



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: November 18, 2022
Comment Deadline: December 18, 2022
Corps Action ID Number: SAW-2022-02147

The Wilmington District, Corps of Engineers (Corps) received an application from Mr. Mark Lyczkowski (MAD M&R, LLC) seeking Department of the Army authorization to impact and fill 1.03 acres (44,721 SQ FT) of 404 wetlands and 0.05 acres (2338 SQ FT) of stream within a 3,196-acre tract proposed for mixed-use commercial and residential development near the Town of Oak Island, Brunswick 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>

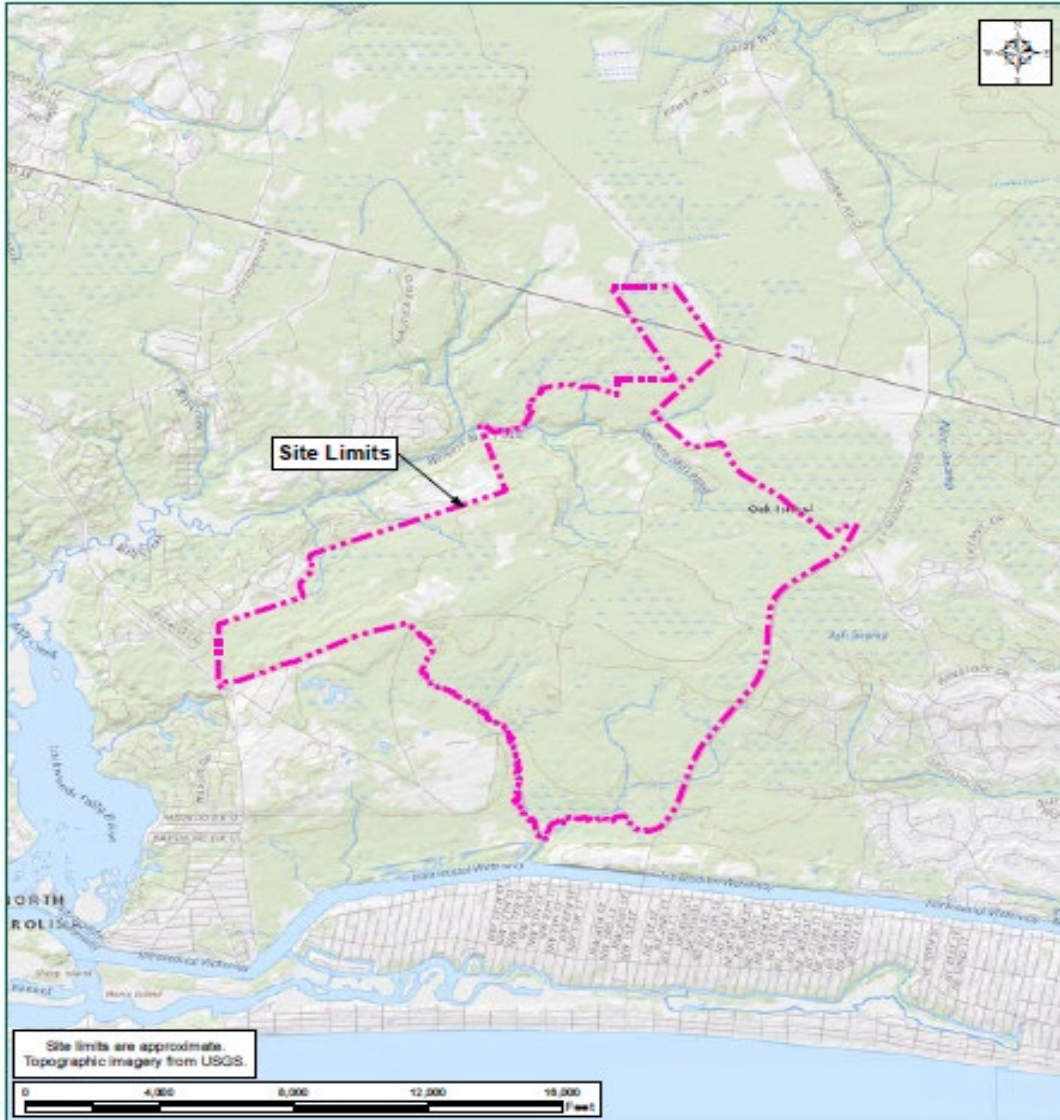
Applicant: Mr. Mark Lyczkowski
MAD M&R, LLC
709 Croswell Court
Whitsett, NC 27377

