



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: December 17, 2014
Comment Deadline: January 5, 2015
Corps Action ID Number: SAW-2009-01304

The Wilmington District, Corps of Engineers (Corps) received an application from Rocky Ford East, LLC (RFE Farms) seeking Department of the Army authorization to fill and subsequently flood approximately 4,092 linear feet of stream and 0.14 acre of wetlands, associated with the construction of an open water lake for competitive water skiing in 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 <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

Applicant: RFE Farms, LLC
Attn: Clay Neill
Post Office Box 3916
Hickory, North Carolina 28603

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

Directions to Site: The site is located on the east side of Rocky Ford Road, and to the east of US Hwy 321, near Newton, Catawba County, North Carolina. This site is located in the South Fork Catawba Watershed of the Santee River Basin (8-Digit Cataloging Unit 03050102). From US Hwy 321, take exit 37 for NC Hwy 10 east, after approximately 1.8 miles turn right on Startown Road. After approximately 1 mile turn right on Rocky Ford Road. Go approximately 1.1 miles and the project area is located immediately east of Rocky Ford Road (See Figure 1 and 2).

Project Area (acres): ~150
Nearest Waterway: South Fork Catawba River
Latitude and Longitude: 35.6184N, 81.2743W

Nearest Town: Newton
River Basin: Santee

Existing Site Conditions

A majority of the site is currently cleared and in pasture. There are two jurisdictional streams with perennial flow located on the site with small pockets of adjacent wetlands. The stream channels drain to the South Fork of the Catawba River, which ultimately drains to the Catawba River, in the Santee River Basin. The Catawba River is considered a navigable water immediately below the Mountain Island Lake Dam in Mecklenburg County, North Carolina. Approximately 5,500 linear feet of stream channel and 0.15 acre of wetlands are present on the site. The stream channels, located in a headwater landscape position, are approximately 3-5' wide and have a clay/silt substrate. These channels exhibit continuous bed/bank, perennial flow, and a weak presence of macro-invertebrates. Due to historical logging and on-going cattle access, the streams lack a riparian buffer and exhibit signs of bank erosion and channel incision. The wetlands on-site are small pockets with herbaceous vegetation located immediately adjacent to existing stream channels. The area surrounding the site consists of a mix of wooded land, open pasture and low-density residential housing.

Applicant's Stated Purpose

According to the applicant, the purpose of this project is to construct a competition grade waterski lake to complement the adjacent (and previously permitted) ski lake in order to host regional and national events.

Project Description

A permit application was originally submitted on July 13, 2009 with supplemental information submitted on August 14, 2009, November 25, 2009, and September 2, 2011. A Public Notice was issued on October 3, 2011 with a 30-day comment period deadline ending on November 2, 2011. RFE Farms' initial request involved the discharge of fill material into 145 linear feet of stream channel and 0.04 acres of wetlands for the dam construction which would subsequently flood 4,122 linear feet and 0.10 acres of wetlands (totaling impacts of 4,267 linear feet of stream and 0.14 acres of wetlands) in order to construct an on-line impoundment for a recreational ski lake. On December 10, 2012, the United States Army Corps of Engineers, Wilmington District, denied RFE Farms a Department of the Army permit. The District's denial was based on noncompliance with the regulations in 40 C.F.R. 230 (known as the Section 404(b)(1) Guidelines).

Mr. Clay Neill, Registered Agent for RFE Farms, appealed the denial to the Division Engineer, South Atlantic Division. The Division Engineer received Mr. Neill's appeal on February 19, 2013, and accepted it as complete for consideration. By memorandum dated July 8, 2014, the Division Engineer found that Mr. Neill's appeal had merit, and remanded the permit decision to the Wilmington District Engineer for action. Therefore, pursuant to 33 CFR § 331.10 (b), we provided notification, by letter dated July 25, 2014, to all parties who participated in the original

permit review seeking their comments regarding our reconsideration of the RFE Farms permit decision. By letter dated August 27, 2014, all comments received were provided to the applicant for response.

