



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: February 16, 2023
Comment Deadline: March 17, 2023
Corps Action ID Number: SAW-2023-00219

The Wilmington District, Corps of Engineers (Corps) received an application from Embrey Partners, LLC., seeking Department of the Army authorization to impact 750 linear feet of stream channel along with approximately 1,000 linear feet of onsite stream relocation and enhancement activities for the construction of the 3027 North Tryon Street Residential Development (Site), a high-density residential development and co-working commercial space in Mecklenburg 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: Embrey Partners, LLC
Joel Albea
7600 Broadway, Suite 300
San Antonio, TX 78209

Agent: Greenman-Pedersen, Inc.
Jonathan Hinkle
1308 US – 258 N
Kinston, NC 28504

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

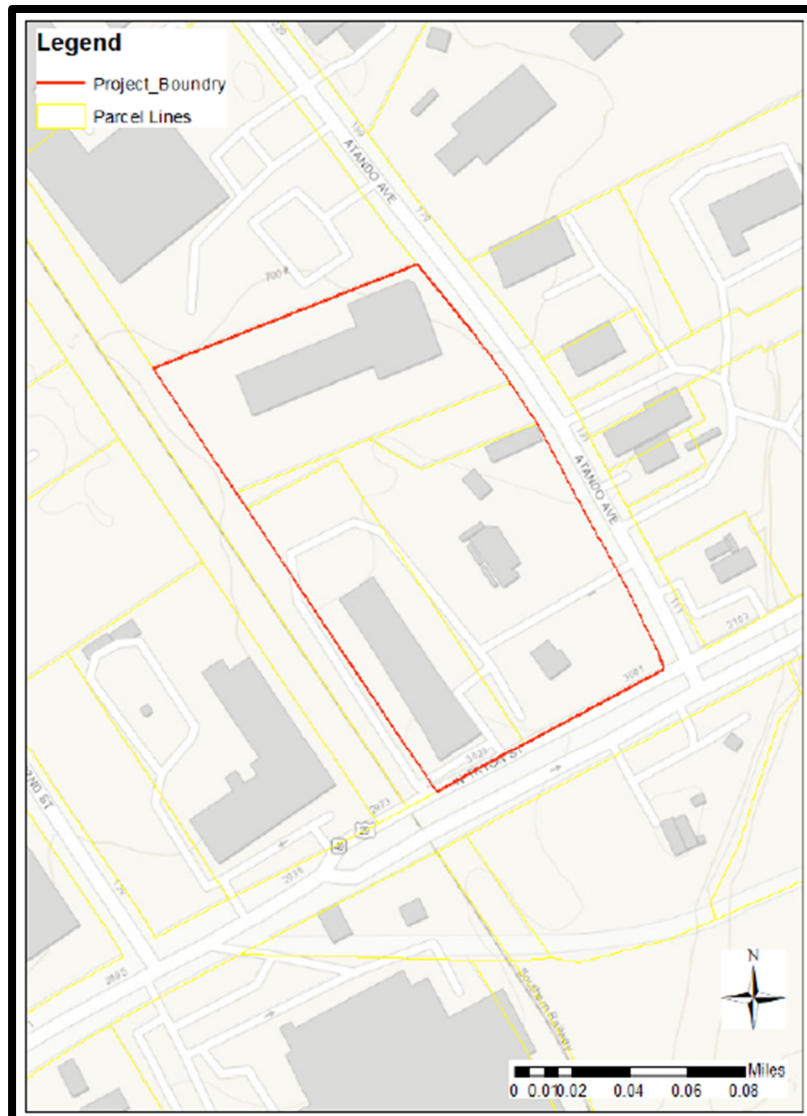


Figure 1. Location of 3027 North Tryon Street Residential Development

Location Description: The project site is on the northwest side of the intersection of N. Tryon Street and Atando Avenue. Parcel Identification Numbers: 08502101, 08502102, and 08502103.

Project Area (acres): ~7	Nearest Town: Charlotte
Nearest Waterway: Little Sugar Creek	River Basin: Santee
Latitude and Longitude: 35.252464N, -80.810705W	

Existing Site Conditions

The proposed project area is located within Mecklenburg County; approximately 2.7 miles northeast of the city of Charlotte, Mecklenburg County, North Carolina, in the United States Geologic Survey (USGS) 7.5-minute quadrangle of Derita, North Carolina (Figure 2) and within the Lower Catawba watershed, USGS hydrologic unit 03050103. The proposed project area consists of open areas and commercial developments and

associated buildings, and the surrounding land use is comprised residential developments, commercial and industrial facilities, and undeveloped lands. The North Carolina Department of Environmental Quality (NCDEQ) has determined the proposed project area is eligible to enter into a Brownfields Agreement in connection with the proposed re-development of the site. The NCDEQ defines a Brownfields site as an abandoned, idled, or underused property where the threat of environmental contamination has hindered its redevelopment. Results of initial environmental testing done by the applicant have confirmed the presence of contaminants within the project area. The NCDEQ Brownfield Program will prepare a Brownfields Agreement and associated documents that outline mitigation measures designed to safely re-develop the project area.



