



PUBLIC NOTICE

**US Army Corps
Of Engineers**
Wilmington District

Issue Date: October 5, 2023
Comment Deadline: November 4, 2023
Corps Action ID Number: SAW-2023-00049

The Wilmington District, Corps of Engineers (Corps) received an application on September 22, 2023 from Jon L. Morris seeking Department of the Army authorization to discharge of fill material into 1.561 acre of wetlands, 0.075 acre of stream (1,720 linear feet) and 3.902 acre of open water, associated with the construction of industrial buildings, commercial/retail buildings of varying sizes and features and associated infrastructure to meet current and future demand for industrial space in Apex, Chatham 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: Jon Morris and Gray Harrell
BIN-AGP LLC
500 E Morehead Street Suite 200
Charlotte, NC 28202

AGENT (if applicable): Jennifer Robertson
Atlas Environmental Inc.
338 S. Sharon Amity Road #411
Charlotte, NC 28211

Authority

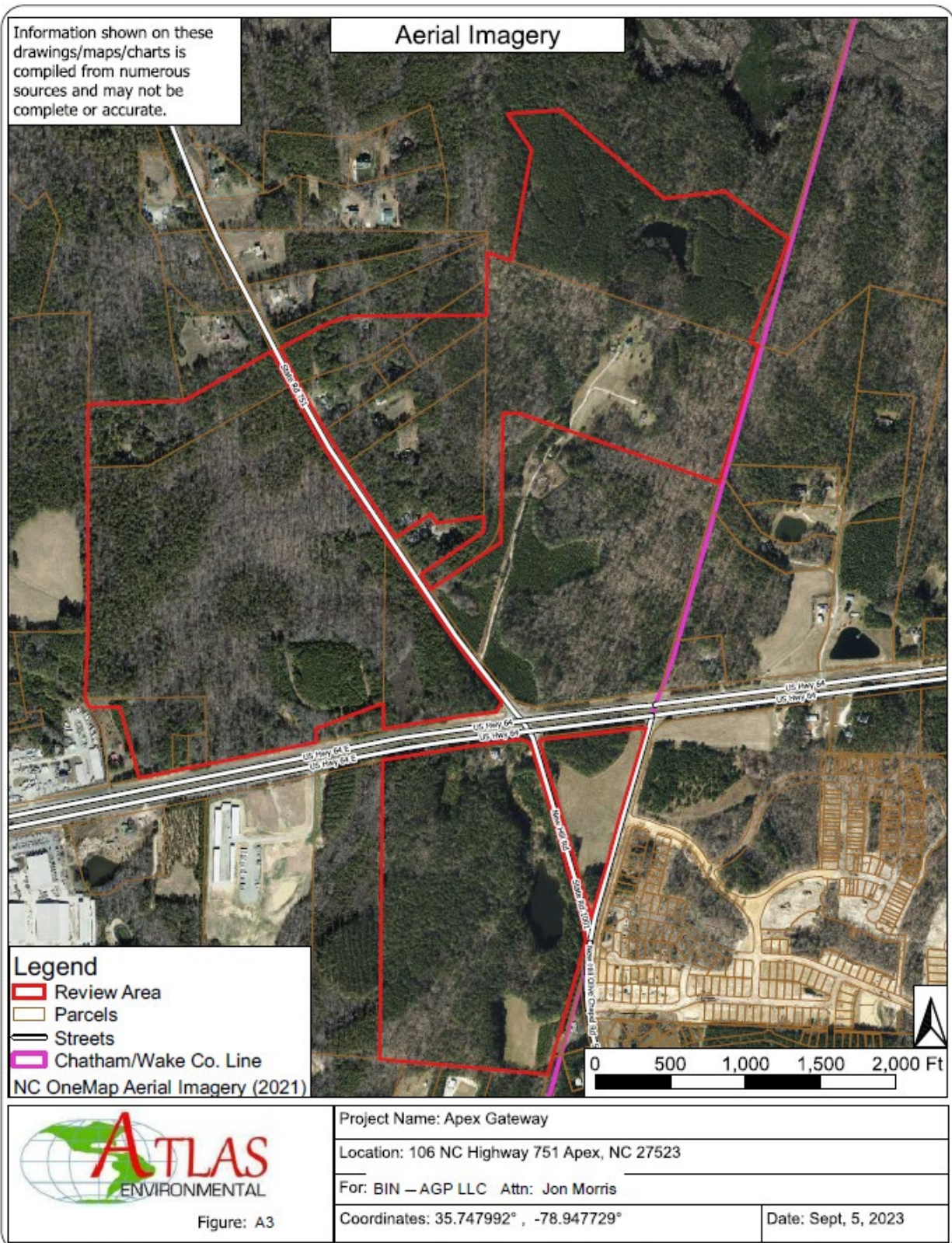
The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- ☒ 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 proposed project site is located at 106 NC Highway 751, Apex, North Carolina, 27523. The review area includes 13 full and two (2) partial parcels (Parcel ID Numbers 17886, 17894, 17903, 17904, 17912 (partial), 17915 (partial), 17918, 60490, 60523, 67322, 68507, 76475, 95398, 95749, and 95750), totaling approximately 302.16 acres in Chatham County, North Carolina. The general project location is on all corners of the intersection of US Highway 64 and NC Highway 751, approximately 7 miles east of Apex's city center as depicted in Figure A3.