AGENT (if applicable): Mr. Nick Tudor
Timmons Group
5410 Trinity Road, Suite 102
Raleigh, NC 27607

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)



Project Location in Oak Island, Brunswick County, NC (Figure 1)

Location

The project is located west of US-906, east of Sunset Harbor Road SE and south of Southport Supply Road SE in Oak Island, Brunswick County, NC. (Parcel Tax ID: 205701350265) (See figure 1 & 2)

Project Area (acres): 3196.4 acres

Nearest Town: Oak Island

River Basin: Lumber

Watershed Hydrologic Unit Code: 03040208

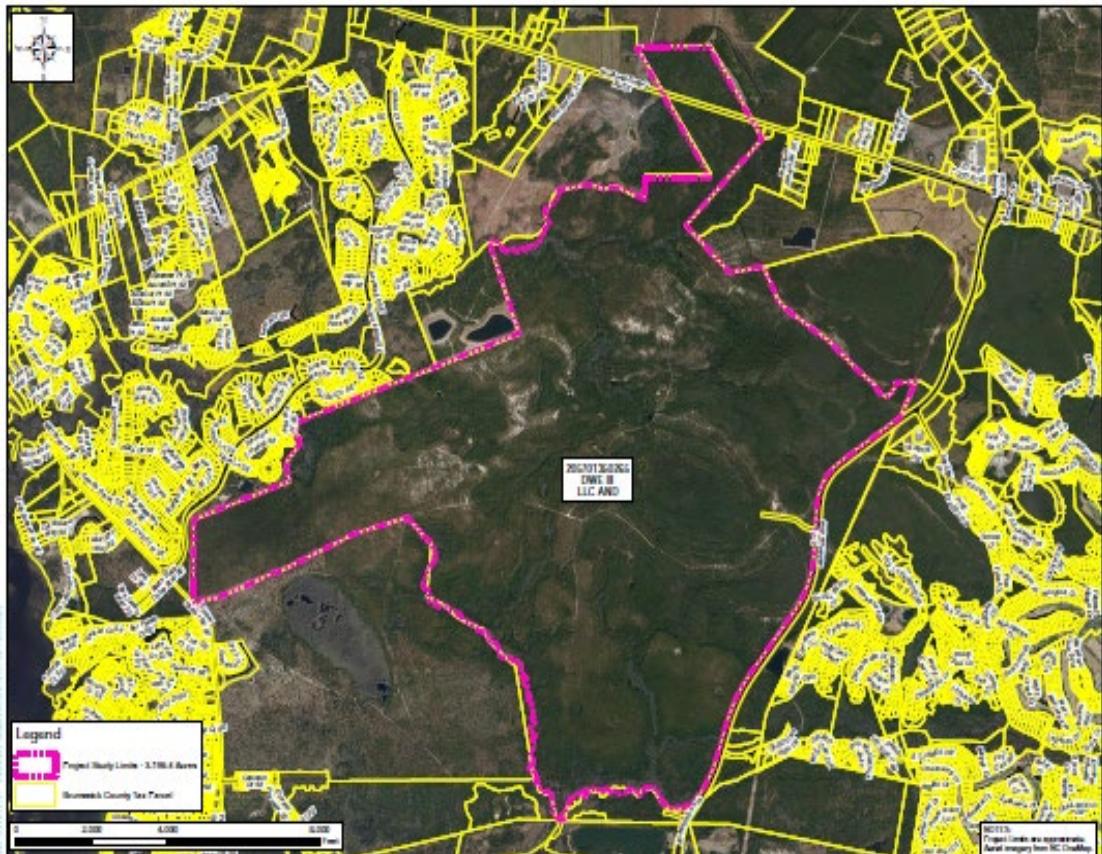
Nearest Waterway: Mercers Mill Pond & UT to Mercers Mill