Figure 2. USGS Topographic Map

The FEMA FIRMs mapping identifies the southern approximately 5 acres of the project area as Zone AE. According to FEMA, flood hazard areas identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1% chance of being equaled or exceeded in any given year. The 1% annual chance flood is also referred to as the base flood or 100-year flood. Zone AE is considered a base flood/100-year flood area.

The EcoRegion Map of North Carolina indicates that the site is in the Southern Outer Piedmont (45b) of the Piedmont Physiographic Province. The landform class consists of mostly irregular plains rather than the plains with hills as seen in the Southern Inner Piedmont and the Carolina Slate Belt. Gneiss, schist, and granite are typical rock types, covered with deep saprolite and mostly red, clayey subsoils. Kanhapludults are common soils, such as Cecil, Appling, and Madison series. Some areas within the region have more alkaline soils such as Iredell series.

Currently, the proposed project area contains one (1) perennial stream totaling 750 linear feet with approximately 100 linear feet of stream channel contained within two

culverts. The onsite stream channel flows onto the project area's northwest corner, down the western property boundary then doglegs east across the project area exiting along the eastern project boundary (Figure 3).

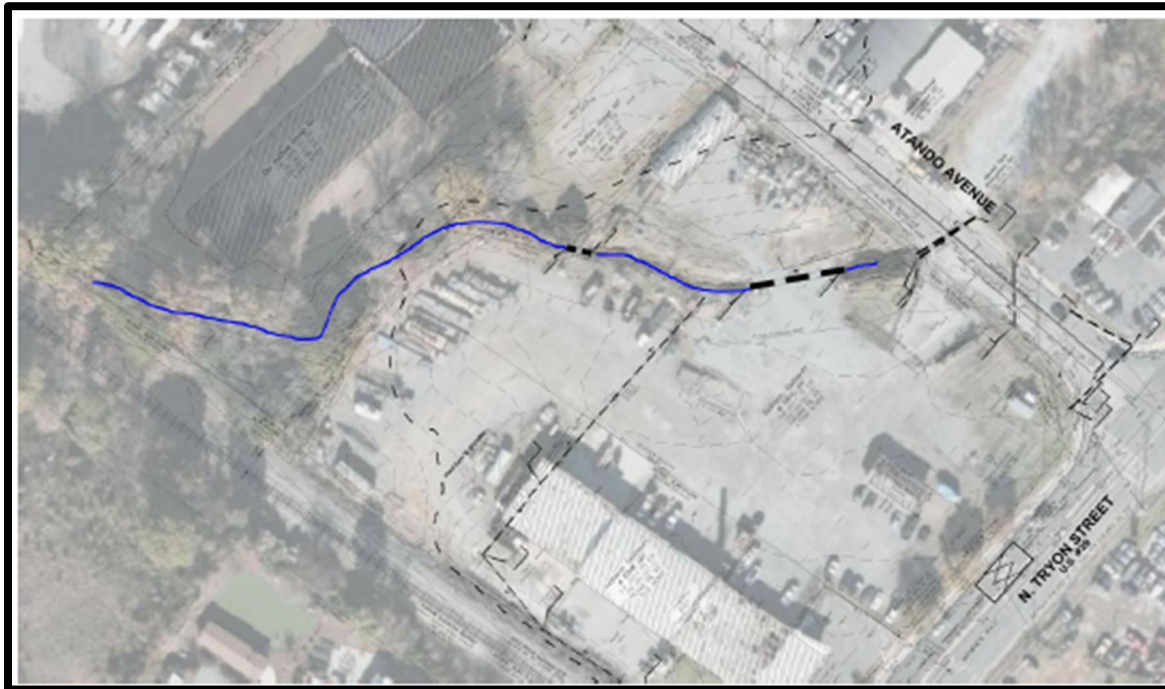


Figure 3. 3027 North Tryon Street Residential Development Aquatic Features Map

Applicant's Stated Purpose

The purpose of the proposed project is to re-develop a dilapidated heavy industrial use site into a modern high-density residential development with co-working space in the city of Charlotte in Mecklenburg County, North Carolina.

Project Description

The applicant is proposing to construct a 403-unit, high-density, residential community with co-working office space. The residential development is proposed to be four (4) stories high and will consist of a parking garage designated for residents use. The residential development will also include amenities such as co-working office space, a swimming pool, clubhouse, outdoor cooking lounges and abundant areas of green space and a natural stream area with walking trails. The 750-linear foot existing onsite stream will be backfilled to utilize the space to construct the residential development and associated amenities. In addition, the applicant proposes to relocate and/or establish a new stream channel which will connect to the existing channel approximately 100 feet downstream of where the existing stream enters the project area on the western side of the property and will flow east along the northern project boundary then turning south to continue to flow within the project area and then offsite (Figure 4). The stream enhancement activities will include increasing the sinuosity of the new stream channel compared to the existing stream channel along with

constructing riffle/pool complexes, enhanced connection to the floodplain, and planting native vegetation along the stream banks to provide a vegetated buffer and stream bank stabilization.