Project parcels outlined in red.

Project Area (acres): 302.16
Nearest Town: Apex
Nearest Waterway: White Oak Creek
River Basin: Cape Fear
Latitude and Longitude: 35.747992N, -78.947729W

Existing Site Conditions

The project site is comprised of four, originally distinct and independently proposed, development sites – NC Highway 751, Droege Aulicino, Apex Gateway (sometimes identified as Project Real), and Berkut.

The Site is made up of partially cleared areas as well as mixed hardwood/pine forest. The mixed hardwood/pine forest vegetation is comprised primarily of red maple (*Acer rubrum*), tulip tree (*Liriodendron tulipifera*), black willow (*Salix nigra*), sweet gum (*Liquidambar styraciflua*), green ash (*Fraxinus pennsylvanica*), and water oak (*Quercus nigra*). The sapling/shrub understory is made up of common elderberry (*Sambucus nigra*), Chinese privet (*Ligustrum sinense*), red maple, and American hornbeam (*Carpinus caroliniana*). The understory is made up of soft rush (*Juncus effusus*), Japanese stiltgrass (*Microstegium vimineum*), and sawtooth blackberry (*Rubus argutus*) in the wetland areas.

The onsite soils are comprised of Creedmoor Green Level complex soils with slopes ranging from 2-15 percent.

The Site is in the Cape Fear River Basin, HUC 03030002. There are 11 perennial, intermittent and ephemeral streams onsite with some unnamed tributaries flowing into White Oak Creek and Jordan Lake Reservoir which flows to the Haw which flows into the Cape Fear River. One unnamed tributary flows into Beaver Creek which flows into Jordan Lake, the Haw and the Cape Fear rivers.

A review of available historical aerial imagery indicates that the proposed project site has been predominantly forested with some agricultural fields and a few residences since the early 1980s. The site is bisected by U.S. Highway 64 and NC Highway 751. General land use in the vicinity is somewhat undisturbed due to the proximity of Jordan Lake, with some high density residential and commercial properties in the vicinity.

