



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: December 4, 2018  
Comment Deadline: January 3, 2019  
Corps Action ID Number: SAW-2015-01697

The Wilmington District, Corps of Engineers (Corps) received an application from BOMA North Carolina, LLC seeking Department of the Army (DA) authorization to permanently impact 557 linear feet (lf) of stream channel associated with 6 proposed road crossings. In addition, the applicant is also requesting an additional 500lf of stream channel that would be temporarily impacted through the construction of utility crossings associated with Caleb's Creek Community residential/commercial development. The property consists of approximately 875 acres abutting Interstate 40, on the east and west sides of Teague Lane, north of Interstate 74, south of Kernersville, Forsyth County, North Carolina. The site contains Abbotts Creek and several of its unnamed tributaries in the Lower Yadkin Pee Dee River Basin (8-Digit Cataloging Unit 03040103). Latitude N 36.062387, W -80.091225

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:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** BOMA North Carolina, LLC  
Attn: Mr. Kory Reimann  
1668 Ridge Point Dr.  
Bountiful, UT 84010

**AGENT (if applicable):** Greer-Louise, Inc.  
Attn: Ms. Debbie Joyce  
1110-A Dover Rd  
Greensboro, NC 27408

Wetlands & Waters  
Attn: Ms. Meagan Jolly  
248 East Broad St.  
Statesville, NC 28677

## 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 project, known as Caleb's Creek, is located on an assemblage of parcels consisting of approximately 875 acres of land abutting Interstate 40, on the east and west sides of Teague Lane, north of Interstate 74, and south of Kernersville, Forsyth County, North Carolina (36.062387 ° N, - 80.091225 ° W). The project site includes a portion of Abbotts Creek and several of its unnamed tributaries and associated wetlands, as well as open waters in the form of freshwater ponds occurring in the Lower Yadkin Pee Dee River Basin (8-Digit Cataloging Unit 03040103).

Project Area (acres): 875 acres                      Nearest Town: Kernersville  
Nearest Waterway: Abbotts Creek              River Basin: Lower Pee Dee  
Latitude and Longitude: 36.0262382 N, -80.1103207 W

## Existing Site Conditions

Approximately 180 acres of the site are decommissioned golf course fairways and cart paths. There are several existing access roads and structures remaining from the prior land use. In recent years, grading activities have commenced in some upland areas. Phases RL-1, -4, and -5 (low-density residential) of the proposed project have already been completed or are currently under construction. Construction of the school, located on the northeastern project area boundary off of Teague Lane, has been completed.

Portions of the proposed 875+/- acre project area consists of undeveloped and agricultural land with early successional forest, comprised of mixed hardwoods and loblolly pines. Abbotts Creek bisects the project area and flows primarily from north to south. There are several tributaries to Abbotts Creek, wetlands, and

freshwater ponds also occurring within the project area. The project site lies within the Abbotts Creek watershed, within USGS 8-digit Cataloguing Unit 03040103. The North Carolina Division of Water Quality (DWQ) has classified this section of Abbotts Creek as “WS-III” (Waters used as sources of water supply for drinking, culinary, or food processing purposes where a WS-I or II classification is not feasible). Abbotts Creek and its tributaries flow to Tom-A-Lex Lake in the Yadkin Pee Dee River basin. Abbotts Creek’s tributaries are associated with forested and cleared riparian areas and riparian wetlands.

Jurisdictional areas on the site include approximately 44,822 lf of intermittent and perennial stream channels, 15.43 acres of riparian forested wetlands and 18.81 acres of freshwater ponds. The Corps has conducted several on-site visits and has verified the extent of jurisdictional aquatic features. Aquatic resources on the site are piedmont headwater systems that primarily originate on the site and flow to Abbotts Creek.

Wooded upland areas on the site are vegetated by sweet gum (*Liquidambar styraciflua*), tulip poplar (*Liriodendron tulipifera*), red oak (*Quercus falcata*), white oak (*Quercus alba*), loblolly pine (*Pinus taeda*), white pine (*Pinus strobus*), eastern red cedar (*Juniperus virginiana*), red maple (*Acer rubrum*), hickory (*Carya spp.*), American holly (*Ilex opaca*), and flowering dogwood (*Cornus florida*).

The wetlands on site are primarily dominated by red maple, sweet gum, black gum (*Nyssa sylvatica*), and black willow (*Salix nigra*) with herbaceous components including needle rush (*Juncus effusus*), panic grass (*Panicum spp.*), Japanese honeysuckle (*Lonicera japonica*), Nepal grass (*Microstegium vimineum*), and common greenbrier (*Smilax rotundifolia*) in the sapling/shrub, woody vine and herbaceous layer. These wetlands are underlain by hydric soils and have evidence of wetland hydrology originating from groundwater seepage, flooding by the streams, and collection of precipitation within the watershed. Some of the functions provided by wetlands on the site include flood and stormwater runoff storage, pollution and sediment assimilation, nutrient cycling, filtration, and habitat for wetland species. Riparian areas along streams on site provide many of the same functions. The functional quality of wetlands and streams on site vary, as rated by the NCSAM and NCWAM standards.

