



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 25, 2023
Comment Deadline: August 24, 2023
Corps Action ID Number: SAW-2019-00955

The Wilmington District, Corps of Engineers (Corps) received an application on July 7, 2023, from Apex Industrial Owner 3, LLC on behalf of Apex Industrial Owner 2, 3, 4, LLC, seeking Department of the Army (DA) authorization to discharge fill material into 2.46 acres of wetlands and 243 linear feet of stream channel, associated with the construction of flex-use warehouse buildings on Lots C, D, and E in the Apex Commerce Center (ACC), in 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:

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

Applicant: Apex Industrial Owner 3 LLC on behalf of Apex Industrial Owner 2, 3, 4 LLC
Attn: Mr. Adam Simpson
3953 Maple Avenue, Suite 300
Dallas, TX 75219

AGENT (if applicable): Terracon
Attn: Mr. Jeff Harbour
2401 Brentwood Road, Suite 107
Raleigh, NC 27604

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 property consists of Lots C and D (45.51 acres), located at 2170 and 2161 Production Drive (PIN 0751-23-5497) and Lot E (27.01 acres) located at 5125 Jessie Drive (PIN 0751-32-2322), ACC, in Apex, North Carolina as depicted below in Figure 1. The entire site boundary of Apex Commerce Center is shown in Figure 2.

Project Area (acres): 111 Nearest Town: Apex
Nearest Waterway: Middle Creek River Basin: Neuse
Latitude and Longitude: 35.711541N, -78.821464W