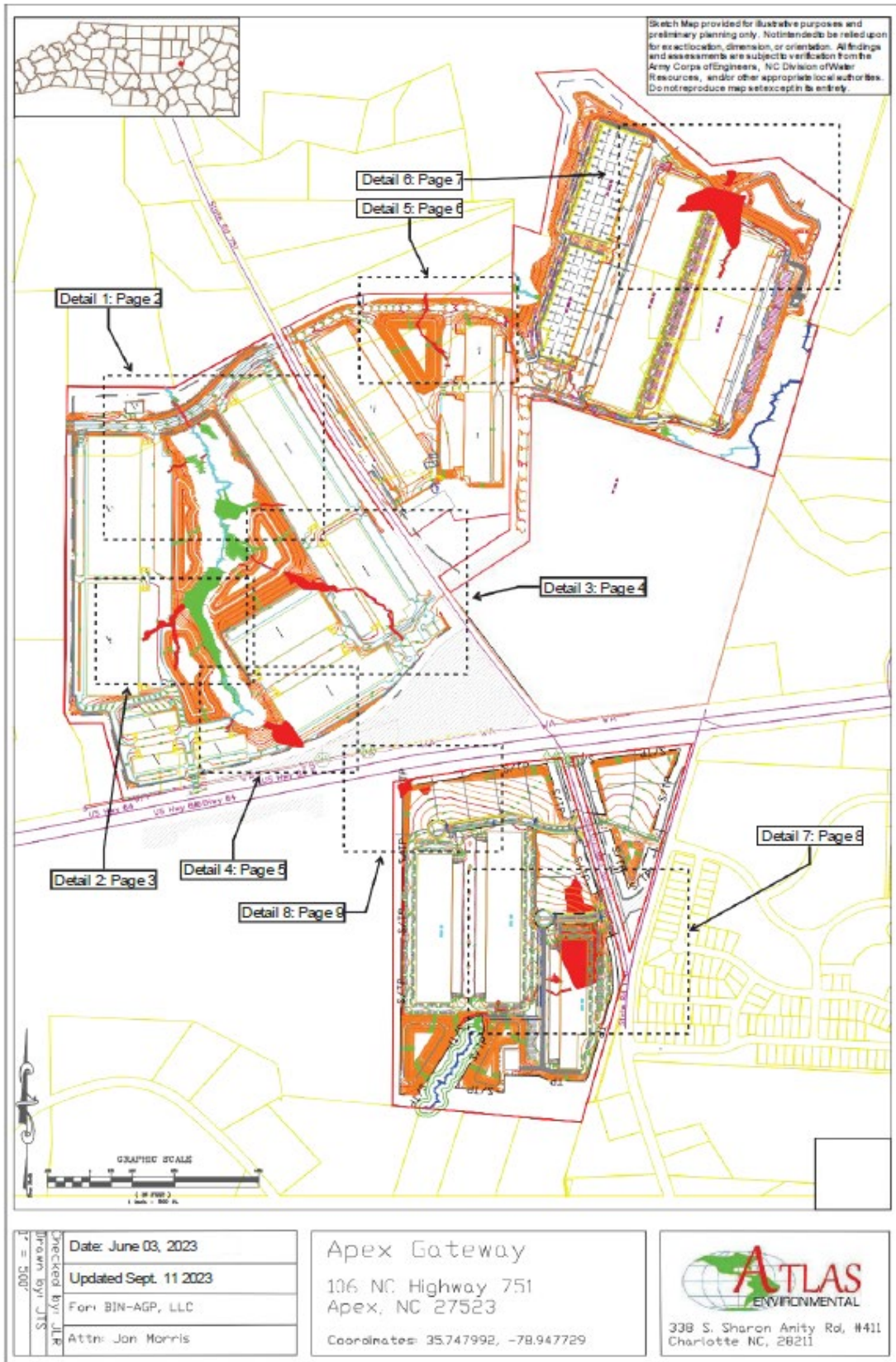
Applicant's Stated Purpose

The purpose of the proposed project is to provide a new and modern, high-quality, light industrial and commercial center with industrial buildings and commercial/retail buildings of varying sizes (approximately 6,000 to 375,000 square feet each) and features (e.g., modern clear heights, number of dock doors, number of parking spaces) to meet current and future demand for industrial space, accommodate a diverse and stable tenant portfolio, and better serve the greater Raleigh and Durham markets. The proposed

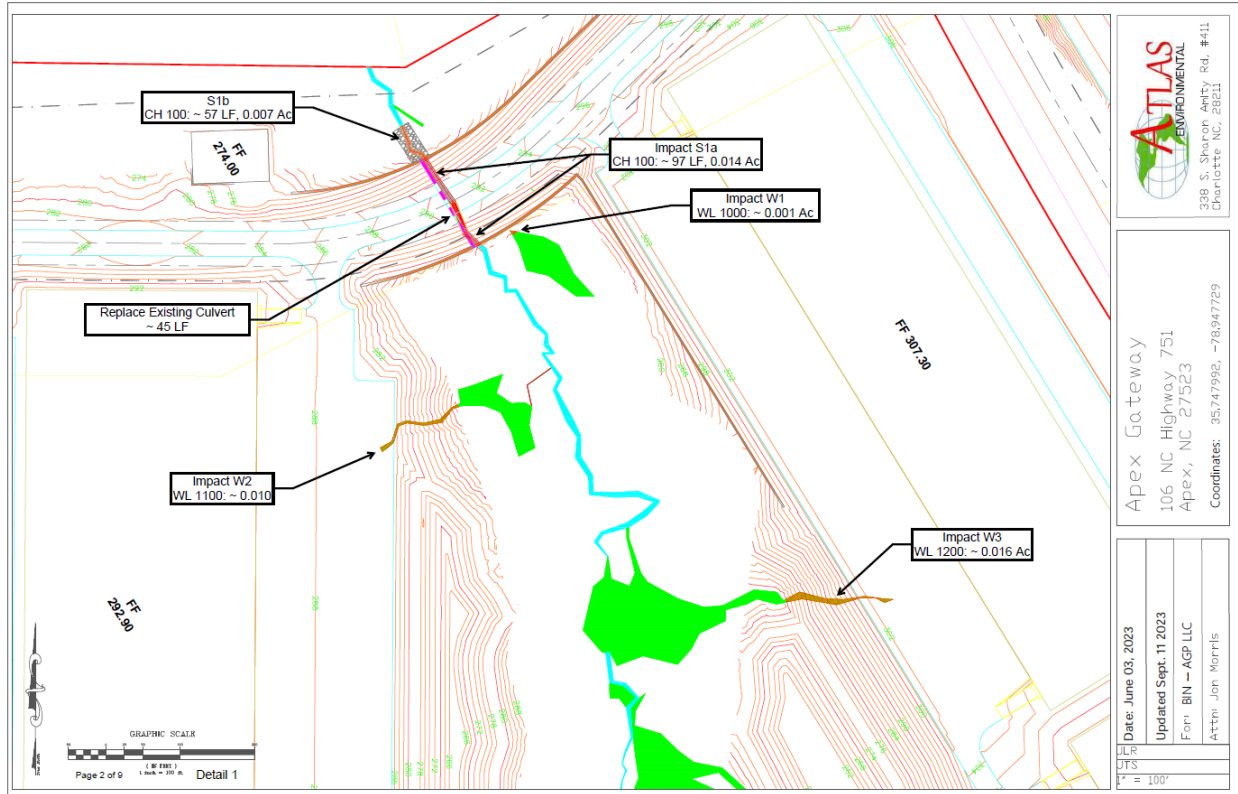
facilities, developed in partnership with Beacon Partners, ideally would be near major transportation corridors with easy ingress and egress of transportation corridors and the project site. Proximity to major transportation corridors helps ensure greater capability of the road system managing increased volume of traffic without major roadway improvements or changes.

