



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: June 17, 2015
Comment Deadline: July 17, 2015
Corps Action ID Number: SAW-2015-00947

The Wilmington District, Corps of Engineers (Corps) received an application from Lincoln Harris seeking Department of the Army authorization to impact 0.763 acre of jurisdictional wetland and 1.157 acres of open water, associated with the development of a mixed-use multifunctional development in Mecklenburg 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: Mr. Gregory Currie
c/o Lincoln Harris for Elm Golf, LLC
4725 Piedmont Row Drive, Suite 800
Charlotte, North Carolina 28210

AGENT (if applicable): Mr. Len Rindner
Leonard S. Rindner, PLLC
Wetlands & Environmental Planning Group
10612-D Providence Road, PMB 550
Charlotte, North Carolina 28277

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 site is located on the north side of Ardrey Kell Road just west of its intersection with Providence Road (NC Hwy 16), in Charlotte, Mecklenburg County, North Carolina. From I-485, head south on NC Hwy 16 (Providence Road) for approximately 0.3 mile. Turn right onto Golf Links Drive and the property can be accessed from the end of Golf Links Drive.

Project Area (acres): 187

Nearest Town: Charlotte

Nearest Waterway: Flat Branch and Six Mile Creek

River Basin: Catawba

Latitude and Longitude: 35.0549 N, -80.7773 W

Existing Site Conditions

The site is approximately 187-acres in size and currently an abandoned golf course. It is a mosaic of open golf links, with fairways, tees and greens, asphalt golf cart paths, fragmented islands of natural vegetation, open water/pond features, depressional mafic wetland pockets, and historically maintained landscape. There are several buildings on the site including a maintenance barn, clubhouse and storage sheds.

The gently sloped, open turf grass golf links and landscaping are comprised of cultivated Bermuda Grass (*Cynodon dactylon*), Fescue Grass (*Festuca* sp.) and Pampas Grass (*Cortaderia selloana*), with isolated strip buffers of shrubs and small trees, and widely scattered larger trees. There are thin strips of wooded buffer along the perimeter of the site which is surrounded by business and shopping center buildings, and single family home sub-divisions. The wooded areas contain some mature trees with moderate sub-canopy strata. Average diameter at breast height (dbh) for the canopy trees is 10 inches, with some larger trees present. Canopy trees present include Shortleaf Pine (*Pinus echinata*), White Oak (*Quercus alba*), Red Oak (*Q. rubra*), Willow Oak (*Q. phellos*), Sweet gum (*Liquidambar styraciflua*), Yellow Poplar (*Liriodendron tulipifera*), Mockernut Hickory (*Carya tomentosa*) and Red Cedar (*Juniperus Virginiana*). The sub-canopy is composed of Flowering Dogwood (*Cornus Florida*), American Holly (*Ilex opaca*), Black Cherry (*Prunus serotina*), and Black Gum (*Nyssa sylvatica*). The shrub layer includes Chinese Privet (*Ligustrum sinense*), Blueberry (*Vaccinium* sp.), and Russian Olive (*Elaeagnus umbellata*). Vines present are Japanese Honeysuckle (*Lonicera japonica*), Virginia Creeper (*Parthenocissus quinquefolia*), Muscadine (*Vitis rotundifolia*), Catbrier (*Smilax* sp.), and Poison Ivy (*Toxicodendron radicans*). The herb layer has little diversity and is dominated by Japanese Stilt-grass (*Microstegium vimineum*).

The roadside along Ardrey Kell Road is maintained by periodic mowing and the narrow ecotone at the property's edge is made up of Fescue (*Festuca* sp), Plume Grass (*Erianthus contortus*), Broomsedge (*Andropogon virginicus*), Dog fennel (*Eupatorium* spp.), Goldenrod (*Solidago* spp.), Blackberry (*Rubus* spp.), Groundsel Tree (*Baccharis halimifolia*), Trumpet Creeper (*Campsis radicans*), and Multiflora Rose (*Rosa multiflora*).

There are two soil types on the site which include Iredell fine sandy loam (IrA and IrB), and Mecklenburg fine sandy loam (MeB). Of these soil types, Iredell fine sandy loam is considered hydric and is located within a majority of the site.