Latitude and Longitude: 33.940698 N, -78.164548 W

Existing Site Conditions

The approximately 3,196 acre site is located in Brunswick County, NC. Approximately 1 mile southwest of the intersection of US-906 and Southport Supply Road SE (Figure 1: Vicinity Map). Access to the Site will be provided by multiple proposed roads. One road will be west of US-906, one will be south of Southport Supply Road SE, and one will be east of Sunset Harbor Road SE. Currently, access to the site is limited to a dirt/gravel road from New Hill Road. The Site is bound to the north by residential and commercial development, pine silviculture, agricultural fields, mixed hardwood and pine forests, and Southport Supply Road SE, to the east by an existing residential development (St. James), mixed hardwood and pine forest, and US-906, to the south by the Intercoastal Waterway and mixed hardwood and pine forests, and to the west by residential development, mixed hardwood and pine forest, and Sunset Harbor Road. The Site lies within the Lumber River Basin (Hydrologic Unit Codes: 030402080107 and 030402080105).

The Site is comprised of one tax parcel (PIN: 205701350265 see figure 2), which is currently owned by DWE III LLC and Ladane Enterprises LLC. The Site consists of mixed mature hardwood and pine forest and pine plantation. Several acres of pine plantation have been recently cleared and are now characterized as early successional growth. Several dirt/gravel roads currently bisect the property.



Parcel Map (Figure 2)

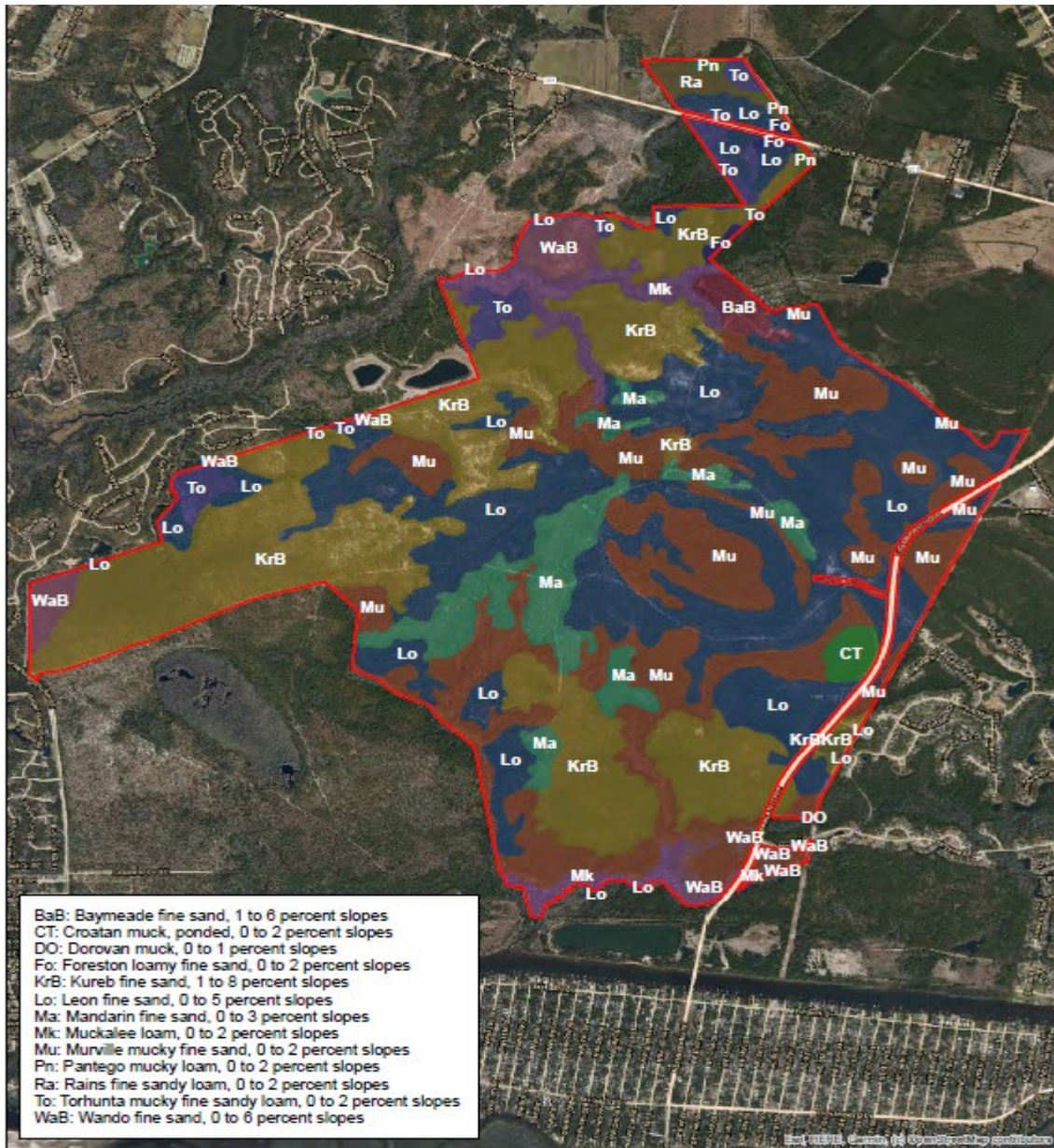
According to the Brunswick County topographic maps for this area, there are several stream systems that flow through the site. The upper/northern system is part of Mercers Mill Pond which flows from east to west eventually flowing into Lockwood Folly River, which in turn flows into the Atlantic Intra-Coastal Waterway (AICWW). The southern segments are Unnamed Tributaries of Mercers Mill. These segments flow south into the Atlantic Intra Coastal Waterway (AICWW). The 984 acres of 404 wetlands are scattered throughout the 3,326-acre parcel. These wetland systems flow either into Mercers Mill in the north or into the UT segments of Mercers Mill In the southern portion of the site. (see Topographic map 3)