Project Description

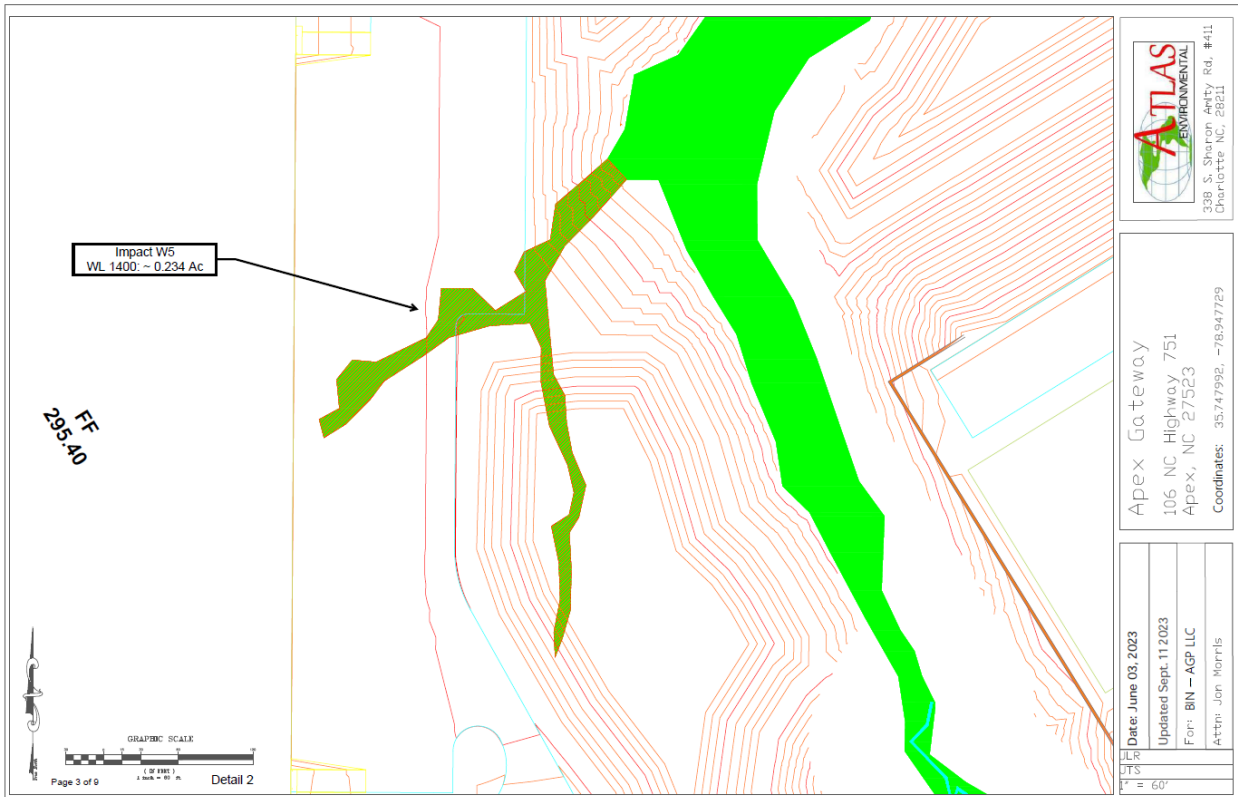
BIN – AGP LLC proposes development of 302.16 acres at the intersection of US Highway 64 and NC Highway 751 for a light industrial complex. The area of development for application request includes the construction of 19 industrial buildings, 12 commercial/retail buildings and outparcels, ingress and egress roadways, parking, stormwater control measures, and other associated infrastructure. The buildings are of varying sizes ranging from approximately 6,000 square feet for commercial/retail to between 27,000 to 375,000 square feet for industrial. The industrial buildings also include features (e.g., modern clear heights, number of dock doors, number of parking spaces) to meet current and future demand for industrial space, accommodate a diverse and stable tenant portfolio, and better serve the greater Raleigh and Durham markets. The size and placement of the buildings was designed to avoid higher quality aquatic resources, planned and dedicated roadways, tree save and buffer areas, and to maximize logistics, including reduced time and costs associated with transport and shared parking for the buildings to reduce the overall footprint of the site.