The project area contains several jurisdictional waters of the U.S. to include stream channels, wetlands, and open water ponds. The jurisdictional areas were confirmed by Corps representatives, William Elliott and Steve Kichefski on February 6, 2015 and a jurisdictional determination was issued on June 12, 2015. Information on non-jurisdictional/isolated wetlands is provided since this is a joint application for the Corps and the North Carolina Division of Water Resources (who regulates both the jurisdictional and isolated wetlands on the site). The jurisdictional and non-jurisdictional features are summarized in the tables below.

Table 1: Summary of Jurisdictional Features

Stream Channels	Stream Type	NCWAM Classification/ Rating	Size (linear foot)
Stream R	Perennial RPW	n/a	505 lf
Stream X	Perennial RPW	n/a	36 lf
			541 lf Stream Channels
Wetlands	Cowardin Classification	NCWAM Classification/Rating*	Size (acres)
Wetland A	Forested/palustrine	Headwater/Medium	0.461 ac
Wetland F	Forested/palustrine	Headwater/Medium	0.269 ac
Wetland J	Forested/palustrine	Basin/Medium	0.374 ac
Wetland M	Scrub-shrub/palustrine	Headwater/Medium	0.165 ac
Wetland N	Emergent/palustrine	Headwater/Medium	0.041 ac
Wetland S	Forested/palustrine	Headwater/Medium	2.596 ac
Wetland Y	Emergent/palustrine	Headwater/Medium	0.034 ac
Wetland Z	Forested/palustrine	Basin/Medium	0.130 ac
Wetland AA	Emergent/palustrine	Headwater/Low	0.011 ac
			4.08 acres Wetlands
Open Water	Cowardin Classification	NCWAM Classification/Rating	Size (acres)
Pond B	Lacustrine	n/a	1.73 ac
Pond K	Lacustrine	n/a	1.92 ac
			3.65 acres Open Waters

*North Carolina Wetland Assessment Method (NCWAM) rating conducted by the applicant.

The stream channel associated with Stream R begins at the confluence of several smaller ephemeral channels and a large, upslope wetland (Wetland S). A majority of the hydrology to this area is derived from storm water flows from surrounding residential and commercial properties. Stream X is the hydrological conveyance from Pond K to Flat Branch.

Jurisdictional Wetlands A and S are located at the periphery of the site, with both being forested and associated with an abutting connection to a jurisdictional surface water. The applicant performed a functional assessment of the wetlands on this site according to the North Carolina Wetland Assessment Method Wetland Rating Sheet, Version 4.1 (NCWAM) which has not yet been verified by the Corps. Wetland A was determined to have an overall wetland rating classification of “Medium”. Wetlands M, N, and AA also have an abutting connection to jurisdictional surface waters but are dominated by emergent or scrub-shrub vegetation. Wetland AA was rated as “Low” while M and N were rated as “Medium”. Jurisdictional Wetlands F, J, Y, and Z were found to have an adjacent connection to jurisdictional surface waters. These wetlands were dominated by vegetation characterized by emergent (Wetland Y) or forested (Wetland F, J and Z) types. These adjacent wetlands were all determined to have NCWAM classifications of “Medium”.

In addition to these jurisdictional wetlands, 12 isolated wetland features were identified on site. All isolated wetlands (Wetlands C, D, G, H, I, P, Q, V and W), with the exception of Isolated Wetlands E, O, and U, were characterized as forested. These isolated, forested wetlands were maintained as part of the historically active golf course and have an understory and emergent vegetation layer that is not typical of isolated wetlands found within this area. Both understory and emergent species are comparatively sparse in vegetation diversity and species count in most of these forested, isolated wetlands.