Topographic Map (Figure 3)



L:\Wetlands\2021 Wetland Files\LMG21.467\Maps
Boundaries are approximate and not meant to be absolute.
Map Source: U.S. Department of Agriculture, Service Center Agencies





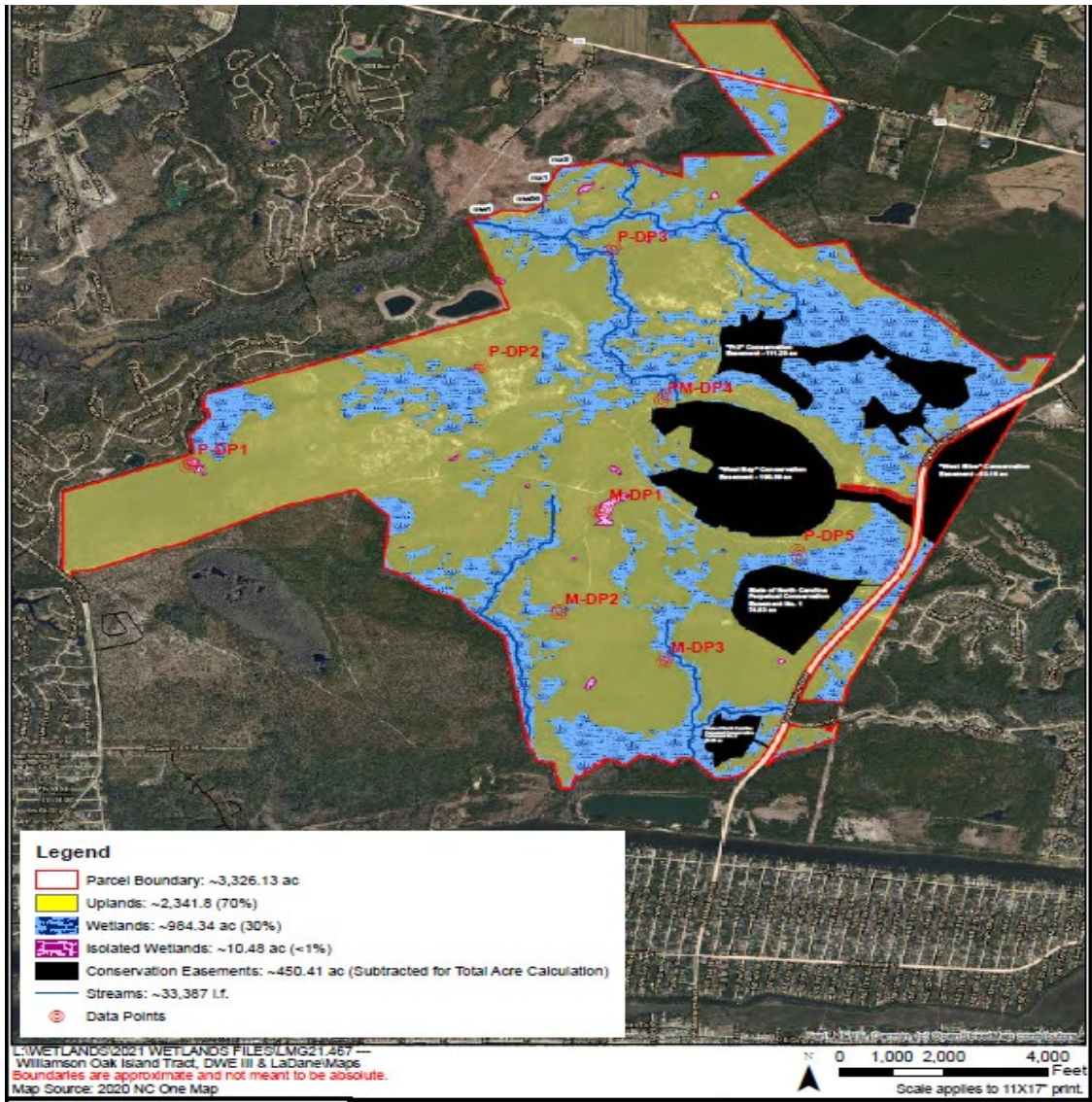
Soils Map (Figure 4)