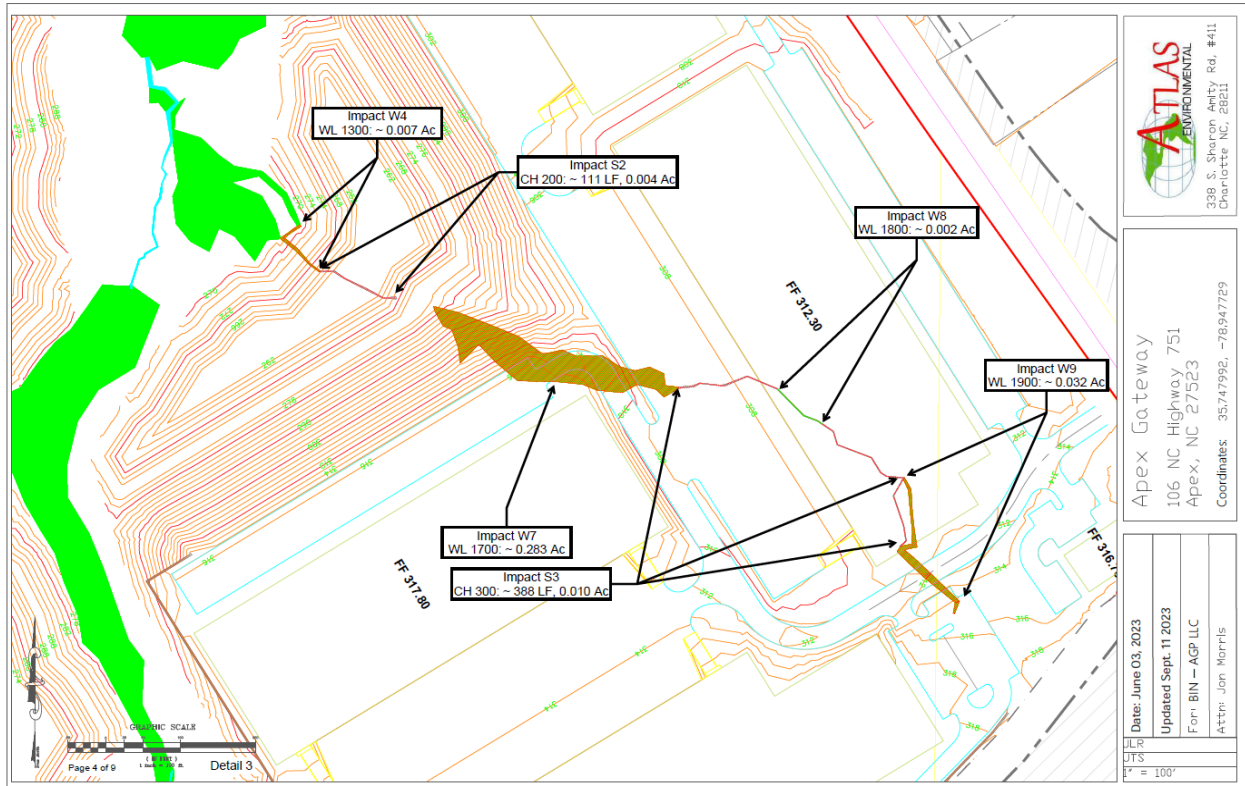
Overall Impact Map



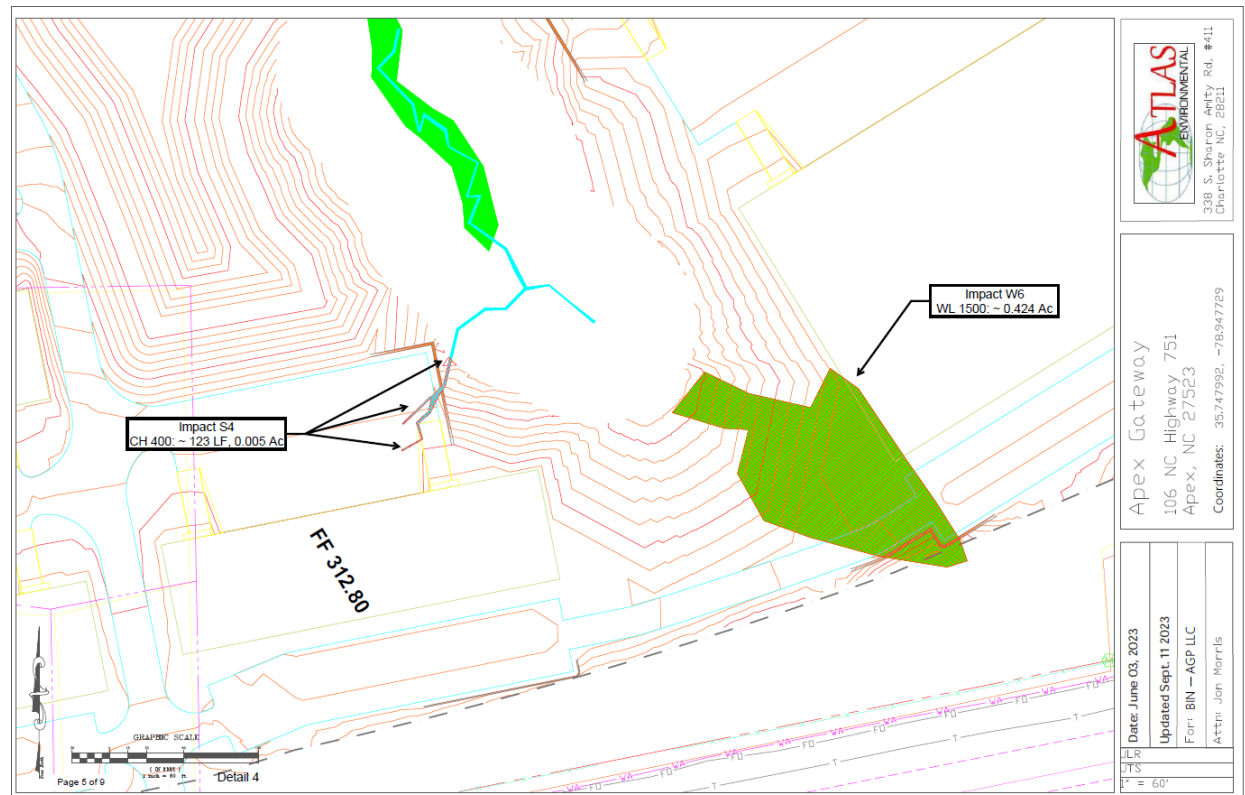
Detail Map 1



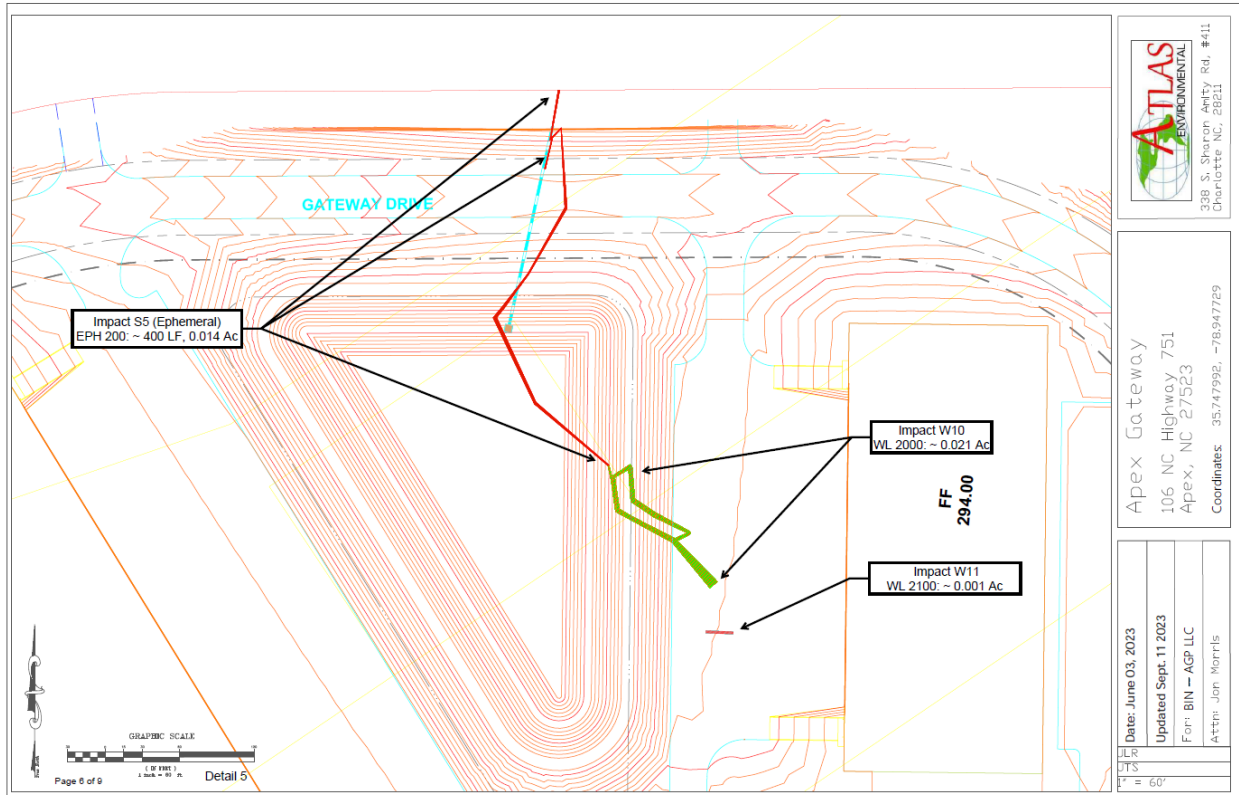
Detail Map 2



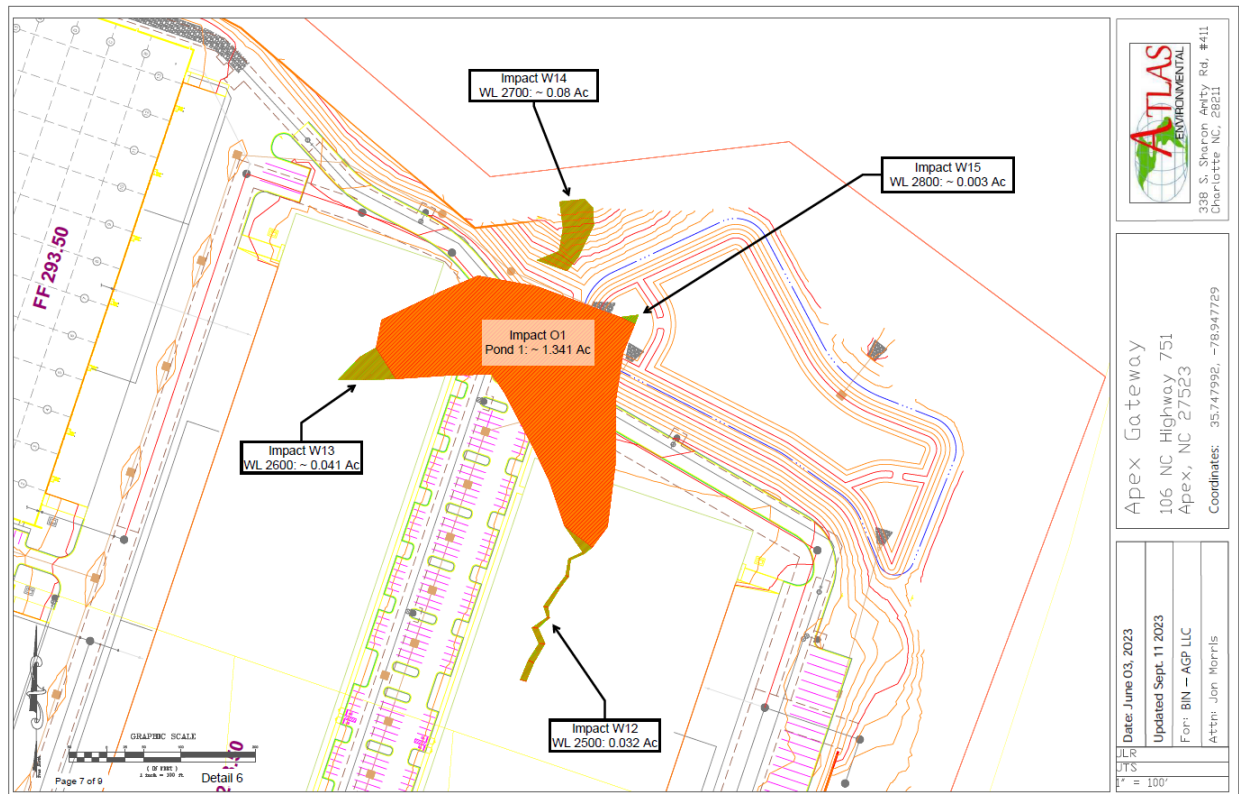
Detail Map 3



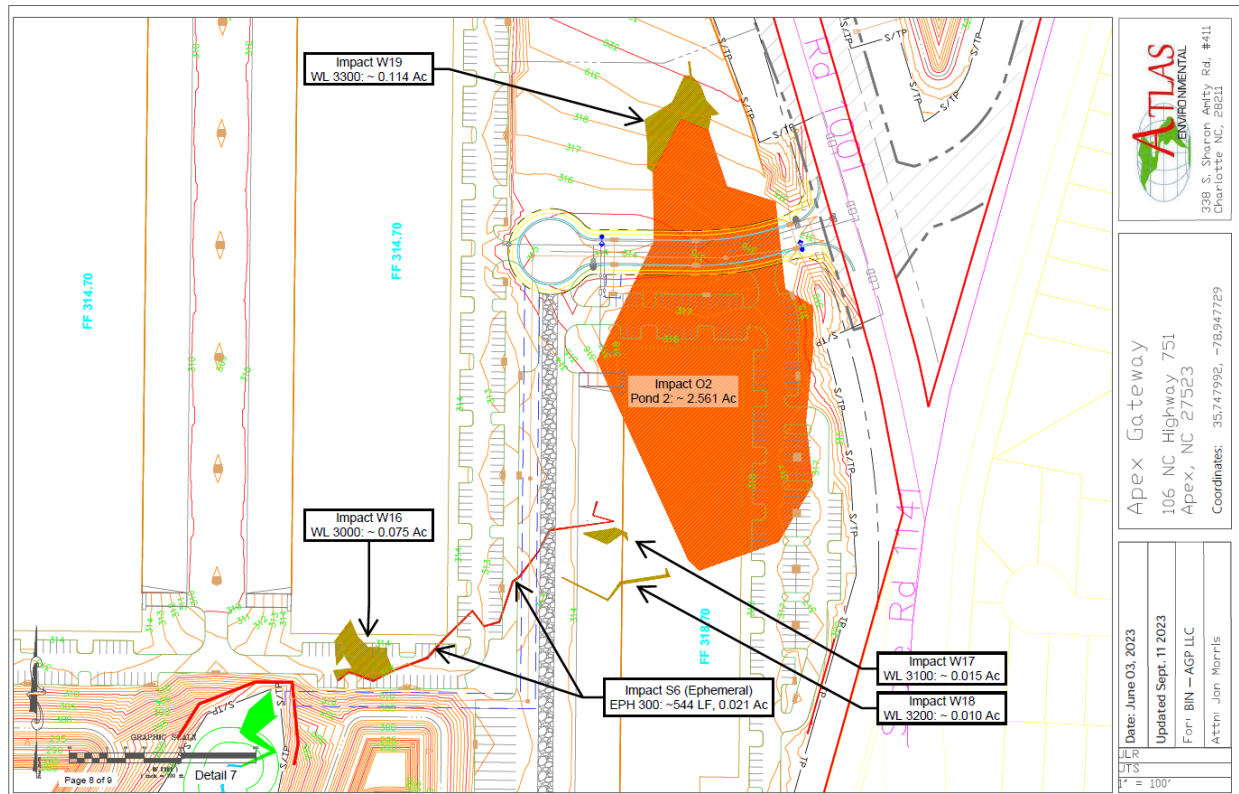
Detail Map 4



Detail Map 5



Detail Map 6



Detail Map 7

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 project has been designed to avoid impacts to the greatest extent possible. The buildings and associated infrastructure are being sized to the minimum spatial extents to accomplish the project purpose and need. The building sizes and placement, parking, and roadways were designed to avoid perennial streams and higher quality wetlands. Buildings have been reduced in size, realigned away from aquatic features to the greatest extent possible to allow vehicles to move safely around buildings, and retaining walls are proposed to avoid and further reduce impacts to aquatic resources.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: Compensatory mitigation is required for the below listed permanent impacts to aquatic resources in the form of in-lieu fee mitigation. For jurisdictional streams