Table 2: Summary of Non-Jurisdictional/Isolated Features

Wetlands	NCWAM Classification/Rating*	Size (acres)
Wetland U	Basin/Low	0.22
Wetland E	Basin/Medium	0.172
Wetland G	Basin/Medium	0.224
Wetland D	Basin/Medium	0.327
Wetland H	Basin/Medium	0.115
Wetland I	Basin/Medium	0.479
Wetland P	Basin/Medium	0.084
Wetland Q	Basin/Medium	0.015
Wetland V	Basin/Medium	0.343
Wetland C	Basin/Medium	0.006
Wetland O	Basin/Medium	0.033
Wetland W	Basin/Medium	0.117
Total Non-Jurisdictional/Isolated Wetlands		2.135 acres

*North Carolina Wetland Assessment Method (NCWAM) rating conducted by the applicant.

Wetland E was characterized as an emergent wetland and had been heavily maintained as part of the historically active golf course. Wetlands O and U were characterized as scrub-shrub wetlands which have likely transitioned from an emergent wetland type due to the cessation in maintenance. All isolated wetlands identified were approximately located within the center of the site and were determined to have NCWAM classifications of “Medium” except for Isolated Wetland U which was classified as “Low”. NCWAM assessment and rating forms are enclosed.

One additional surface water feature, identified as a Non-Jurisdictional Golf Course Water Hazard, is a man-made, open water feature constructed in high ground with earthen berms. This Golf course water Hazard was also approximately centrally located within the site and has no discernible nexus to jurisdictional features within the area.

Applicant's Stated Purpose

The basic purpose of the project is to construct a large-scale mixed-use residential and commercial development. Specifically, the overall project purpose is to construct a mixed-use residential and commercial development in the Providence Road/I-485 area of Charlotte to include the following components: single-family housing, multi-family housing, office and retail space, a school and daycare, and a fitness facility.

The project is being designed to include multiple and diverse components to support the 'live, work, play' model of development. The attached Zoning Master Plan depicts the categories of these types of development strategically positioned on the 187-acre site. The interrelationship of these components from a safety, size requirement, traffic flow, and visibility/aesthetic requirement influences how the master plan for the site was ultimately developed and facilitated the locations of the multiple development components.

Project Description

The project will consist of multiple development components with associated infrastructure to include 200-units of single-family housing, 625,000 square feet of office/parking space, 350-units of multi-family housing, 375,000 square feet of retail/grocery space, 200,000 square feet for a fitness facility, and 200,000 square feet for a school facility.

Total proposed impacts on the site are 0.764 acre of jurisdictional wetlands, 2.135 acres of non-jurisdictional/isolated wetlands, and 1.157 acres of open water ponds. A majority of the jurisdictional and isolated wetland impacts in addition to 0.455 acre of Open Water Pond B are associated with the discharge of fill material for the construction of roads, single-family lot development, and office building/parking deck construction. The remainder of the open water impacts is associated with the conversion of the existing ponds to storm water treatment facilities. The ponds will be re-configured/expanded to adequately detain and treat storm water runoff for the project site. Approximately 0.56 acre of Open Water Pond K will be filled to create a new dam/berm and the adjacent uplands excavated to create a larger and more aesthetically appealing open water feature. The location of the current outfall of the pond will remain the same. For Open Water Pond B, approximately 0.142 acre of open water will be filled to re-configure/expand the existing pond. The location of the current outfall will remain the same and no secondary/indirect impacts to Wetland A (adjacent/downslope of Pond B) is expected to occur. Approximately 0.02 acre of Wetland A is proposed for impact associated with the grading for the new berm/dam. The table below provides a summary of proposed impacts and relevant classification systems.

Table 3: Impacts to Jurisdictional Waters

Wetlands	NCWAM Classification/Rating*	EEP Mitigation Category	Area (acres)
Wetland A	Headwater/Medium	Riparian	0.02 ac
Wetland J	Basin/Medium	Non-Riparian	0.374 ac
Wetland M	Headwater/Medium	Riparian	0.165 ac
Wetland N	Headwater/Medium	Riparian	0.041 ac
Wetland Y	Headwater/Medium	Riparian	0.034 ac
Wetland Z	Basin/Medium	Non-Riparian	0.130 ac
Total Jurisdictional Wetland Impacts			0.764 ac
Open Water			
Pond B	n/a	n/a	0.597 ac
Pond K	n/a	n/a	0.56 ac
Total Open Water Impacts			1.157 ac

*North Carolina Wetland Assessment Method (NCWAM) rating conducted by the applicant.

