



**US Army Corps  
Of Engineers**  
Wilmington District

## **PUBLIC NOTICE**

Issue Date: April 12, 2022  
Comment Deadline: May 12, 2022  
Corps Action ID Number: SAW-2018-02111

The Wilmington District, Corps of Engineers (Corps) received an application from Legacy Cary, LLC seeking Department of the Army authorization to discharge fill material into 1,107 linear feet (0.170 acre) of stream channel and 0.372 acre of wetlands, associated with mixed-use multifamily apartment complex construction 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:

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

**Applicant:** Mr. Derek Boesch  
Legacy Cary, LLC  
10720 Sikes Place, #150  
Charlotte, North Carolina 28277

**AGENT (if applicable):** Mr. Troy Beasley  
WithersRavenel, Inc.  
219 Station Road, Suite 101  
Wilmington, North Carolina 28405

### **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



Figure 1: Proposed Project Boundary Along Twyla Road

### Location Description:

Project Area (acres): 36.42                      Nearest Town: Cary  
Nearest Waterway: Unnamed Tributary to Panther Creek  
River Basin: Cape Fear  
Latitude and Longitude: 35.8115 N, -78.8886 W

### Existing Site Conditions

The proposed 36.42-acre project site is located at 1112 Twyla Road, in Cary, in Wake County, North Carolina. The project site consists primarily of mature forest and previously contained several single-family lots/dwellings and associated yards on both sides of Twyla Road prior to being purchased by the applicant. Twyla Road bisects the project site and currently is the only point of access to the project area, as well as privately owned property to the north and west of the project.

Soils mapped on site are presented in the table below:

Table 1: Soil Characteristics

Soil Type	Map Unit Symbol	Hydric/Non-hydric
Chewacla and Wedahkee soils, 0 to 2 percent slopes, frequently flooded	ChA	Hydric
Creedmoor-Green Level complex, 2 to 6 percent slopes	CrB	Non-hydric
Creedmoor-Green Level complex, 10 to 15 percent slopes	CrD	Non-hydric

Among the three soil types that occur within the project area, Chewacla and Wedahkee (which is frequently flooded) are hydric and other soil types within the project area are non-hydric. Average annual precipitation for Wake County is 46.1 inches of rainfall and 3.6 inches of snowfall.

The site contains two vegetative communities consisting of mixed hardwood/pine forest and early successional. The mixed hardwood/pine forest vegetation was comprised primarily of red maple (*Acer rubrum*), sweet gum (*Liquidambar styraciflua*), tulip poplar (*Liriodendron tulipifera*), white oak (*Quercus alba*) and loblolly pine (*Pinus taeda*). The understory and groundcover were sparsely vegetated due to the dense canopy.

The early successional communities are associated with the yards of the former residences. These areas were historically mowed/maintained as lawns but since the residences have been vacated these areas are no longer mowed/maintained and are currently in transition with early successional species beginning to establish. The vegetative composition consisted primarily of fescue (*Festuca spp.*) and Bermuda grasses (*Cynodon dactylon*), dog fennel (*Eupatorium capillifolium*), broomsedge (*Andropogon virginicus*), sweetgum and Chinese privet (*Ligustrum sinense*).

The vegetation on the shoulders of Twyla Road is maintained at low heights and consist of a mixture of Bahia grass (*Paspalum notatum*) and other common weeds.

Site reconnaissance was conducted by the applicant's agent for the proposed residential development to determine and delineate the presence and location of potentially jurisdictional waters of the US. The wetland delineations were performed in accordance with the U.S. Army Corps of Engineers 1987 Delineation Manual and subsequently issued Regional Supplement to the 1987 Delineation Manual: Eastern Mountains and Piedmont (Version 2.0). The wetland delineation for the proposed project was approved by the Corps and the

Preliminary Jurisdictional Determination was issued on December 15, 2021. The Town of Cary issued a Buffer Determination Letter for the proposed project (TCRB 18-008) on March 15, 2019.