The Brunswick County Soil Survey shows the site having a mix of thirteen different soil types. The most dominant appearing to be Kureb fine sand (KrB), Murville mucky fine sand (Mu), Leon fine sand (Lo) and Mandarin fine sand (Ma). Other soils include Baymeade fine sand, Dorovan muck, Croatan muck, Foreston loamy fine sand, Pantego mucky loam, Rains fine sand, Torhunta mucky fine sand and Wando fine sand. (see soils map Figure 4)

Multiple delineations have been conducted within the Site to identify the presence and location of jurisdictional streams and wetlands. These delineations have been conducted in accordance with the guidance provided by the U.S. Army Corps of Engineers

(USACE) 1987 Delineation Manual and the Regional Atlantic and Gulf Coastal Plain Supplement.

An Approved Jurisdictional Determination (AJD) for the 3,326-acre project area, which includes the entirety of the Oak Island Williamson Site, was issued on 10/31/2016 and assigned the Action ID SAW-2000-00757. This AJD expired on 10/31/2021; however, an addendum for the Oak Island Williamson Site was submitted to update stream and wetland areas that had been previously delineated in 2016. Together, the delineations have identified 984.34 acres of wetlands, 33,387 linear feet of streams, and 450.41 acres of conservation easement area within the Site (See Figure 5: Wetlands and Waters Delineation Map).



Wetlands and Waters of the U.S. Delineation map (Figure 5)

Within the 3,196-acre project site, there is an onsite conservation easement on 450.41-acres that was associated with the North Carolina Department of Transportation's construction of highway 906. These wetlands will remain in conservation.

Applicant's Stated Purpose

The applicant's purpose for the project is to provide the surrounding community with a mixed-use development that will include residential development and commercial development. The project is being undertaken to meet the increased demand for available residential and commercial space in a rapidly growing area of Oak Island and Brunswick County, NC. According to the applicant, market research indicates that residents and visitors to the area have the population to support this type of project.