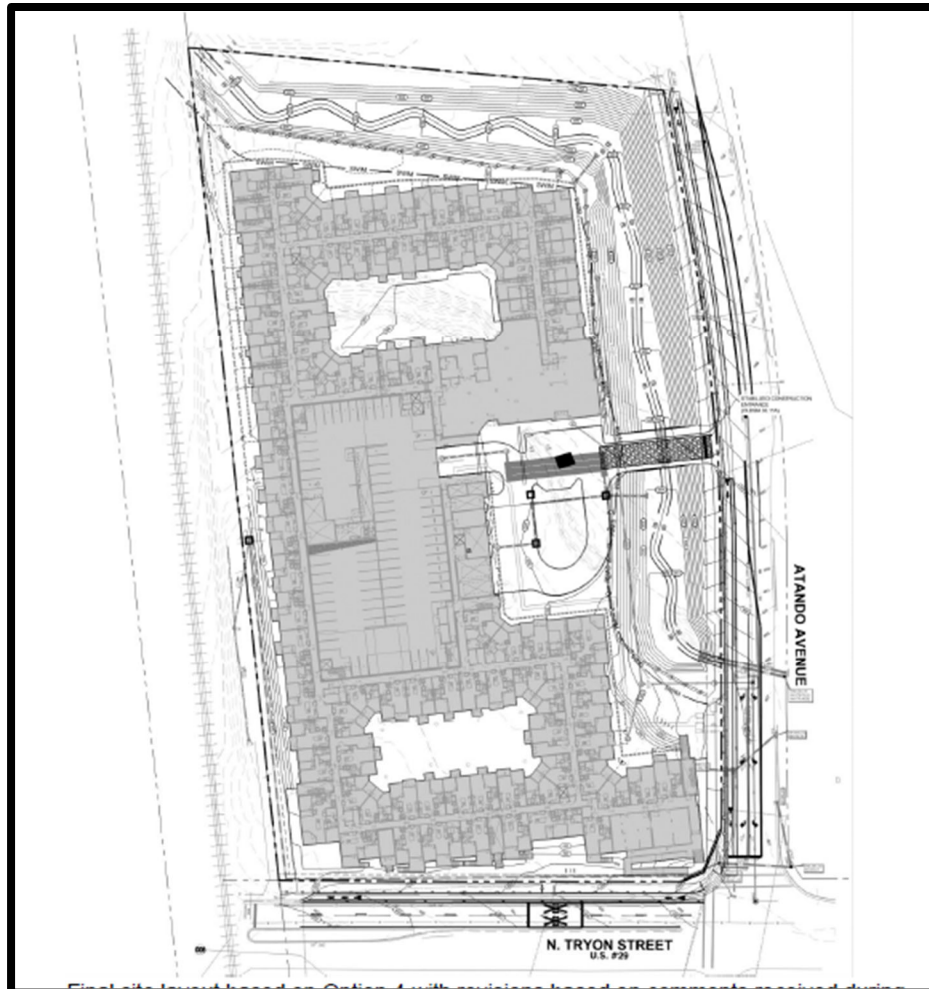


Figure 4. Proposed Layout of 3027 North Tryon Street Residential Development

Avoidance and Minimization

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

“During the investigation of the proposed project, the team considered a multitude of options when selecting the site and the layout of the proposed activities to ensure the regulatory, financial, and ecological goals are met.”

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

“Given the stream restoration portion of the project and the ecological uplift that will bring to this watershed, Embrey would propose a total 1:1 mitigation ratio between the Corps and NCDWR requirements based on the stream restoration, functional lift, and 250 additional linear feet of stream this project would add.”

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. Implementation of the proposed project 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.

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:

- ☒ 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 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.

According to the Information for Planning and Consultation (IPAC) website, the following species are listed: Tricolored Bat (*Perimyotis subflavus*), Rusty-patched Bumble bee (*Bombus affinis*), Monarch Butterfly (*Danaus plexippus*), Michaux's sumac (*Rhus michauxii*), Schweinitz's sunflower (*Helianthus schweinitzii*), and smooth coneflower (*Echinacea laevigata*).

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 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 _____ to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 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, March 17, 2023**. Comments should be submitted to Mr. Bryan Roden-Reynolds, Charlotte Regulatory Field Office, 8430 University Executive Park Drive, Suite 615, Charlotte, North Carolina 28262, at (704) 510-1440. Comments may also be submitted to CharlotteNCREG1@usace.army.mil or bryan.k.roden-reynolds@usace.army.mil.