The project area is in the Cape Fear River Basin, Hydrologic Unit Code (HUC) 0303000206. Streams within the project area are generally stable. Onsite streams include Panther Creek (Stream Index: 16-41-1-17-3) and four additional unnamed tributaries to Panther Creek with normal pattern and profile for the ecoregion. These streams carry the North Carolina Division of Water Resources (NCDWR) best usage classification of Water Supply (WS) WS-IV; Nutrient Sensitive Water (NWS). WS-IV refers to waters used as sources of water supply for drinking, culinary, or food processing purposes where a WS-I, II or III classification is not feasible. These waters are also protected for Class C uses. WS-IV waters are generally in moderately to highly developed watersheds or Protected Areas. The streams are also considered NSW which is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growths of microscopic or macroscopic vegetation. Additionally, the site contains eleven (11) wetlands, all the Headwater Forest type per the North Carolina Wetland Assessment Method (NCWAM).

There is a total of 3,587 linear feet (0.65 acre) of stream channel within the project area and 1.2 acre of wetlands. In general, the unnamed tributaries flow south to north and confluence with Panther Creek. Panther Creek flows east to west before flowing into Jordan Lake. The stream channels within the project range from high to low function per the North Carolina Stream Assessment Method (NCSAM). Stream 1 (intermittent) has been historically impacted by relocation and channelization during construction of Twyla Road. Stream 1 has a total of three existing culverted crossings, consisting of two culverted driveway crossings and a culvert within Twyla Road, all of which are located within the proposed Stream 1 impact area (Impacts S1 and S2). Additionally, the vegetative buffer on one side of Stream 1 was removed as a result of construction of Twyla Road and is maintained as low height herbaceous vegetation.

### **Applicant's Stated Purpose**

The purpose of the proposed project is to construct a mixed-use multi-family apartment complex and commercial/retail development to meet the existing demand for affordable rental workforce housing in the Town of Cary and Wake County.

### **Project Description**

The applicant provided the following project description:

The proposed project consists of construction of six multi-family apartment buildings with a total of 390 units and a Clubhouse:

Building 1 – 86,876 square feet(sf)/61 Units  
Building 2 – 104,516 sf/69 Units  
Building 3 – 104,516 sf/69 Units  
Building 4 – 13,000 sf/Clubhouse  
Building 5 – 99,168 sf/62 Units  
Building 6 – 99,168 sf/62 Units  
Building 7 – 91,945 sf/67 Units

The project also consists of constructing associated infrastructure including internal roads, a 10-foot-wide greenway trail, parking, utilities, and stormwater management, a clubhouse (Building 4) and amenities, as well as two outparcels designated for future commercial/retail development. The project also requires improvements to the existing Twyla Road, as well as the extension of Stockwell Lane from the existing stub within the Fryars Gate subdivision to the east.

While the total project area is 36.42 acres, site constraints including wetlands, streams, 50-foot Jordan Lake Riparian Buffers and 100-foot Town of Cary Urban Transition Buffers reduce the total developable upland area to approximately 25 acres. The ±25-acres of developable uplands consist of two separate areas: a ±17-acre area east of Twyla Road and an ±8-acre area west of Twyla Road. The site is further constrained by the requirement to extend the existing stub of Stockwell Lane to Twyla Road, as well as improve Twyla Road to meet Town design standards and relocate the connection to Morrisville Parkway to the existing traffic circle.

Twyla Road would be a public road required to meet Town of Cary design standards for a public roadway and would have a 60-foot right-of-way (ROW). Twyla Road would be widened and raised 33 feet in elevation to match the existing 350-foot elevation of the Morrisville Parkway traffic circle and transition the road to natural grade at the 282-foot elevation of the northern cul-de-sac. The required improvements to Twyla Road would result in permanent impacts to Stream 1 (intermittent) that runs parallel to Twyla Road only a few feet from the existing edge of pavement. The project has been designed to capture the existing drainage to Stream 1 in a storm drainage pipe, which would outfall into a constructed swale that drains into the undisturbed portion of Stream 1 downstream of the impact area, allowing for construction to be completed “in the dry.”