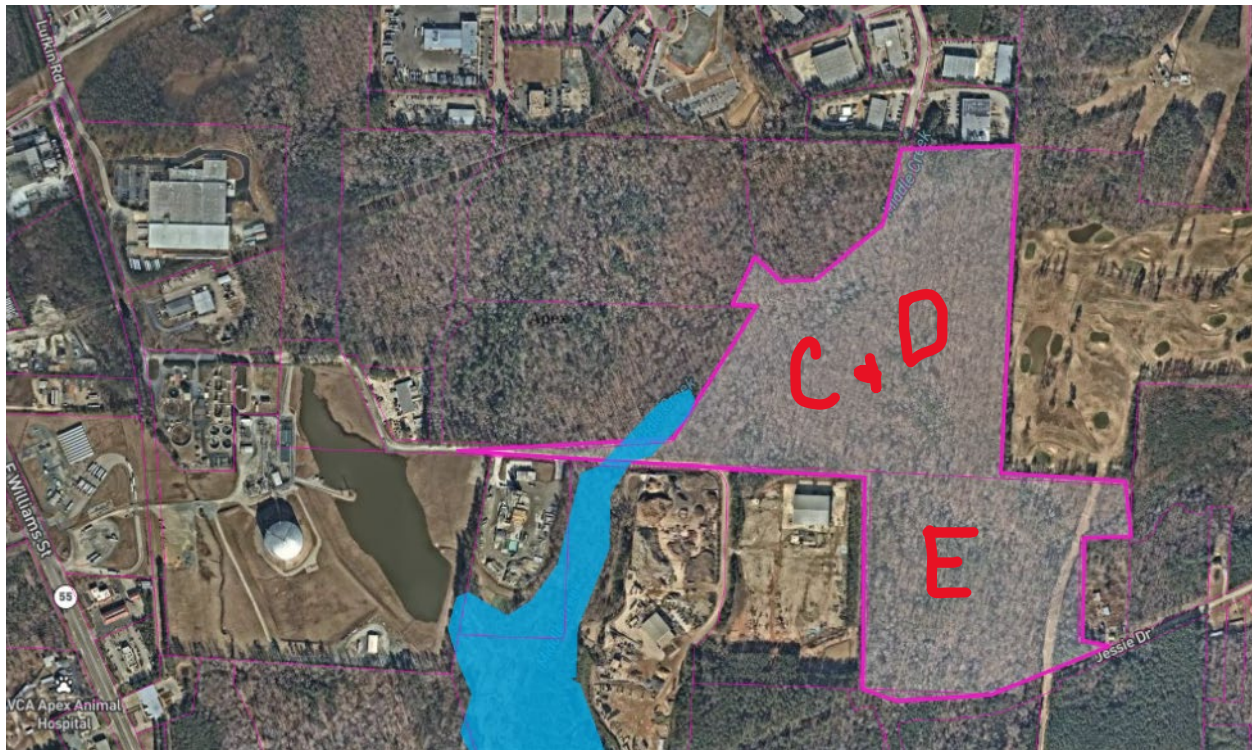


Figure 1. Location of Lots C, D, and E in Apex Commerce Center

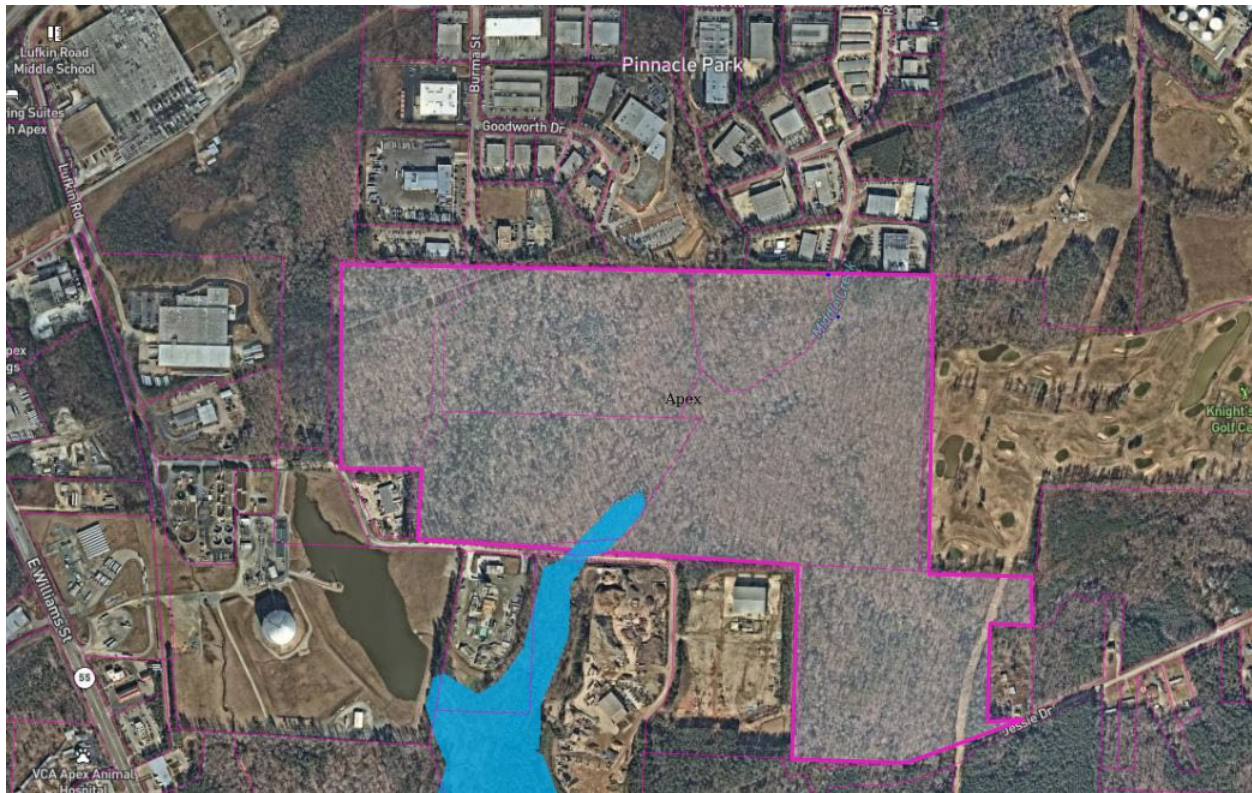


Figure 2. ACC Site Boundary (Lots A-E)

Existing Site Conditions

The ACC consists of approximately 111 acres, divided into five lots for industrial development. This project specifically involves Lots C, D, and E (72.52 acres) off the proposed extension of Production Drive, north of Pristine Water Drive and Jessie Drive . The site is currently wooded and consists of a mixture of pine-hardwood forests. The canopy of the uplands is vegetated by red maple (*Acer rubrum*), loblolly pine (*Pinus taeda*), and American beech (*Fagus grandifolia*). The sapling layer is dominated by loblolly pine and sweetgum (*Liquidambar styraciflua*). The shrub layer is dominated by sweetgum and Highbush blueberry (*Vaccinium corymbosum*). There was minimal coverage in the herb and woody vine stratus. The land use in this area is zoned Light Industrial and that particular zoning type represents the majority of the existing development in the area.

The site is situated in the Piedmont Physiographic Province, consisting of gently rolling hills with side slopes primarily ranging from 10 to 15 percent. Elevations range from 380 to 440 feet above mean sea level. The following table identifies the various soil units within the project boundary.

Map Unit Symbol	Map Unit Name
AaA	Altavista fine sandy loam, 0 to 4 percent slopes, rarely flooded

ChA	Chewacla and Wehadkee soils, 0-2 percent slopes, frequently flooded
GeB	Georgeville silt loam, 2 to 6 percent slopes
GeC	Georgeville silt loam, 6 to 10 percent slopes
HeB	Helena sandy loam, 2 to 6 percent slopes
HrB	Herndon silt loam, 2 to 6 percent slopes
HrC	Herndon silt loam, 6 to 10 percent slopes
NaD	Nanford silt loam, 10 to 15 percent slopes

The site is located within the Neuse River Basin and is in the Middle Creek sub-watershed (12-digit Hydrologic Unit Code [HUC] 030202010901). The mapped Federal Emergency Management Agency (FEMA) 100-year floodplain along Middle Creek is located downstream of the site as the project is situated in the headwaters of Middle Creek.