Topography on the site consists of gently sloping ridges and valleys with moderately steep slopes typical of the Piedmont Physiographic Region. Elevations on the site range from approximately 830 to 930 feet above mean sea level (MSL). Soils within the project area are combined into the Pacolet-Cecil association, the Wedowee-Louisburg association and the Wilkes-Enon association. These associations are comprised of gently sloping to hilly, deep and moderately deep, well drained soils. Floodplain soils are dominated by Chewacla and Wehadkee soils which are somewhat poorly drained and poorly drained, respectively.

## **Applicant's Stated Purpose**

The applicant's stated purpose is to construct a master-planned mixed-use development, formally known as Caleb's Creek, developed by BOMA NC LLC. Caleb's Creek is situated in the Piedmont-Triad in Forsyth County, North Carolina. This community would feature neo-traditionally styled low-density, medium-density, and high-density residential housing, commercial/office leasing space, mixed-use spaces, an amenity center, walking and biking trails, and common open space. Impacts to waters of the US associated with the completion of the Caleb's Creek community are limited to road crossings for the purpose of construction access to high-ground and for internal circulation roads supportive of the overall development, as well as utility crossings for sanitary sewer to serve the community.

## **Project Description**

The proposed project involves the development of the master-planned Caleb's Creek community. This development would consist of 19 road crossings and utility line crossings (sanitary sewer) that would provide supportive infrastructure to the master-planned Caleb's Creek community. In addition to the road and sewer crossings being requested under the scope of this Individual Permit, additional impacts associated with the project were requested under Nationwide Permits 3 and 14 in 2017 for existing dam repair and maintenance activities and 5 public thoroughfare road crossings, respectively.

To date, a school, portions of the sewer trunk line, and phases RL-1, 4, and 5 of the low-density residential phases have been constructed as part of the overall development without impacts. As previously mentioned, proposed dam maintenance and rehabilitation, as well as, construction of major public thoroughfare roads were proposed under Nationwide Permits in 2017. Although the proposed major thoroughfare roads lie within the project boundary, they are considered a separate and complete project with independent utility as part of the Town of Kernersville's *Land Use Plan – Infrastructure Improvements*, and would be constructed regardless of the completion of the Caleb's Creek community.

## **Avoidance and Minimization**

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

Changes to the project design since original conception in the early 2000s mainly relate to the residential product offered and the distribution and density at which the development is proposed. The project was always contemplated as mixed-use, residential, commercial, and office development located between the

Winston-Salem and Greensboro metropolitan regions, proximate to the Interstate 40 and Interstate 74 corridors. Currently, products associated with the development are neo-traditional in style, with greater density in built-upon area than was originally planned. The original recreational anchor for the development was changed with modified site designs in 2014 from rehabilitation of the existing golf course to passive recreation options, including walking and biking trails and open space. This change resulted in a reduction to proposed wetland impacts by approximately 4 acres.

Additionally, the orientation and placement of commercial and residential development avoids impacts to jurisdictional features. Proposed impacts were minimized to those necessary for infrastructure (i.e., construction access to high ground, internal circulation roads, and sanitary sewer).

The applicant proposes that box culverts be sized in consideration of natural stream design protocols and would be constructed with sills that would maintain natural stream bed material that is a minimum of 12 inches deep. There are several existing culverts within the project boundary that are aging and incorrectly constructed; the applicant proposes to replace these culverts and restore the ability for aquatic life passage during low-flow and drought conditions. Additionally, riprap would be pressed into streambanks instead of being placed directly into streambeds to prevent interference with aquatic life passage during low-flow and drought conditions.

Several of the proposed road and sanitary sewer crossings would utilize pre-existing crossing locations that have been previously impacted by road crossings or fairways from the former use of the property, and would be upgraded, as appropriate. Additionally, many of the utility crossings were designed to be co-located within roadway crossings.

Development would be completed in phases to limit the number of areas subject to impact at any one given time, and the limits of construction would be clearly demarcated for portions of the development under active construction. The overall project is anticipated to be constructed over a 10 to 20-year period. The entirety of the project would be constructed under an approved Sediment and Erosion Control plan, and would conform to measures outlined in the Stormwater Master Plan.

Concrete used for the construction of crossings would not be allowed to come into contact with surface waters until cured. Cofferdams and pump arounds would be utilized to establish work-in-the-dry conditions. All contours would be restored to previous conditions and fill slopes would be re-seeded with appropriate bio-engineering practices and allowed to re-naturalize.

Riparian buffers would be preserved to the maximum extent practicable in order to minimize impacts to aquatic and terrestrial wildlife resources, water quality, and aquatic habitat within and downstream of the project area. The applicant has designed a site plan that minimizes riparian habitat fragmentation through the establishment of dispersal corridors along all remaining streams.

### **Compensatory Mitigation**

The applicant proposes to mitigate for unavoidable impacts to jurisdictional waters of the United States at a 1:1 ratio through a phased payment schedule to the North Carolina Division of Mitigation Services (DMS). The permittee proposes to make payments to the North Carolina Division of Mitigation Services (DMS) according to a phased schedule, commensurate with construction, sufficient to perform the restoration of 557 linear feet of warm water stream in the Yadkin Pee Dee River Basin, Cataloging Unit 03040103.

### **Essential Fish Habitat**

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial 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:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- 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).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected

by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).

- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- 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 would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat.
- 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. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. 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 December 27, 2018, 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):**

- The application did not include 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 did not include the consistency certification, the Corps will request, upon receipt, 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, January 3, 2019. Comments should be submitted to Mrs. Jean B. Gibby, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587, at (919) 554-4884, ext. 24.