The extension of Stockwell Lane is necessary to meet Town of Cary’s interconnectivity requirements and would provide a secondary access to Morrisville Parkway for residents of Fryars Gate subdivision traveling west on Morrisville Parkway. Additionally, pending development of the future commercial outparcels, Stockwell Lane would provide internal access (vehicular, pedestrian and bicycle) for Fryars Gate residents to these businesses without having to travel on Morrisville Parkway, thereby eliminating additional traffic on Morrisville



Parkway. The extension of Stockwell Lane would result in a perpendicular crossing of two intermittent streams (Streams 2 and 3). The alignment of the Stockwell Lane extension was restricted by the location of the existing road stub within the Fryars Gate subdivision to the east.

### **Avoidance and Minimization**

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

Prior to site plan design, the applicant requested that a detailed wetland delineation be conducted so that impacts to wetlands and “waters” could be minimized. Proposed wetland and stream impacts have been minimized to only those necessary for infrastructure. There are no proposed impacts for construction of buildings, parking, or stormwater management.

Most of the proposed wetland and stream impacts are necessary for construction of the roads for access to the site. The primary access to the proposed Legacy Cary development would be Twyla Road from Morrisville Parkway. The existing connection of Twyla Road to Morrisville Parkway would be relocated to the traffic circle because the existing intersection is too close to the traffic circle to meet North Carolina Department of Transportation (NCDOT) separation standards. Also, relocating Twyla Road to connect to the traffic circle provides safer conditions for vehicles entering and leaving Twyla Road. Aside from the relocation of the connection of Twyla Road to the Morrisville Parkway traffic circle, Twyla Road would be improved in its current location/alignment.

Twyla Road would be a public road required to meet Town of Cary design standards for a public roadway and would have a 60' ROW. Twyla Road must be widened and raised to match the elevation of the Morrisville Parkway traffic circle and transition the road to natural grade at the northern cul-de-sac. The required improvements to Twyla Road would result in permanent impacts to the Stream 1 (intermittent) that runs parallel to Twyla Road only a few feet from the existing edge of pavement. Various alignments and designs for Twyla Road were explored and determined not to be feasible or not result in a reduction of impacts to Stream 1.

The alignment of the Stockwell Lane extension was restricted by the location of the existing road stub within the Fryars Gate subdivision to the east. The proposed impacts for the Stockwell Lane extension have been minimized to the greatest extent practicable while maintaining a functional design that prevents future disturbance to Streams 2 and 3.

Upon completion of construction of the Stockwell Lane extension, the temporary coffer dams within Streams 2 and 3 would be removed and the temporary stream impact areas restored to natural grade. The stream banks would be lined with biodegradable matting and temporarily seeded, if possible, depending on the

water levels. No matting would be placed on the stream bed. Additionally, temporary wetland impact areas would be restored to natural grade and seeded with a wetland seed mix.

The greenway trail has been designed to minimize wetland impacts to only those necessary for a riprap dissipator for a culvert in the greenway trail to prevent erosion within Wetland F. There are no proposed wetland or stream impacts required for construction of the greenway trail.

### **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: An NCSAM assessment was conducted for Stream 1 (intermittent) which determined that the functional value was “Low” due to the historic alterations during construction of Twyla Road. An NCSAM assessment determined the functional value was “Low” for Stream 2 (intermittent) due to the degradation of the stream from erosion. An NCSAM assessment for Stream 3 (intermittent) determined the functional value was “High.”

Due to the “Low” functional value of Streams 1 and 2, the applicant proposes to mitigate for the 793 linear feet of permanent impacts to Stream 1 and 188 linear feet of permanent impacts to Stream 2 at a 1:1 mitigation ratio. The applicant proposes to mitigate for 106 linear feet of permanent impacts to Stream 3 at a 2:1 mitigation ratio. The applicant proposes to mitigate for the 0.335 acre of permanent wetland impacts at a 2:1 ratio.

### **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.

### **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, not likely to adversely 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 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 sixty 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 May 5, 2022, 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 (NCDWM):**

- 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 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, May 12, 2022. Comments should be submitted to April R. Norton, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 441-3637, or [April.R.Norton@usace.army.mil](mailto:April.R.Norton@usace.army.mil).