



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: June 1, 2023
Comment Deadline: July 1, 2023
Corps Action ID Number: SAW-2023-00898

The Wilmington District, Corps of Engineers (Corps) received an application on May 18, 2023, from Microsoft Corporation (Microsoft) seeking Department of the Army Authorization to permanently impact 889 linear feet (LF) of stream channel and 0.08 acre of wetland, permanently convert 0.19 acre of wetland, and temporarily impact 285 LF of stream channel, in conjunction with the construction of the Lyle Creek Data Center-CLT 04(Site), in Conover, Catawba 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: Microsoft Corporation
Mr. Chris Sander
One Microsoft Way
Redmond, WA 98052

AGENT (if applicable): Stantec Consulting Services, Inc
Mr. Spencer Davis
801 Jones Franklin Road Suite 300
Raleigh, NC 27606-3394

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)

Location

Figure 1. Location of Lyle Creek Data Center



Location Description: The 220.19-acre site is located on seven (7) parcels to the northwest of intersection of NC Highway 16 and Northern Drive NW. in Conover, Catawba County, North Carolina. (Parcel Tax ID: 3742087988002, 374208890323, 374206495558, 374207680515).

Project Area (acres): 220.19

Nearest Town: Conover

Nearest Waterway: Lyle Creek

River Basin: 03050101

Latitude and Longitude: 35.731135 N, -81.205389 W

Existing Site Conditions

The Site is characterized by active agricultural fields, forested areas, and a past commercial development (figure 2). The areas that have been developed did not require

Department of the Army permit authorization and were constructed in uplands. The commercial development area currently only has infrastructure and concrete pads present.

A Best Usage Classification (BUC) is assigned to waters of North Carolina based on existing or contemplated best usage of various bodies of water. A jurisdictional determination (JD) was submitted on January 24, 2023, by Stantec Consulting Services, Inc. and field verified by the Corps on February 2, 2023. A preliminary JD was issued on April 27, 2023, identifying 10,838 LF of potentially jurisdictional stream channels, and 2.555 acres of wetlands.

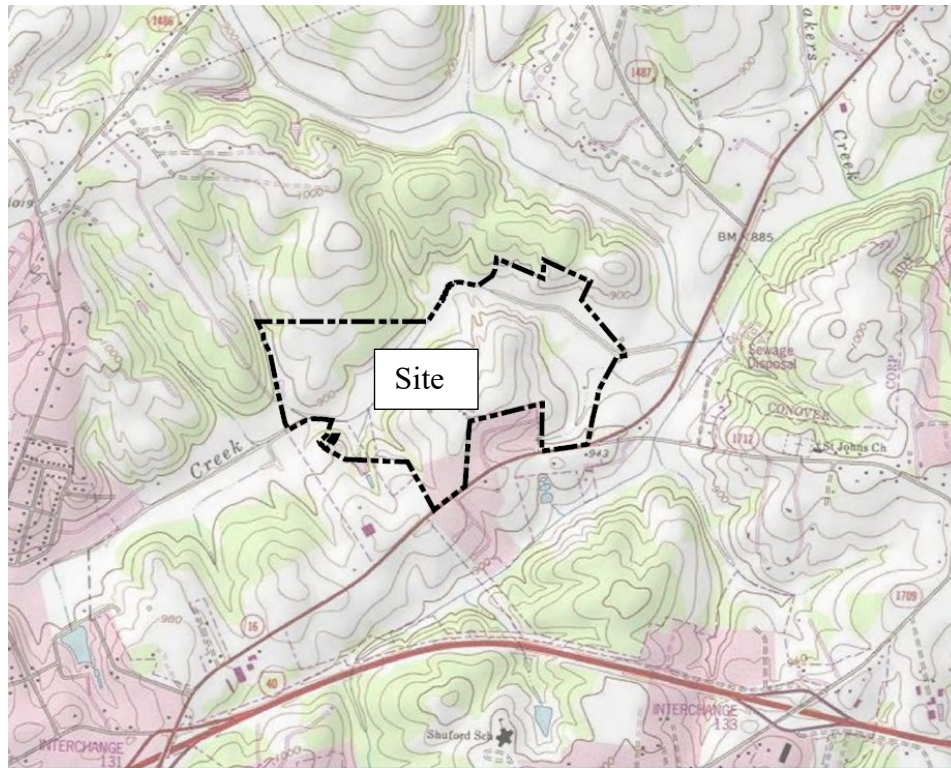
The streams on-site have a BUC of C. The supplemental classification C designates aquatic life, secondary recreation, and fresh water. The supplemental classification NSW designates Nutrient Sensitive Waters which require limitations on nutrient inputs. Further, these on-site streams were rated as medium/High using the North Carolina Stream Assessment Method (NCSAM), with one stream characterized as low.

The Site is characterized by several unique soil map units including, Dan River Loam, Fairview Clay Loam, Poplar Forest-Udorthents complex, Tomlin loam soils, Tomlin Clay loam, and Woolwine-Fairview-Westfield complex soils.