Within the scope of the remand review, the applicant provided additional and revised project information. In accordance with 33 CFR § 331.10 (b) and 325.7, the Wilmington District has determined that additional public review and consideration of the project is warranted. At this time the applicant is proposing to create a 21.1 acre impoundment by constructing an earthen dam within stream channels on the property. This acreage does not include the proposed littoral shelf to be constructed within the proposed impoundment. The proposed dam and two crossings on the upper end of the proposed impoundment would fill approximately 345 linear feet of stream channel and 0.04 acre of wetlands. The fill would include 200 linear feet for the dam and 145 linear feet for the two crossings which would include 20 feet of littoral shelf adjacent to each crossing. Subsequently, approximately 3,747 linear feet of stream and 0.10 acre of wetlands would be flooded as a result of the dam construction. The proposed dam height is 34 feet which will include 4 feet of freeboard. Figures showing the project details are attached.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: RFE Farms has provided updated analysis of alternatives previously examined as well as information regarding sites that were not available during the initial permit review. In examining the alternatives, the following factors and criteria were considered: aquatic resources, impoundment size and configuration, proximity to a municipality, proximity to another appropriate ski lake, property availability and safety. The project footprint has been limited to the greatest extent practicable.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant proposes to mitigate for impacts to stream channels and wetlands by creating/preserving a minimum 2.2 acre littoral shelf around the perimeter of the lake once constructed and a 60' wide maintained vegetated buffer landward of the shoreline. The applicant is also proposing Enhancement mitigation for 2,308 linear feet of remaining channel on the property through a deed restriction. Enhancement mitigation is proposed by fencing/removal of cattle from riparian areas, planting vegetation, spot treatment of invasive species and protected buffers ranging from 60 to approximately 436 feet from the edge of the remaining channels. A preliminary compensatory mitigation figure is attached.

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:

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 an updated concurrence from the SHPO (or THPO). The Corps received comments from the State Historic Preservation Office by letter dated May 17, 2011 that stated, "We have conducted a review of the project and are aware of no historic resources which would be affected by the project."

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.

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 January 5, 2015 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.

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 shall 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 5, 2014. Comments should be submitted to Steve Kichefski, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980.

