



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: December 5, 2016
Comment Deadline: December 20, 2016
Corps Action ID Number: SAW-2001-21252

The Wilmington District, Corps of Engineers (Corps) has received an application for a modification to an existing Department of Army (DA) permit from Newland Communities seeking Department of the Army authorization to permanently impact an additional 110 linear feet of jurisdictional stream channel and 72 square feet of jurisdictional wetlands. This modification is to the permit associated with the construction of the Briar Chapel Development in Chatham County, North Carolina. The modification is for 5 new sites (identified as V,W,X,Y,Z) that account for 377 linear feet of permanent stream impacts and 464 square feet of permanent wetland impacts. However, all permanent stream and wetland impacts previously permitted under the existing DA permit were not undertaken by the applicant. As such, the total amount of additional permanent stream impacts is 110 linear feet and the total amount additional permanent wetland impact is 72 square feet.

Specific plans and location information are summarized 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>

If you wish to review these plans in person, or to obtain a copy of the plans by mail, please contact Andrew Williams with the U.S. Army Corps of Engineers, Raleigh Regulatory Field Office at (919) 554-4884, extension 26.

Applicant: NNP Briar Chapel, LLC
Attn: Mr. Bill Mumford
1312 Briar Chapel Parkway
Chapel Hill, NC 27516

Agent: Wetlands and Waters, Inc.
Attn: Mr. Perry Isner
2712 Minden Rd.
Pleasant Garden, NC 27313

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

The project, Briar Chapel Development, is approximately 1,720 acres in size and is located west of US Highway 15-501, and north of Andrew's Store Road (SR 1528), and south of Mann's Chapel Road (SR 1532), approximately 5 miles south of Chapel Hill, in Chatham County, North Carolina. Coordinates (in decimal degrees) for the site are 35.8251 ° North, -79.1059 ° West. The site contains several unnamed tributaries of Pokeberry Creek and Wilkinson Creek, and adjacent wetlands, in the Cape Fear River Basin (8-Digit Cataloging Unit 03030002).

Existing Site Conditions

The land use in the area surrounding the project consists primarily of large lot residential subdivisions, forested tracts, and agricultural tracts.

The land use on the project site itself is currently undergoing construction for the Briar Chapel Development. A portion of the site has been left in open space and/or under voluntary conservation easements. The project area now contains the US Steel property, an adjoining parcel, purchased in 2013. This parcel comprises 131 additional acres. The Briar Chapel site contains several tributaries to Pokeberry Creek, which runs from north to south through the central portion of the property, and drains the majority of the land within the subdivision. The western-most portions of the site drain to Wilkinson Creek. A total of approximately 60 acres of adjacent wetlands have also been identified on the site. Both Pokeberry and Wilkinson Creek flow into the Haw River several miles downstream of the site, which then flows into B. Everett Jordan Lake before merging with the Deep River to become the Cape Fear River.

Applicant's Stated Purpose

The applicants stated purpose is to address the growing need for housing and commercial space in the area.

Project Description

The original project, known as the Briar Chapel Development, was a 1589-acre mixed-use development that included construction of single-family residential areas, commercial and office space, community services such as parks, a County school, charter school,

library, fire station, and EMS station, and over 900 acres of open space. An additional 131 acres of the US Steel Site has been added to the total acreage.

The permit for the Briar Chapel Development was issued in September, 2006, which authorized permanent impacts to 1,653 linear feet of stream channel and 0.6655-acre of wetland, and temporary impacts to 211 linear feet of stream channel and 0.137-acre of wetland. Since that time, several modification requests were made by the applicant that resulted in four (4) permit modifications to the original permit. These modifications were made in December of 2007, August of 2009 and February of 2011. As a result of the four permit modifications, the total authorized permanent impacts were for 2,177 linear feet of stream channel and 0.44 acre of wetlands and temporary impacts for 644 linear feet of stream channel and 0.197 acre of wetlands.

Construction of Briar Chapel began shortly after permit issuance and continues to present. Special Condition 1 requires the applicant to perform all work in strict compliance with the approved plans and that any modification must be approved by the US Army Corps of Engineers (USACE) prior to implementation.