Project Description

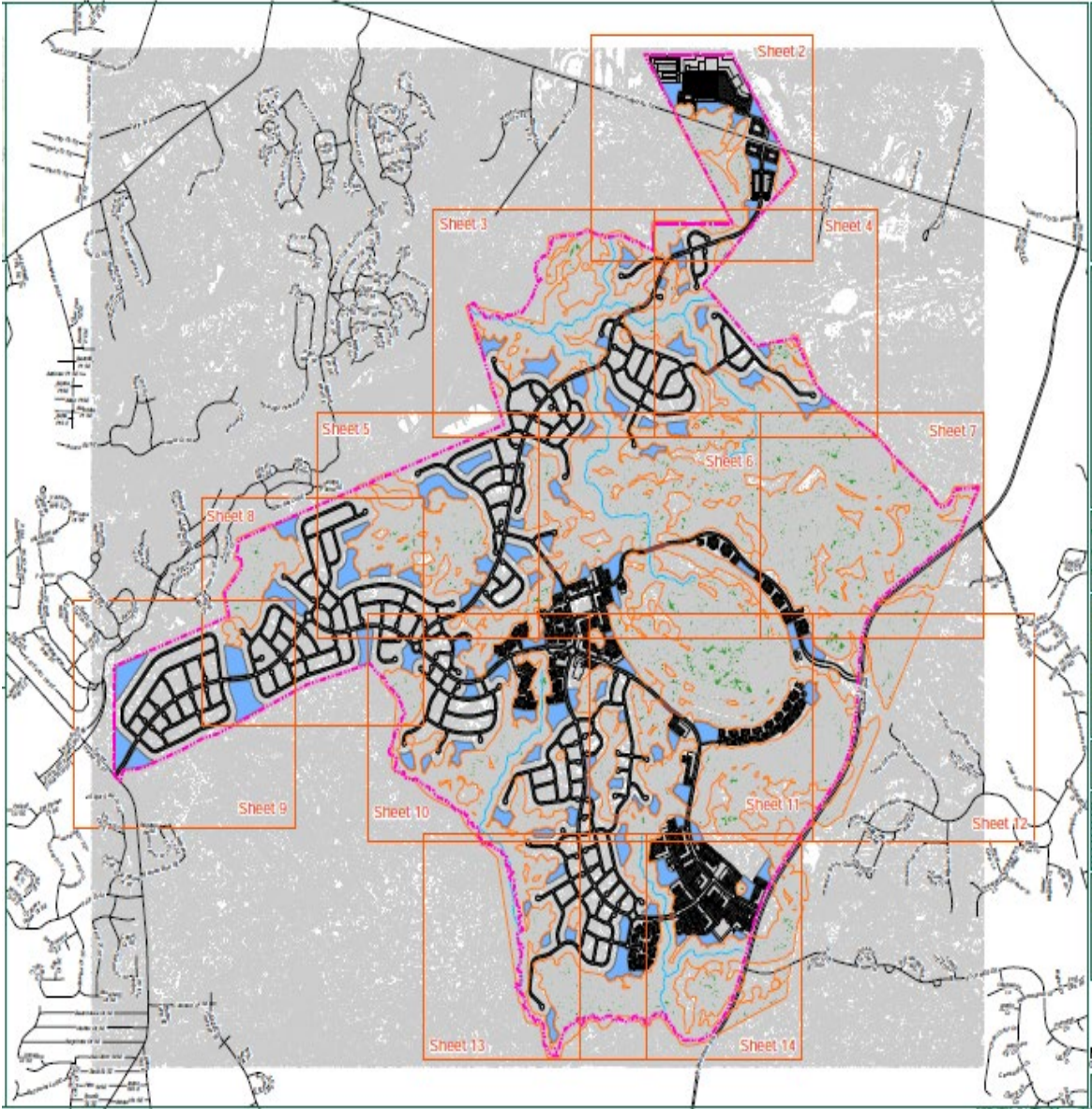
The proposed project is to develop a mixed-use development, including residential and commercial units. The project will include the development of approximately 1,600 acres in order to meet current and future needs for Brunswick County and Oak Island. This permit application includes all anticipated stream and wetland impacts associated with the construction of roadways and stormwater control measures. The current proposed impacts encompass 1.03 acres (44,721 sq. ft.) of 404 wetlands and 302 linear feet (0.05 acres) of stream impacts. There are currently no proposed temporary impacts for this project. It is the intent of the applicant to permit future impacts (if necessary) with a modification to this permit.