81.283° W

W

81.2666666° W

81.250000° W

35.6333333° N

35.6333333° N

35.6166666° N

35.6166666° N

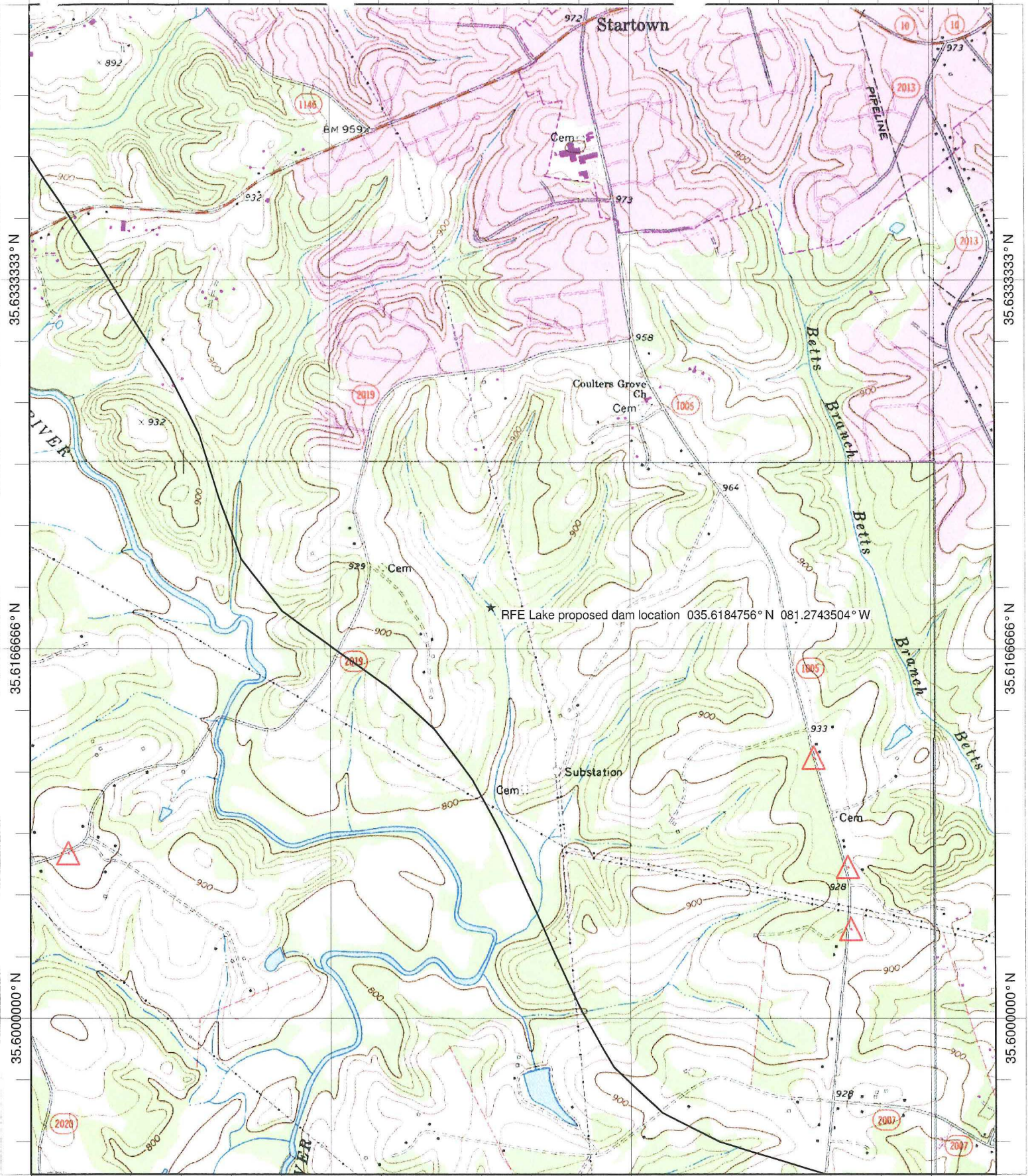
35.6000000° N

35.6000000° N

81.2833333° W

81.2666666° W

81.250000° W

