



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: September 8, 2021  
Comment Deadline: October 8, 2021  
Corps Action ID Number: SAW-2021-00253

The Wilmington District, Corps of Engineers (Corps) received an application from Martin Marietta seeking Department of the Army authorization to impact 2,463 linear feet (lf) of unnamed tributaries to Killian Creek, associated with the proposed expansion of an existing aggregate quarry at 4965 NC-16 Business northwest of Denver, Lincoln 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:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

**Applicant:** Mr. Ron Kopplin  
Martin Marietta  
2235 Gateway Access Point  
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)

## Location

Location Description: The project site is located on the south side of NC HWY 16 Business, approximately 1/2 mile south of its intersection with NC HWY 150, north-east of NC HWY 16, north west of the Denver community, in Lincoln County, NC.

Project Area (acres): 259                      Nearest Town: Denver  
Nearest Waterway: Killian Creek              River Basin: Catawba 03050101  
Latitude and Longitude: 35.5463N, 81.0637W

## **Existing Site Conditions**

### Facility Site

The 259-acre site, known as the Denver Quarry, is located in the Catawba River Basin (03050101), and includes an operating Granite Quarry Pit, Stockpile yard, plant and infrastructure and a wooded area as shown on the attached maps. The Quarry operation has been active since the 1970s. The main infrastructure for the Quarry has been constructed for the existing pit operations and would be used to continue mining in the proposed expansion area.

Soils on the site consist of Cecil sandy clay loam soils on the hill tops with Pacolet Sandy loam and sandy clay loam on the side slopes. Areas within the valleys and near the main streams are mapped as Chewacla loam.

### 404/401 Permit History

A wetland delineation was conducted on the site and a Preliminary Jurisdictional Determination was approved on March 30, 2021. Two previous permits have been issued at the site. One Nation Wide Permit number 39 for the construction of a water supply pond that impacted approximately 100LF of a small stream channel and one Nation Wide Permit number 14 for the construction of a road crossing that impacted 150LF of Stream A.

### State DEQ DEMLR Mining Permit

The current NC DEQ DEM LR permit (No. 55-02), will be modified as appropriate after other permits are obtained. While the areas proposed for mining are currently within the mining permit boundaries, these areas are not within the permitted pit area, and so the permit must be modified accordingly. Martin Marietta anticipates DEMLR approval of the necessary permit revisions under the circumstances.

## **Applicant's Stated Purpose**

**Basic:** The basic purpose of this project is to cost-effectively mine construction grade Aggregate reserves at the existing Denver Quarry facility.

**Overall:** The overall project purpose is to cost-effectively continue operation of the aggregate quarry facility at Denver by expanding the existing quarry area to mine suitable stone reserves in a systematic and economically viable fashion.

Denver Quarry currently has limited available reserves to supply the market it serves. Without augmentation, it will be unable to serve market demand.

## **Project Description**

According to the applicant, their preferred project alternative involves the restoration and relocation of approximately 1749 LF of Stream A, an Unnamed Tributary to Killian Creek in order to expand the existing aggregate quarry. Along with this relocation two smaller tributaries, Stream C and Stream D will be reconstructed and shortened due to the proposed location of Stream A.

With a focus on sustainability and environmental stewardship, Martin Marietta Materials Inc. (MMM) have acquired the services of Jennings Environmental and North State Environmental for the design and construction of the relocation project. They have provided 60% drawing plans for the project, which were provided with the application as Exhibit B. MMM desires to construct a channel that not only allows the quarry to access needed reserves, but also enhances the quality of the stream channels on site, as discussed below.

The project will start just north of a pond located upstream of an old road crossing with failing culverts. The existing pond and culvert will be removed and as part of the relocation project, the channel (approximately 150 LF) will be restored in this area. The stream restoration will continue downstream, remaining in its natural floodplain boundary for another approximately 150 LF before the actual re-location begins. A new floodplain will be excavated with 3:1 side slopes and an approximate bottom width of 100ft. To maintain access to the pit, a culvert crossing will be constructed per attached plans within the stream's proposed new location. Due to the depth of the channel and the decision to use 2:1 side slopes on the crossing for greater stability, the proposed culvert length is 231ft. Downstream of the new culvert crossing, Stream C will be slightly relocated to the south in order to tie into the new proposed channel. Stream C is a lower quality stream with previous riprap impacts and through this relocation, will be restored to a higher quality. Downstream of Stream C, Stream D will be improved and tied into the proposed Stream A, mostly within its current footprint. Stream D is deeply incised, and its quality will also improve with this project. Continuing downstream Stream A will tie back into Killian Creek at a natural topographic low point, approximately 130 LF downstream of its original tie in.

MMM is also proposing to install a culverted road crossing on Killian Creek, south of its confluence with Stream A. This Culvert will allow access to a high ground area for the purposes of storing overburden material.

