



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: March 23, 2016
Comment Deadline: April 22, 2016
Corps Action ID Number: SAW-2016-00095

The Wilmington District, Corps of Engineers (Corps) received an application from K. Hovnanian Homes of North Carolina, Inc. seeking Department of the Army authorization to permanently impact 377 linear feet of stream channel and 0.97 acre of forested wetlands, associated with the construction of the Oak Pointe residential subdivision, near Apex, in 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: K. Hovnanian Homes of North Carolina, Inc.
Attn: Scott Johnson
3333 Regency Parkway, suite 100
Cary, North Carolina 27518

Agent: Environmental Services, Inc.
Attn: Robert Turnbull
4901 Trademark Drive
Raleigh, North Carolina 27610

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: From US 1 US 64 interchange in Apex, proceed west on US 64 5 miles to NC 55 Hwy. Turn right onto NC 55 Hwy and proceed 1 mile to Old Jenks Rd. and turn right. The project is located on the south side of Old Jenks Rd. before its intersection with Castleburg Rd.

Project Area (acres): 58

Nearest Town: Apex

Nearest Waterway: Beaver Creek

River Basin: Cape Fear (03030002)

Latitude and Longitude: 35.7556N, -78.8722W

Existing Site Conditions

The proposed 58 acre project site consists of primarily undeveloped land with mixed hardwood trees and loblolly pines. There are six unnamed tributaries that flows to Beaver Creek in the Cape Fear River basin. Beaver Creek bisects the property and flows primarily from north to south across the property. The tributaries are associated with forested riparian areas and headwater riparian wetlands. Topography on the site consists of gently sloping ridges and valleys with moderately steep slopes typical of the eastern Piedmont Physiographic Region. Elevations on the site range from approximately 340 to 400 feet above mean sea level. Soils on site consist of Creedmoor sandy loam (2 to 6 percent slopes), Mayodan sandy loam (10 to 15 percent slopes), Wehadkee and Bibb soils, and Worsham sandy loam. These are combined into the Mayodan-Granville-Creedmoor soil association, which is comprised of gently sloping to hilly, deep and moderately deep, moderately well drained soils that have a very fine clayey subsoil; derived from sandstone, shale, and mudstone.

Wooded upland areas on the site are vegetated by sweet gum (*Liquidambar styraciflua*), loblolly pine (*Pinus taeda*), American holly (*Ilex opaca*), eastern redcedar (*Juniperus virginiana*), red maple (*Acer rubrum*), hickory (*Carya* sp.), and flowering dogwood (*Cornus florida*). The wetland areas are vegetated by sweet gum (*Liquidambar styraciflua*), water oak (*Quercus nigra*), black willow (*Salix nigra*), red maple (*Acer rubrum*), and dominated by velvety panicgrass (*Dicanthelium scoparium*), sawtooth blackberry (*Rubus argutus*), privet (*Ligustrum sinense*) Japanese honey suckle (*Lonicera japonica*), common rush (*Juncus effuses*), common greenbrier (*Smilax rotundifolia*), in the sapling/shrub, woody vines, and herbaceous layers.

Wetlands and streams on the site are piedmont headwater systems that primarily originate on the site and flow to Beaver Creek which bisect the property from north to south, and include riparian headwater wetlands that originate on-site and flow predominantly from

north to south. The streams are tributaries to Beaver Creek which flows to Jordan Lake in the Cape Fear River. The tributary within the site have a best usage classification of WS-IV; NSW. WS-IV waters are used as sources of watersupply for drinking, culinary, or food processing purposes. The supplemental classification NSW designates nutrient sensitive waters which require limitations on nutrient inputs.

The sources of wetland hydrology are from groundwater seepage, flooding of the streams and collection of precipitation within the watershed. Jurisdictional areas on the site include approximately 2,100 linear feet of intermittent and perennial stream channel, along with approximately 11 acres of riparian forested wetlands. The Corps has conducted several on-site visits and has verified the extents of jurisdictional aquatic features.

Applicant's Stated Purpose

The purpose of the project is to construct infrastructure necessary to access proposed undeveloped residential lots for the proposed Oak Pointe residential subdivision

Project Description

The project consists of the construction of a 94 lot residential subdivision and associated infrastructure. Three hundred seventy seven linear feet of permanent stream channel impacts would result from the proposed road construction including 115 linear feet of perennial and 262 linear feet of intermittent stream channel. These impacts are proposed to occur at three road crossing (sites C1, D1, and D2), one greenway crossing (site C2), and one sewer easement crossing (site F). The project proposes to impact 0.97 acre of jurisdictional wetlands from one roadside fill area (site B), two greenway crossings (sites B, C2), four road crossings (sites C1, D1, D2, E), one drainage easement (site E), and one sewer easement crossing (site F).

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The proposed stream crossings are generally perpendicular to the existing natural channels and impacts are as narrow as possible to minimize impacts and still allow for suitably functioning infrastructure. Specific avoidance and minimization considerations include: the road crossing at site C1 uses the existing private driveway as much as practicable to minimize impacts and to minimize impacts within the stream channels, the rip rap dissipater pads on the upstream and downstream ends of all road crossings would be buried below the existing streambed elevation.

Specific wetland avoidance and minimization include: road fill slopes at site B have been minimized as much as possible, the road crossing at site D1 is perpendicular to the drainage way minimizing the amount of wetland impacts, lot fill at site D1 has been minimized as much as possible, impacts associated with site E are minimized as much as practicable while still allowing access to all lots in phase two.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: the applicant proposes to mitigate for 0.97 acre of permanent wetland impacts and 377 linear feet of stream channel through the purchase of riparian wetland and stream mitigation credits from the North Carolina Department of Mitigation Services.

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 may affect, but not likely to adversely affect 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, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat. Pursuant to the Endangered Species Act (ESA) of 1973, our office has examined all information provided by the applicant and consulted the latest North Carolina Natural

Heritage Database (dated April 2015). According to information provided by the U.S. Fish and Wildlife Service, Raleigh Office, there are documented occurrences of Northern Long-eared Bat in Wake County. The proposed project would involve clear cutting of hardwood forest within the Corps action area; potential habitat for the Northern Long-eared Bat. Based on this information, the Corps believes the proposed project may affect, not likely to adversely affect the Northern Long-eared Bat or its 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 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 April 15, 2016, to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650
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, April 22, 2016. Comments should be submitted to James Lastinger, Regulatory Specialist, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 554-4884, Ext 32.