Table 4: Impacts to Non-Jurisdictional/Isolated Waters

Wetlands	NCWAM Classification/Rating*	EEP Mitigation Category	Area (acres)
Wetland U	Basin/Low	Non-Riparian	0.22
Wetland E	Basin/Medium	Non-Riparian	0.172
Wetland G	Basin/Medium	Non-Riparian	0.224
Wetland D	Basin/Medium	Non-Riparian	0.327
Wetland H	Basin/Medium	Non-Riparian	0.115
Wetland I	Basin/Medium	Non-Riparian	0.479
Wetland P	Basin/Medium	Non-Riparian	0.084
Wetland Q	Basin/Medium	Non-Riparian	0.015
Wetland V	Basin/Medium	Non-Riparian	0.343
Wetland C	Basin/Medium	Non-Riparian	0.006
Wetland O	Basin/Medium	Non-Riparian	0.033
Wetland W	Basin/Medium	Non-Riparian	0.117
Total Non-Jurisdictional Wetland Impacts			2.135 ac

*North Carolina Wetland Assessment Method (NCWAM) rating conducted by the applicant.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The site plan has been designed utilizing critical design criteria associated with a mixed-use/multi-functional development model while taking into consideration the location of jurisdictional waters on the property. Due to the landscape position of a majority of the wetland features (both jurisdictional and isolated) and the extent of these features which are scattered throughout the central and southern portions of the site, impacts could not be avoided while still being able to develop these portions of the property. The wetland features proposed for impact are uncharacteristically located in an upland landscape position thereby limiting avoidance and minimization opportunities.

The largest/contiguous wetland and stream complex located in the northeastern corner of the site will be completely avoided which will preserve approximately 505 linear feet of stream channel and 2.6 acres of associated wetlands. Also, a road connection adjacent to Jurisdictional Wetland F was re-designed to completely avoid impacting this wetland (0.269 acres) which is part of high quality/larger wetland complex that extends off-site. A majority of impacts to Jurisdictional Wetland A were avoided (0.441 acre) by maintaining the outfall of Open Water Pond B in its current location once the dam/pond is reconfigured. Impacts to Jurisdictional Perennial RPW Tributary X (36 linear feet) were also avoided using the same approach with Open Water Pond K.

Prior to finalizing the site plan, NCWAM assessments were conducted by the applicant on wetlands on the site in order to prioritize potential impact areas based on the functional characteristics and qualities that the wetlands exhibited. As noted previously, the site has been previously developed into a golf course with a majority of the wetland features remaining on-site being impacted either through vegetation removal/maintenance and/or creating upland barriers which fragments habitat and negatively affects landscape patch structure and connectivity to other natural areas. Due to the quality of the majority of the wetlands being impacted and the fact that most of the impacts are to wetlands considered isolated and therefore only regulated by state statutes (and not the federal Clean Water Act program), the applicant believes that the site plan as proposed adequately avoids/minimizes the higher quality/jurisdictional wetlands on the site while still allowing development to occur that meets the project's purpose/need. The applicant also proposes to mitigate for the proposed impacts as described below to further minimize impacts to wetlands on the site.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant is proposing to off-set impacts to both jurisdictional and non-jurisdictional wetlands by making payment into the North Carolina Division of Mitigation Services (DMS) which was formerly the North Carolina Ecosystem Enhancement Program (NCEEP). The applicant provided an acceptance letter from DMS indicating that they will accept payment for the proposed impacts. As noted on the acceptance letter, DMS will utilize the Catawba 03 Expanded Service Area for this project and all non-riparian impacts will be mitigated with riparian wetlands. Specifically, the applicant is proposing a 2:1 ratio for jurisdictional wetland impacts and a 1:1 ratio for the isolated/non-jurisdictional wetland impacts (as currently regulated/required by NCDENR-DWR). There is no mitigation proposed for the open water impacts.

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 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.

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 July 17, 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 requests, via this Public Notice, 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, July 17, 2015. Comments should be submitted to Steve Kichefski, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980.