plans and a narrative can be found on the District Website at

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx>.

Avoidance and Minimization

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

The applicant has incorporated the use of retaining walls at significantly increased construction costs in efforts to further minimize the impact to the environment and jurisdictional features. Approximate 12 foot tall retaining walls that will act as head/end walls are proposed to be constructed up and down-gradient of the proposed crossing location. The retaining wall on the up-gradient end of the crossing is approximately 65 feet long and the retaining wall on the down-gradient end of the crossing is approximately 85 feet long. The use of the retaining walls has further reduced the amount of impact of the preferred alternative by 88 linear feet of stream channel and 0.09 acres of wetlands.

The applicant has conceptualized locations of proposed lots and shown designs for infrastructure, including roads and utilities to the lots without additional impact to jurisdictional features. Proposed lot boundaries have been designed based on locations of jurisdictional features; whereas, jurisdictional features serve as lot boundaries and/or are located in proximity to lot boundaries to the maximum extent possible in efforts to reduce the potential for future impacts to jurisdictional features associated with individual lot construction and full build out of phase II of TBP.

The sequence of construction phases has been designed to minimize areas of exposed/bare soil. During construction, erosion control measures will be routinely inspected and maintained as needed to prevent erosion and capture sediments. Disturbed areas will be immediately re-seeded to prevent erosion and sedimentation runoff into streams. Stockpiling excavated soil will be avoided where possible. If temporary stockpiling is necessary, it will be bermed with bales of hay and or covered to prevent excessive run-off. Erosion control inspections will be scheduled with the Land Quality Section as necessary. A stormwater management plan will be submitted separate from this application to the NC Department of Environment and Natural Resources (NCDENR) or an NCDENR approved local municipality.

There are approximately 5,124 linear feet of perennial stream channel, 1,620 linear feet of intermittent steam channel, 8.892 acres of wetlands and 3.356 acres of jurisdictional open waters (ponds) located with phase II of TBP. Impacts to 4,934 linear feet of perennial stream channel, 1,620 linear feet of intermittent stream channel, 8.33 acres of wetlands and 3.356 acres of jurisdictional open waters (ponds) has been avoided. The project as proposed allows for the future development of phase II of TBP to occur in upland areas with no impact to jurisdictional features and/or the environment. Additional impacts to jurisdictional features beyond those that are proposed in this project are not anticipated.

Compensatory Mitigation

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

Impacts to the wetlands are proposed be compensated through payment to the NCEEP, now known as the NC Division of Mitigation Services, at a 2:1 mitigation to impact ratio for the permanent stream and wetland impacts associated with phase II; this would result in a purchase of 380 warm water stream credits and 1.18 riparian wetland credits.

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.

The applicant submitted additional site-specific information on federally protected threatened and endangered species, which can be found on the District Website at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx>.

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 August 25, 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 (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.
- 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, September 4, 2015. Comments should be submitted to David E. Bailey, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 554-4884 extension 30.