The site was delineated for potential waters of the US on February 1, 2019, field verified by the Corps on June 4, 2019, with the Preliminary Determination being finalized for Lots A – D on May 5, 2020. A total of 11 wetlands and 6 streams were located within that portion of the ACC. Of those, 5 wetlands and Middle Creek and one of its unnamed tributaries were located on Lots C and D. Several small seasonal wetlands are present along with several tributaries and their associated riparian buffers. The wetland systems adjacent to Middle Creek are dominated by tulip poplar (*Liriodendron tulipifera*), loblolly pine and red maple. The sapling layer is dominated by ironwood (*Carpinus caroliniana*). The shrub layer was absent, and the herb layer was dominated by species of sedges (*Carex sp.*). The wetlands along the northeastern and southeastern property boundary were dominated by sweetgum, loblolly pine, and common persimmon (*Diospyros virginiana*). The sapling layer was dominated by sweetgum and red maple. Sweetgum and Highbush blueberry dominated the shrub layer, the herbaceous layer was absent and common greenbrier (*Smilax rotundifolia*) dominated the woody vine layer. Lot E was originally part of another property, with the jurisdictional features being confirmed by the Corps on September 27, 2017.

Middle Creek carries a surface water classification of C; NSW. Class C waters are protected for uses such as aquatic life propagation, survival and maintenance of biological integrity (including fishing and fish), wildlife, secondary contact recreation and agriculture. Secondary contact recreation means wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis. NSW means nutrient sensitive waters and is a supplemental classification intended for waters needing additional nutrient management due to being subject to excessive growths of microscopic or macroscopic vegetation. The wetlands proposed to be impacted can be classified by the North Carolina Wetland Assessment Method (NCWAM) as being either headwater forest or hardwood flat.

Applicant's Stated Purpose

The purpose of the project is to develop an industrial park and associated infrastructure consistent with local zoning and municipal requirements in the Apex area of central North Carolina.

Project Description

The proposed project comprises construction of flex-use warehouse buildings (Lots C, D, and E), associated roadway infrastructure (Pristine Water Drive and Production Drive), and stormwater ponds. The site is part of the ACC. Development of Lot B of the ACC did not require DA authorization as it was constructed entirely in uplands.