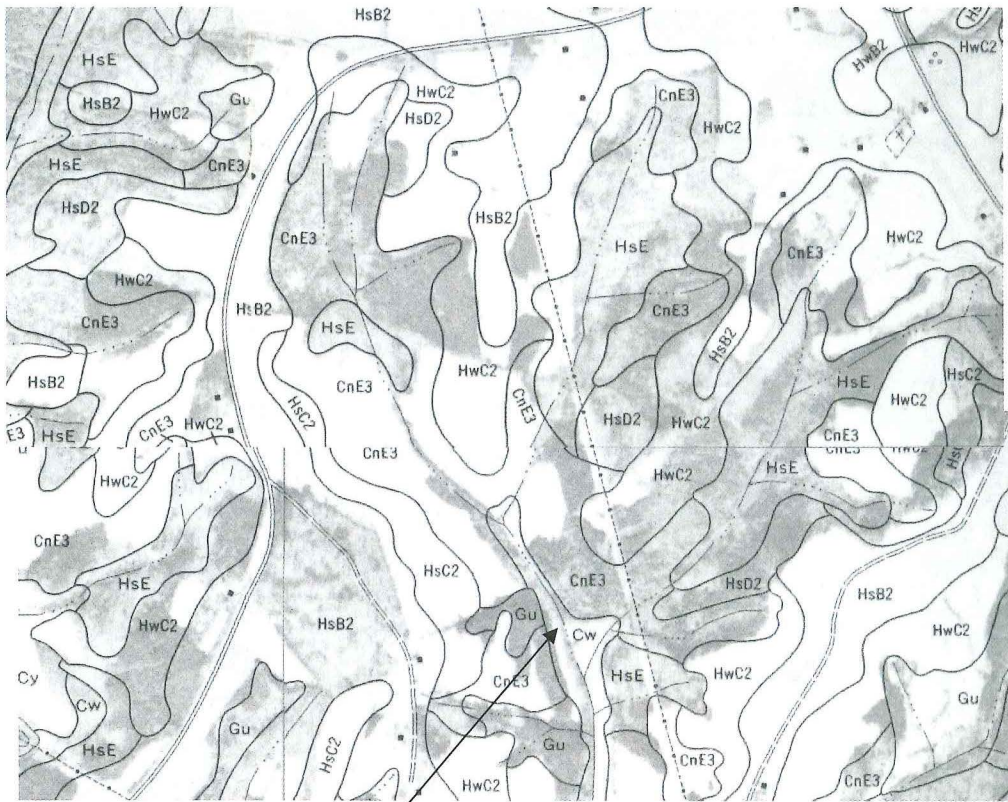


Name: REEPSVILLE
 Date: 7/2/2009
 Scale: 1 inch equals 2000 feet

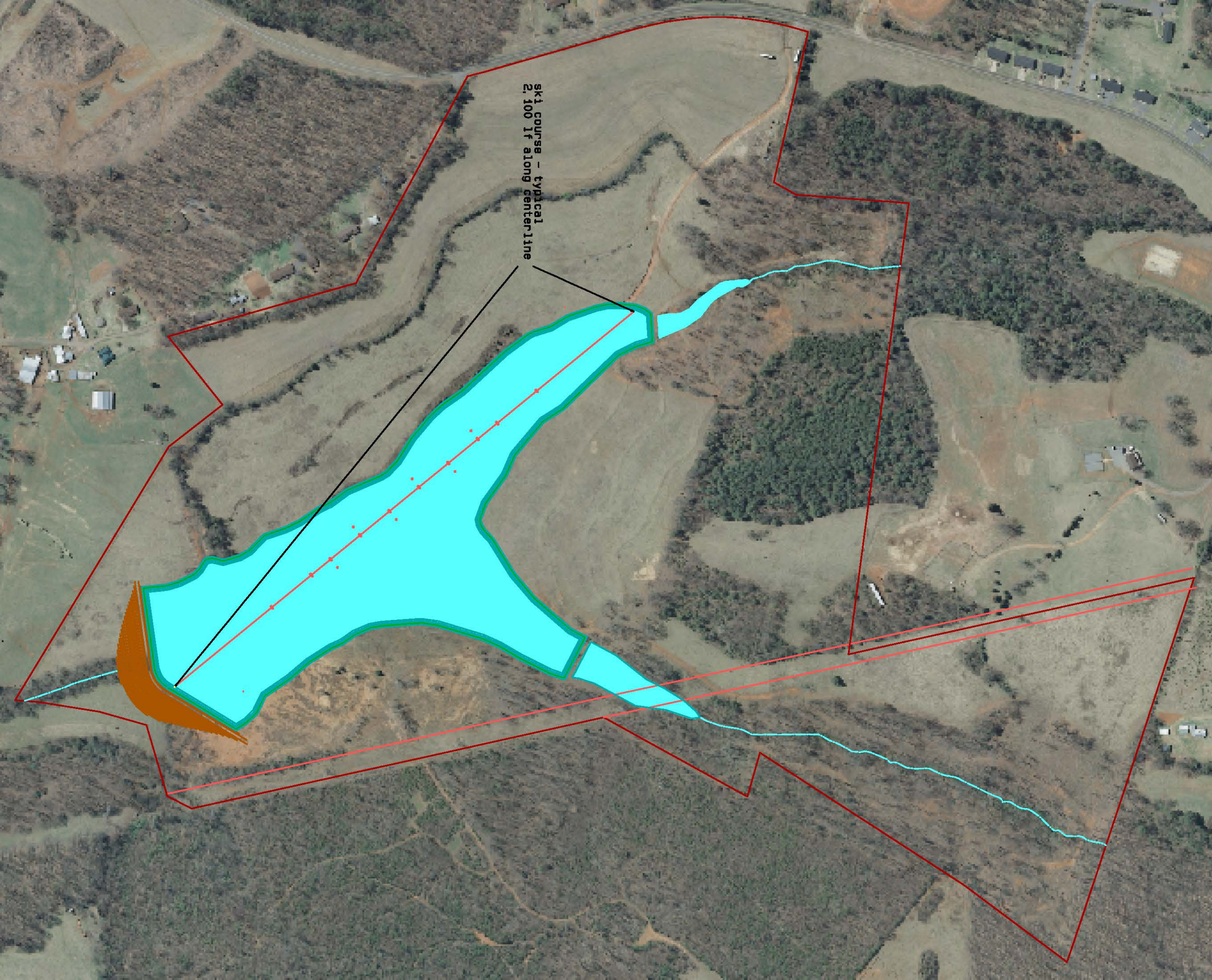
Location: 035.6193840° N 081.2732037° W
 Caption: Rocky Ford East Lake
 Catawba County, NC