### Construction Sequence

The project would begin by excavating overburden for the new floodplain while maintaining a plug at upstream end to keep Stream A in existing channel. A pump-around system will be used with temporary rip rap channels to carry Stream C and Stream D across the new excavated floodplain to connect with existing channels. New Culverts will be installed within the excavated channel, under the access road for future connection to relocated Stream A. Next, starting at downstream end of Stream A, the new channel will be constructed in the dry with bedform features, in-stream structures,

and bank stabilization measures from the downstream terminus upstream to Stream D. After this, using a pump-around system, Stream D will be constructed and connected to the newly constructed Stream A. Then Stream A will be constructed in the dry up to Stream C. As with stream D, Stream C will be constructed and connected to the newly constructed Stream A using a pump around system. Stream A will then be constructed in the dry working upstream from Stream A to the upstream plug. Using a pump-around system, the Stream A plug will be removed, and Stream A will be turned into the new channel. At this time the old channel will be plugged. Using a pump-around system, Stream A enhancements will be constructed from the upstream, beginning downstream of the relocated channel. After the water has been turned, the old channels will be filled as needed to establish the designed floodplain, and native riparian species will be planted per specifications.

Impact summary

The project involves both restoration and relocation of streams. At the north end of the project, a portion of Stream A (approximately 350LF) will be restored. Currently this section has been impacted by a small pond and a road crossing with failing culverts. Restoration will also be completed on a portion of Stream C (approximately 80LF) and Stream D (approximately 200LF) before a portion of the tributaries are slightly relocated to the south in order to tie into the proposed Stream A.

Approximately 1590LF of Stream A, 118 LF of Stream C and 21LF of Stream D would be relocated. Relocating Stream A to the east would also result in a loss of the lower portions of Streams C and D. However, MMM believes that the NCSAM evaluation reflects that Stream A is currently degraded and that construction will result in a higher quality system.

The table below shows Current Stream Lengths vs Proposed Stream lengths. This table does not consider current or proposed culverts lengths in order to show only actual stream linear footage loss.

	Current Length	Proposed Length	Total Loss
Stream A	1749LF	1687LF	62LF
Stream C	322LF	198LF	124LF
Stream D	392LF	221LF	171LF
Killian Creek Culvert			100LF
<b>Total</b>	<b>2463LF</b>	<b>2106LF</b>	<b>457LF</b>

**Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: In order to avoid impacts to the fullest extent practicable, MMM conducted careful investigations of the property. The location of available reserves has been established to the extent practicable. As discussed in the

above alternatives, MMM has avoided higher quality areas of Killian's Creek and is not proposing to relocate it as originally planned, even though this option would provide more reserves for the operation. Instead MMM is only proposing to cross Killian Creek to access high ground between Killian Creek and Stream F.

To minimize impacts to wetlands and other waters, MMM uses stormwater management and erosion control techniques that preserve downstream water quality. MMM will use stripping techniques that will not allow the loss of material downstream or into adjacent wetlands. As the overburden is removed or stripped from the site, all runoff will be directed to the pit or other erosion control structure. A minimum 50ft wooded buffer will be maintained around all wetlands and waters not directly impacted by this requested permit.

To further minimize impacts, MMM is proposing to use the attached natural channel design instead of just conveying the stream flow around the site through an open channel. Though the cost of construction for this will be much higher, MMM believes that this plan will result in positive result for the environment as the designed channel will be higher quality than the existing channel. An NCSAM evaluation has been conducted to determine the current quality of Stream A.

To minimize impacts associated with the proposed crossing of Killian Creek, the crossing has been located in a straight section of stream. To minimize the length of impact, the crossing is designed for one lane truck crossing.

### **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: MMM proposes to mitigate for impacts associated with the project by using natural channel design to build a high-quality stream system instead of redirecting stream flow through a straight channel. Doing so will provide a higher quality stream system than currently exists on site.

Furthermore, MMM is proposing to mitigate for the total loss of 457 linear feet of stream by purchasing 457 stream credits from the Environmental Banc & Exchange Dogtown Mitigation Bank. A Statement of Availability letter is included with the application.

### **Essential Fish Habitat**

The Corps' 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.

- This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our 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.
- 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 determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.
- 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 applicant did not provide or satisfy all 9 elements required for a complete 401 certification request. Therefore, the 401 Certification process has not started. 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 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. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within 120 days of the date of this public notice. 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 November 08, 2021 to:

NCDWR Central Office  
Attention: Mr. Paul Wojowski, 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 NCDCCM.

- 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 will 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, October 8, 2021. Comments should be submitted to Mr. Steve Kichefski, Asheville Regulatory Field Office , 151 Patton Avenue, Room 208 , Asheville, North Carolina 28801-5006 , at (828) 271-7980 extension 4234.