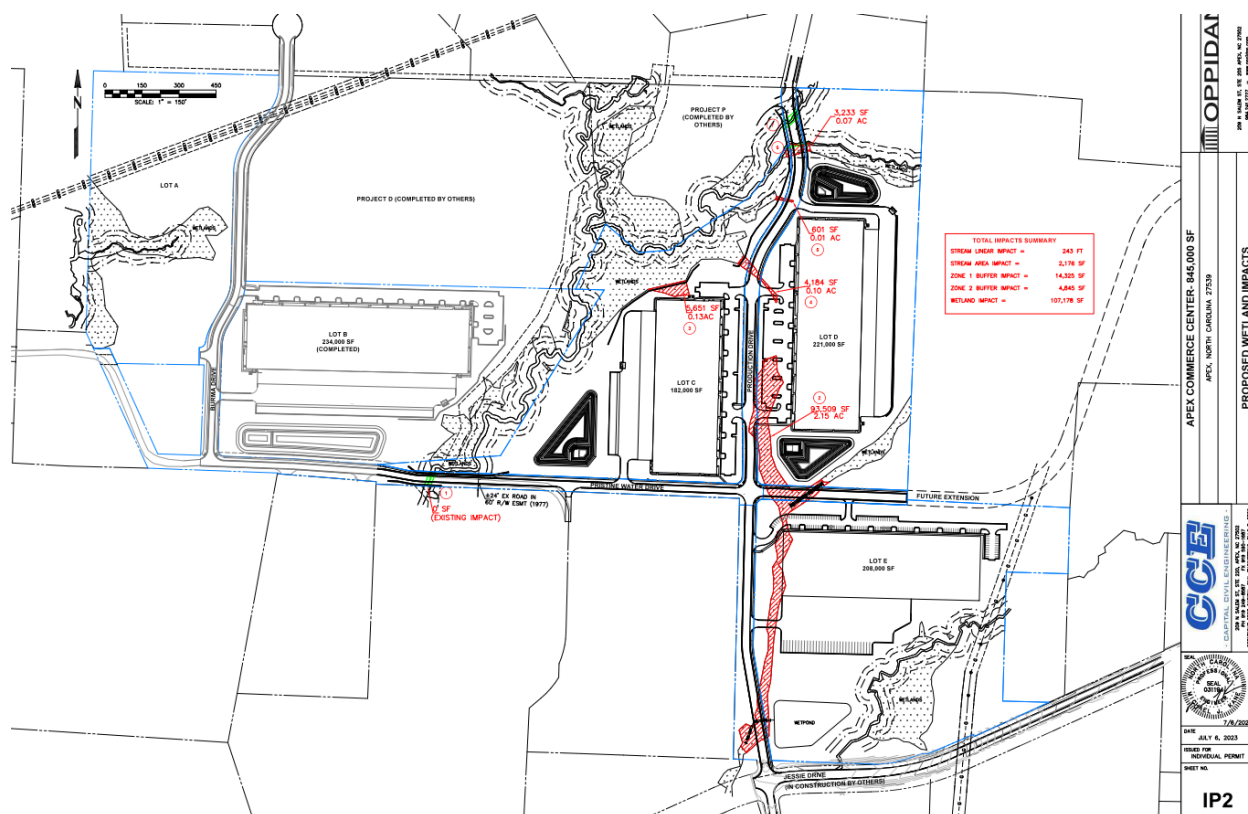


Figure 2. Site Plan of Lots C, D, and E – Apex Commerce Center

The project would require the permanent discharge of fill material into 2.46 acres of wetlands and 243 linear feet of stream channel. Impacts associated with the construction of the southern end of Production Drive along with parking areas adjacent to the proposed buildings on Lot D and Lot E would impact 2.150 acres of hardwood flat. The remaining 0.31 acre of impact would impact headwater forest wetland systems associated primarily with road construction, grading, and stormwater piping. Further, the extension of Production Drive would also impact two stream channels. One crossing would impact 116 linear feet of intermittent stream channel through the installation of a 60-inch culvert and 127 linear feet of perennial stream through the installation of a dual 4' high by 12' wide box culverts, totaling 0.047 acre of waters of the US.

The applicant's agent stated that there are no current plans to develop Lot A and that the applicant has attempted to avoid any potential indirect impacts from the project since all necessary infrastructure will be constructed during the initial construction.

Additionally, an existing culvert under Pristine Waters Drive is proposed to be replaced as part of this project. The culvert replacement would occur inside the existing footprint of the original impact and no additional aquatic resources would be affected by the replacement.

Typical construction equipment would be used consisting of excavators, graders, bulldozers, front-end loaders, dump trucks, and pump-around equipment. If shallow rock is present, blasting may be necessary.

Avoidance and Minimization

The applicant stated that the ACC project has been in the design and planning stage for close to 2 years and has gone through multiple iterations to avoid and minimize certain impacts. Alternate site layouts have been studied and the impacts resulting from these layouts are provided below:

- Alternate Layout A – 3.83 acres of wetland impact; 400 lf stream impact
- Alternate Layout B – 3.87 acres of wetland impact; 243 lf stream impact
- Alternate Layout C – 4.21 acres of wetland impact; 400 lf stream impact
- Preferred Layout - 2.46 acres of wetland impact; 243 lf stream impact

Two alternate layouts include an additional roadway, just south of Project D, that was part of the Town's Transportation Plan when the project planning began. The applicant quickly identified this roadway as a major environmental impact and detriment to the feasibility of the project. The applicant worked with the Town to amend the Transportation Plan, removing this roadway, and reducing ± 0.95 acre of wetland impact along with stream and buffer impacts to a perennial stream. The preferred layout results in significantly less wetland impacts, by as much as 1.75 acres, and meets the applicant's purpose and need.

The limited stream impact results from the extension of Production Drive and that design has been minimized as much as practicable based on required engineering specifications and hydrology requirements. The applicant has been working with the Town of Apex to place the retaining walls and as tight as possible to the right-of-way to minimize environmental impacts. This placement necessitates a more expensive retaining wall system and special considerations from the Town.

Improvements to Pristine Water Drive include the replacement of existing corrugated metal culverts with larger reinforced concrete box culverts. The existing culverts were likely installed pre-permit requirements and have been found to be undersized and in a reverse slope condition. The new culverts will be in the same footprint as the existing culverts, therefore incurring no additional impacts to the tributary.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: Terracon confirmed with Statement of Availability letters dated July 7, 2023, that RES (EBX-Neuse I, LLC Stream and Wetland Mitigation Banks) is currently able to provide the necessary wetland and stream mitigation associated with the project.

Currently, the mitigation ratio for impacts is 2:1, considering that the applicant didn't provide any supporting documentation to justify otherwise.

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 of 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 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.

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 the 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 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 August 15, 2023, to:

NCDWR Central Office
Attention: Supervisor, 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):

- ☒ 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, January 11, 2023. Comments should be submitted to Mrs. Rachel A. Capito, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 440-1823. Comments may also be submitted to RaleighNCREG@usace.army.mil.