The applicant, Briar Chapel, LLC, has revised their plans requesting a slight increase in impact amounts, impacts at several new locations and a decrease in impacts at some previously permitted impact sites. Specifically, permitted and actual impacts at sites with difference were as follows:

Table 1

<u>Permanent Impacts</u>						
Impact Site	Permitted stream impact (linear feet)	Actual stream impact (linear feet)	Un-impacted stream amount (linear feet)	Permitted wetland impact (square feet)	Actual wetland impact (acres)	Un-impacted wetland amount (square feet)
E	129	84	45	0	0	0
L	123	0	123	0	0	0
U	233	134	99	392	0	392
Total	485	218	267	392	0	392
<u>Temporary Impacts</u>						
Crossing 1	20	0	20	0	0	0
Crossing 2	20	0	20	0	0	0
Crossing 3	21	0	21	0	0	0
Crossing 7	20	0	20	5358	0	5358
Crossing 8	24	0	24	0	0	0
Crossing 9	0	0	0	610	0	610
Total	105	0	105	5968	0	5968

Table 2

New Site Number	Requested permanent stream impacts (linear feet)	Requested permanent wetland impacts (square feet)
V	112	0
W	0	224
X	0	240
Y	135	0
Z	130	0
Total requested	377	464
Total not impacted (from Table 1)	267	392
Total Additional Permanent Impacts	110	72

As such, the total amount of additional permanent stream impacts is 110 linear feet and the total amount additional permanent wetland impact is 72 square feet. Permanent impacts proposed are due to roadway fill and lot development. No additional temporary impacts were requested.

If the permit is modified as proposed, the total impacts for the Briar Chapel Development will include permanent impacts to 2,287 linear feet of stream channel, 0.44 acre of adjacent wetlands and temporary impacts to 539 linear feet of stream and 0.06 acre of adjacent wetlands.

Given that the current proposed impacts to waters of the U.S. include an increase in stream impacts and are in different locations than previously permitted, the current proposal for modification of this permit is being placed on Public Notice.

Avoidance and Minimization

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

- Utilization of a bridge at Impact Area C;
- Use of plunge pools, instead of dissipater pads to reduce impacts;
- Most crossings designed at perpendicular angles to the existing stream to minimize impacts;
- Elimination of several temporary utility crossings;
- Elimination of permanent impacts at site L and the reduction of impacts at sites E and U.

Compensatory Mitigation

For the previously authorized DA permit, the applicant provided compensatory mitigation by providing payment to the North Carolina Ecosystem Enhancement Program (NCEEP), now known as the North Carolina Division of Mitigation Services (NCDMS), for 0.6655 Riparian Wetland Mitigation Credits within the Cape Fear River Basin (Cataloging Unit 03030002). NCEEP issued a receipt for payment of these credits on February 19, 2009. Additionally, the permittee was to provide stream restoration in accordance with the plan entitled “Harpers Crossroads Stream Restoration Plan” dated September, 2005. This site was monitored for five (5) years, determined to meet the success criteria, and closed out by letter dated February 8, 2011 from the US Army Corps of Engineers. Furthermore, the applicant was required to preserve and protect un-impacted jurisdictional streams and wetlands located on the project site by recording with the Register of Deeds for Chatham County a Declaration of Covenants and Restricts for those areas. These were recorded in October of 2006 and November of 2007.

The applicant proposed no compensatory mitigation for the additional impacts. The applicant previously provided compensatory mitigation for the 267 linear feet of stream impacts at sites E, L and U, at a 2:1, 1:1 and 1:1 ratio respectively, which resulted in a surplus of 312 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).

Several archeological/historical sites were identified within the Briar Chapel project area during the initial permit application review. The applicant completed archeological surveys for these sites prior to the initial permit being issued in 2006. The applicant coordinated with SHPO, who proposed protective measures for these sites that were subsequently incorporated as Special Conditions into the DA permit.

- 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 Branch, 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 20, 2016 to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Branch
(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, December 20, 2016. Comments should be submitted to Andrew Williams, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 554-4884 extension 26.