Rocky Ford East Lake
Catawba County, NC

Portion of Catawba County Soil Survey

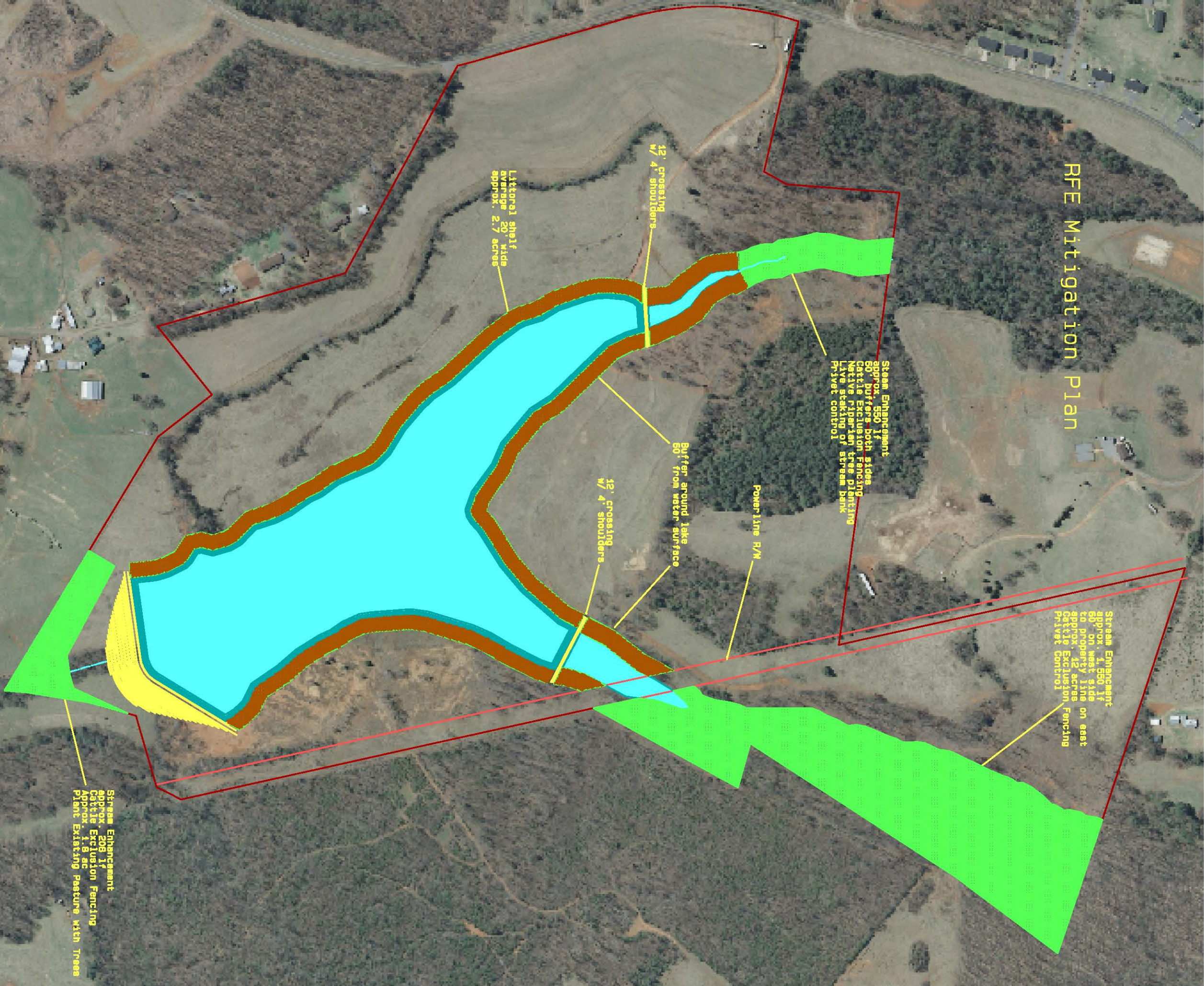


Proposed Dam Location



ski course - typical
2,100 ft along centerline

RFE Mitigation Plan



RFE conceptual riser detail