Since this is a large project, at over 3000 acres, the current project duration is around 10-15 years and will be constructed in eight phases with the first phase being constructed by 2024 and 2025. The initial impacts will be for roadways and stormwater management development, which will allow access throughout the site. (See the eight proposed phases in Figure 6)

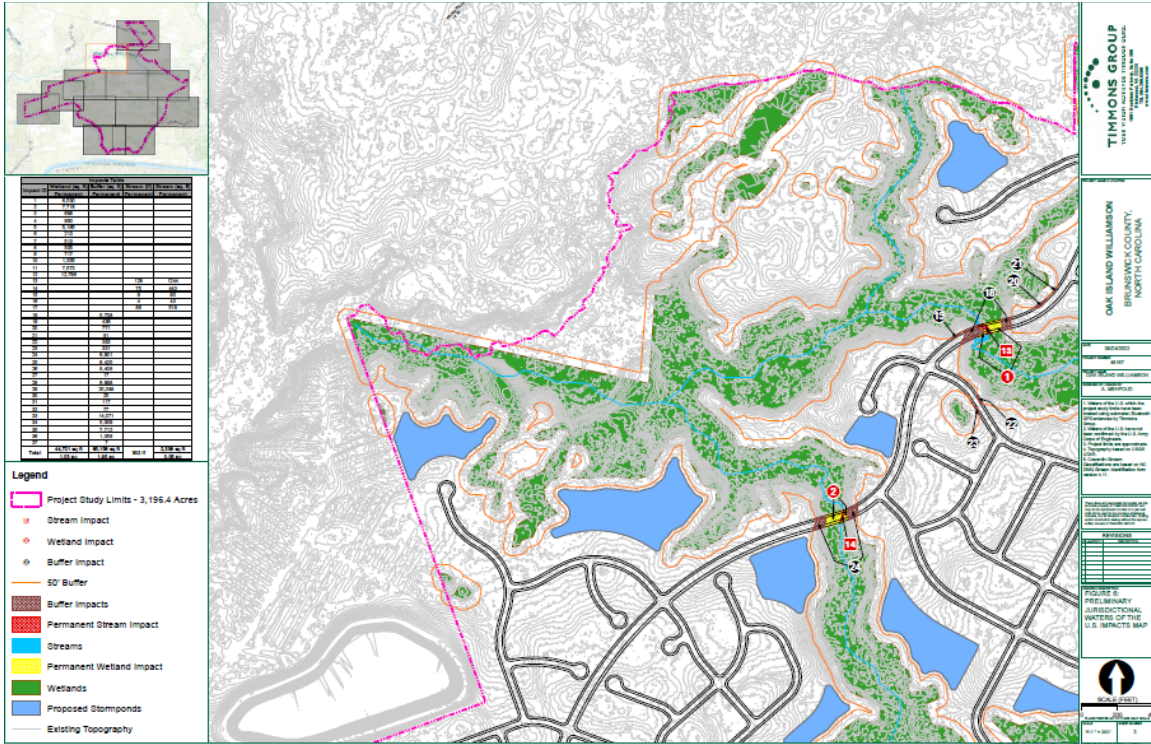
The project layout, including roadways and Waters of the US impacts has fourteen associated plans with it. An overall view of the plan can be seen in (Figure 7). The plans with Waters of the U.S. impacts can be seen on (Figures 8, 9, 10, 11 & 12). Due to the large size of this project, the entire set of plans and site layout design will need to be emailed separately if requested.