Figure 2. Existing Site Conditions



Figure 3. USGS Topographic Map



Applicant's Stated Purpose

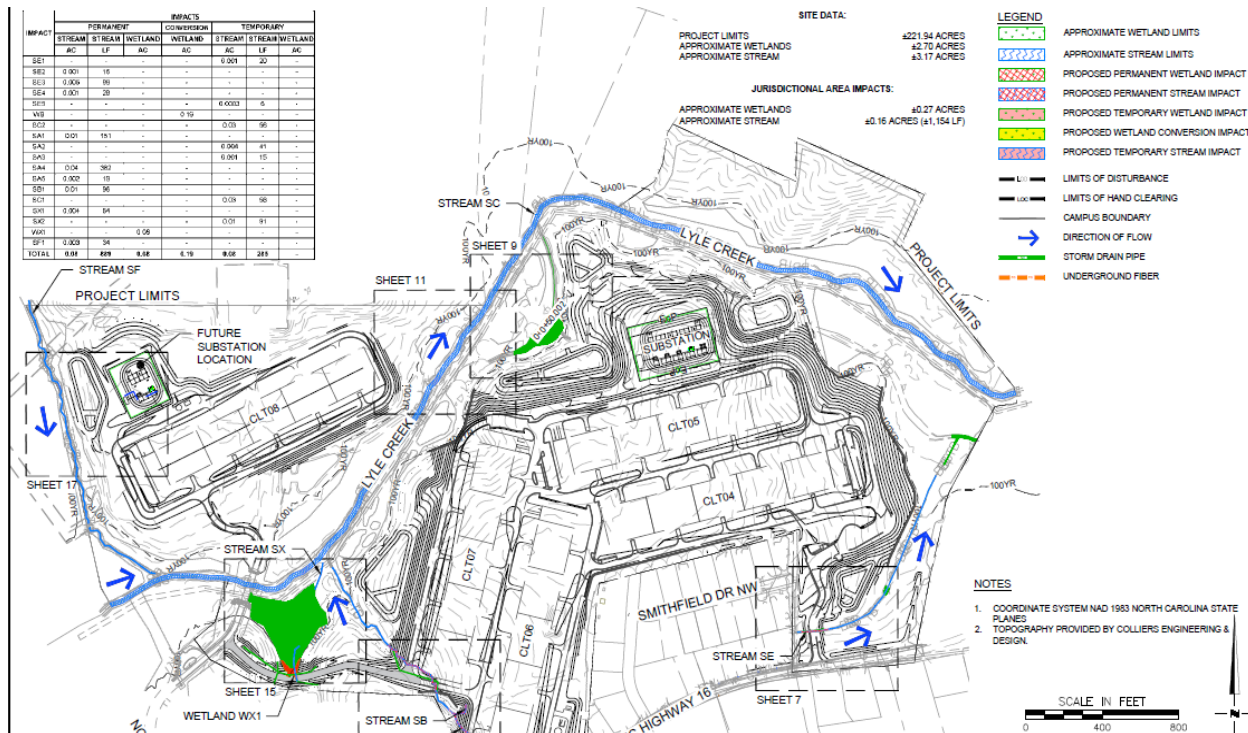
The basic purpose of the project is to provide additional cloud storage capacity in support of Microsoft's North Carolina Regional Network Gateway (RNG). The overall purpose of the project is to construct a data center that would provide additional cloud storage capacity for Microsoft's North Carolina RNG.

Microsoft established RNG's around the globe within identified regions. Sites within the RNG are required to meet certain connectivity and redundancy requirements and must be located within 20-kilometer (km) of other data centers in the region, all of which are connected through fiber optic lines.

Project Description

The applicant is proposing to construct five (5) single-story data center buildings along with associated infrastructure and amenities. The proposed project would provide 488 Megawatts (MW) of data storage and would include five 48-(MW) data center buildings with parking, access road, two (2) Duke Energy Substations, security entrances and features, installation and/or relocation of utilities, and stormwater management treatment facilities. Implementation of the proposed project would permanently impact 889 LF stream channel and 0.08 acre of wetland, permanently convert 0.19 acre of wetland, and temporarily impact 285 LF of stream channels.

Figure 4. Lyle Creek Data Center – CLT 04 Design Drawing



Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: As detailed in the plans and alternatives analysis, the selected alternative has avoided and minimized impacts to waters of the U.S. to the maximum extent practicable by orienting the buildings to have the least impact on aquatic resources. The project area contains 2.555 acres of wetlands and 10,838 LF of stream. The proposed development would avoid 9,664 LF of stream channel and 2.25 acres of wetlands. Overall, the proposed design avoids and preserves greater than 88 percent of streams and wetlands on-site.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant has chosen to purchase 0.35 acre wetland mitigation units and 1,485 stream mitigation units from a combination of private mitigation banks and from the North Carolina Division of Mitigation Services (DMS) In-Lieu Fee Program to offset the unavoidable loss of 889 LF of stream and 0.08 acre of wetland, and the permanent conversion of 0.19 acre of wetland.

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 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: Bog Turtle (*Glyptemys muhlenbergii*), Dwarf-flowered Heartleaf (*Hexastylis naniflora*), Tricolored Bat (*Perimyotis subflavus*)

Roosting habitat for the Tricolored Bat is present across the site in the form of forested areas. Acoustic surveys are scheduled in May 2023 for these species and further analysis and recommendations will be provided at that time.

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 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 July 1, 2023 to:

NCDWR Central Office
Attention: Ms. Stephanie Goss, 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, July 1, 2023. Comments should be submitted to Ms. Krystynka Stygar, Charlotte Regulatory Field Office, 8430 University Executive Park Drive, Suite 615, Charlotte, North Carolina, 28262 and by email at krystynka.b.stygar@usace.army.mil, or by phone at (252)545-0507.