that rank either Medium or High using the North Carolina Stream Assessment Method (NC SAM), we propose a 2:1 mitigation ratio. For jurisdictional streams that rank Low using the NC SAM, we propose a 1.5:1 mitigation ratio. For jurisdictional wetlands that rank Medium or High using the North Carolina Wetland Assessment Method (NC WAM), we propose a 2:1 mitigation ratio. For

jurisdictional wetlands that rank Low using the NC WAM, we propose a 1:1 mitigation ratio.

In addition to mitigation, the applicant will include vegetated upland buffers around unimpacted aquatic resources as additional avoidance and minimization measures. In addition to the upland buffers, the applicant is proposing to preserve the remaining 3,906 linear feet of intermittent streams (CH 100, CH 400, CH 500, CH 600, CH 700, and CH 800) and 3.174 acres of on-site wetlands (WL 1000, WL 1100, WL 1200, WL 1300, WL 1400, WL 1600, WL 2200, WL 2300, WL 2400, and WL 2900). The applicant will include added assurances for the protection of preserved streams, wetlands and uplands that may take the form of deed restrictions, conservation easements, or other legal assurances of protection.

The applicant is requesting that a portion of the required mitigation be satisfied with the proposed permanent preservation of on-site upland buffers, streams, and wetlands within the riparian corridors.

Essential Fish Habitat (EFH)

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 (i.e., properties listed in or eligible for inclusion in the National Register of Historic Places) are present within the Corps' permit area; therefore, there will be no historic properties affected.

The North Carolina Department of Natural and Cultural Resources (NCDNCR) provided letters for each parcel:

The NCDNCR stated, "We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed", for the following parcels.

ER-22-1514: NC Highway 751 (July 12, 2022)

ER-22-1832 Droege Site (August 9, 2022)

ER-21-3261 Project Real (July 12, 2022)

A structure that needed further review was found on the Berkut site though after additional information was provided by the applicant. NCDNCR concurred that the J.B. Mills House was not eligible for listing on the National Register of Historic Places due to neglect and vandalism. ER-221929 (September 19, 2022, and December 2, 2022)

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:

- ☒ For the proposed project, the Corps has made the following determination for federally listed endangered or threatened species or their formally designated critical habitat: May Affect, Not Likely To Adversely Affect

☒ 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 should do so in writing, within 30 days of the issue date of the notice by emailing comments to publiccomments@deq.nc.gov with the subject line of "401 Water Quality Certification" or by mail to:

NCDWR Central Office
Attention: Stephanie Goss, 401 and Buffer Permitting Branch
(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 [Certification Information](#) 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 [Request Method](#) the consistency certification, the Corps [Request Method](#), 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 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, November 4, 2023. Comments should be submitted to Rachel Capito, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, or via email at Rachel.A.Capito@usace.army.mil. The Corps Project Manager can be contacted at (919) 440-1823. Comments may also be submitted to RaleighNCREG@usace.army.mil.