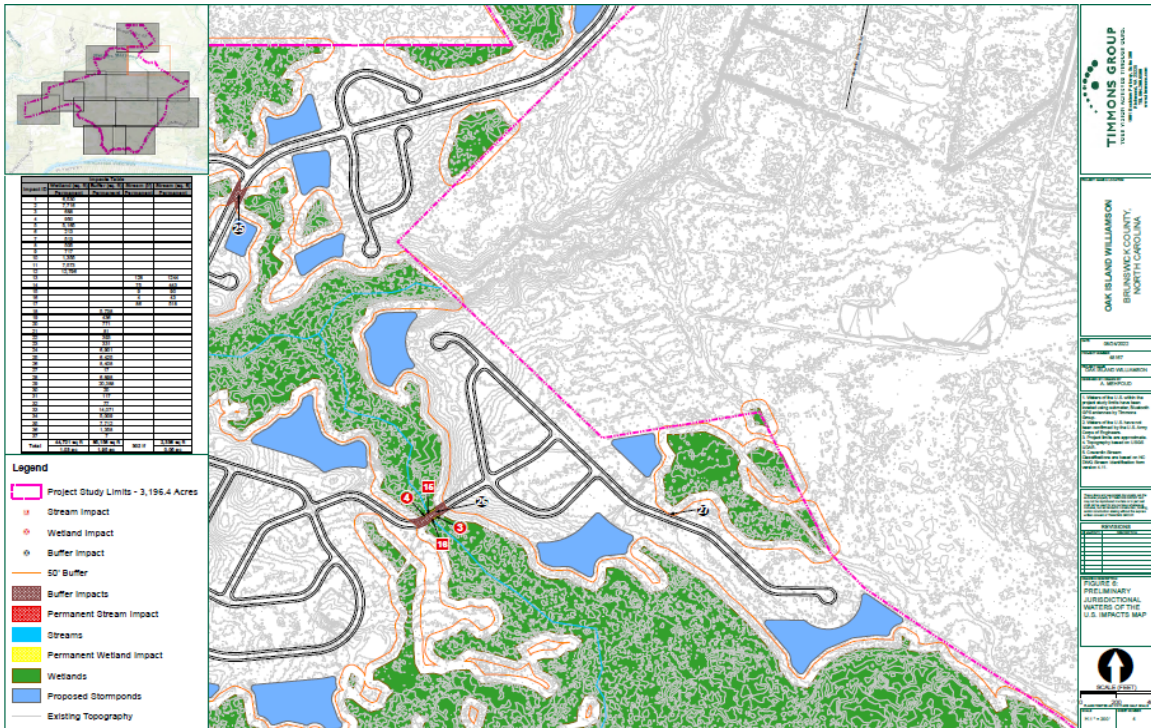
Eight project phases (Figure 6)



Project Design and layout (Figure 7)



WOUS Impacts 1, 2, 13 & 14 (Figure 8)



WOUS Impacts 3, 4, 15 & 16 (Figure 9)



WOUS Impacts 5, 6, 7, 8 & 9 (Figure 10)



WOUS Impacts 10 & 11 (Figure 11)



WOUS Impacts 12 & 17 (Figure 12)

Avoidance and Minimization

Alternative analysis was performed for this project by the consultant and applicant. The applicant evaluated several off-site and on-site alternatives and determined that due to the large size of the proposed project the preferred project is the least environmentally damaging yet practicable alternative.

Proposed minimization efforts include impacting only 1.03 acres of the estimated 984.34 acres of existing 404 wetlands onsite. Stream impacts will unfortunately take place for road crossings. The amount of stream impacts will include 302 linear feet to the existing 33,387 linear feet of streams onsite.

Compensatory Mitigation

The applicant is proposing to purchase mitigation credits from the Stone Farm Mitigation Bank which is in the same Hydrologic Unit Code (HUC) as the proposed project. This mitigation bank is located near the town of Calabash, NC.

Essential Fish Habitat

The Corps' determination is that the proposed project would not affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

- This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Corps initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by Fishery Management Councils and the National Marine Fisheries Service (NMFS). Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.
- The Corps will consult under the Magnuson-Stevens Act and will not make a permit decision until the consultation process is complete.
- The Corps has initiated consultation the Magnuson-Stevens Act and will not make a permit decision until the consultation process is complete.

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.
- By copy of this public notice, 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 will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps has initiated 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, NC 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by December 18, 2022 to:

NCDWR Central Office
Attention: Mr. Paul Wojoski, 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, **December 18, 2022**. Comments should be submitted to Gary Beecher, **Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403**, at (910) 251-4694 or to Gary.h.Beecher@usace.army.mil