



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: March 15, 2007
Comment Deadline: April 13, 2007
Corps Action ID #: 2007-815-381

The Wilmington District, U.S. Army Corps of Engineers has received an application from Chestnut Oak, LLC seeking Department of the Army authorization to impact 5,869 linear feet of an unnamed tributary to Walnut Creek and 0.01 acre of wetlands associated with the construction of two open water impoundments as amenities to the proposed residential development known as The Highlands at Walnut Creek, on the west side of County Line Road, in Polk and Rutherford Counties, 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 www.saw.usace.army.mil/wetlands

Applicant: Chestnut Oak, LLC
P.O. Box 454
Lake Lure, NC 28746

Agent (if applicable): ClearWater Environmental Consultants, Inc.
Attn: Clement Riddle
718 Oakland Street
Hendersonville, NC 28791

Authority

The Corps will evaluate this application and decide whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of Section 404 of the Clean Water Act (33 U.S.C. 1344).

Location

The proposed project known as Highlands at Walnut Creek is located on the west side of County Line Road, west of Rutherfordton, in Rutherford and Polk Counties, North Carolina (35.3706°N, 82.1106°W). The site contains wetlands and stream channels with indicators of ordinary high water marks that are unnamed tributaries to Walnut Creek in the Broad River Basin. The Broad River ultimately flows to the Atlantic Ocean through the Congaree and Santee Rivers in South Carolina.

Existing Site Conditions

The project site is 582 acres in size and consists of wooded land. The site is bordered by County Line Road to the west and undeveloped, forested areas along the remaining property boundaries. State Road-1316 is located just to the south of the property. Elevations range from approximately 930 feet msl to 1,125 feet msl in the interior of the property. The property has been previously used for Virginia pine silviculture and almost all areas of the site are dominated by Virginia pine with very little understory or variation in community types.

The site contains five (5) different habitat types. These habitat types include Virginia pine plantation, Piedmont/low mountain alluvial forest, wetland seeps, streambed and banks, and maintained utility line right of way. The upland community of Virginia Pine Plantation comprises approximately 95 percent of the project site. The overstory is dominated by Virginia pine (*Pinus virginiana*) with some yellow poplar (*Liriodendron tulipifera*), red maple (*Acer rubrum*), and (*Carya* sp.) hickory observed in the coves. Saplings of the species listed above along with dogwood (*Cornus florida*) and American holly (*Ilex opaca*), dominate the midstory of this area. Due to the shade created by the dense overstory the herbaceous layer is nearly nonexistent. Species that do occur in the herbaceous layer are Christmas fern (*Polystichum acrostichoides*), blackberry (*rubus* sp.), and greenbriar (*smilax* spp.).

The Piedmont/low mountain alluvial forest community type occurs along the margins of larger on-site streams. Piedmont/Low Mountain Alluvial forest comprises less than five percent of the project site. This community is influenced by intermittent flooding events. Dominant tree species include yellow poplar, hickory, sweet gum (*Liquidambar styraciflua*), river birch (*Betula nigra*), and red maple. The shrub layer includes spicebush (*Lindera melissifolia*) and saplings of dominant trees. Species observed in the herbaceous layer include Christmas fern, jewelweed (*Impatiens capensis*), *Galax aphylla*, and immature trees and shrubs. The maintained utility line right of ways are limited to a linear mowed right of way through the property. The vegetation consists of blackberry, broom sedge (*Andropogon virginicus*), and early successional tree species from the surrounding forest. These areas have been maintained through mowing and the spraying of herbicide.

Wetland depressions and seeps on the site total 0.43 acre which is less than 1 percent of the site. On-site wetlands are associated with stream areas. The overstory is dominated by red maple, yellow poplar, and sweet gum. Plants observed in the shrub layer include spicebush and rosebay (*Rhododendron maximum*). Plants observed in the herbaceous layer include soft rush (*Juncus effusus*), royal fern (*Osmunda regalis*), jack-in-the-pulpit (*Arisaema triphyllum*), cinnamon fern (*Osmunda cinnamomea*), and unknown grasses (*Carex* sp.). Other aquatic resources on the site include the streambeds and banks of unnamed tributaries of Walnut Creek. Approximately 19,290 linear feet of stream channels (intermittent and perennial) are located on the site. Permanently rooted aquatic plants are practically non-existent in on-site streams. Most streams are incised and are bordered by hardwood forests dominated by yellow poplar, red maple, sweetgum, and river birch, all commonly observed in stream-side canopies on site. In addition to saplings of the above trees, species commonly observed in the shrub layers along streams include Rose Bay and mountain laurel (*Kalmia latifolia*). The site contains fifteen (15) unnamed perennial and intermittent tributaries that originate or cross portions of the site. The tributaries also have seepage areas and/or springheads associated with them. All tributaries located on the property flow into Walnut Creek, which is classified as "C" by the N.C. Division of Water Quality. Walnut Creek drains into the Green River approximately 1.3 miles

downstream from the project site and is contained in the Broad River basin. At the confluence with Walnut Creek, the Green River is classified as “C” by the N.C. Division of Water Quality and is not listed on the 2004 N.C. 303(d) list for impaired water bodies. Based upon the Stream Quality Assessment Worksheets submitted with the application, stream channels on the site are considered to be good quality.

Based upon information provided by The U.S. Fish and Wildlife Service and the North Carolina Natural Heritage Program, five federally listed species are known to occur or have the potential to occur in Rutherford and Polk Counties. A comprehensive threatened and endangered species survey was conducted on the site. No federally listed species were observed upon the completion of this survey.

Applicant’s Stated Purpose

The purpose of the project, as stated by the applicant, is to construct two open water impoundments to provide recreational opportunities for residents of the proposed surrounding residential development.

Project Description

The applicant is proposing to construct two on-line impoundments by constructing earthen dams. The table below provides a summary of the type of impacts to stream channels for each lake.

Impact	Lake #1 (22-acres)	Lake #2 (1-acre)
<i>Stream Channel Fill</i>	<i>1,899 linear feet</i>	<i>138 linear feet</i>
<i>Stream Channel Flooding</i>	<i>3,432 linear feet</i>	<i>400 linear feet</i>
Total Impacts	5,869 linear feet	

The applicant is proposing to impact a total of 5,869 linear feet of perennial/intermittent stream channels. The applicant is proposing to place fill into approximately 2,037 linear feet of perennial/intermittent stream channel for construction of two dams. Due to the construction of the dams, the applicant is proposing to flood approximately 3,832 linear feet of perennial/intermittent stream channel. The applicant is also proposing to flood 0.01 acre of wetland associated with the construction of Lake #1. The applicant previously received nationwide permit (NWP) authorization to construct two road crossings for phase 1 of the development on May 11, 2006. Impacts previously authorized total 149 linear feet of stream channel. Currently, one of these culverts has been installed as part of Phase I. There are no additional impacts to aquatic resources associated with the construction of utilities. The development will also be constructed with a dry hydrant system that will use water from the lakes for fire protection. Both lakes will have a subsurface water cold water release in order to minimize downstream aquatic resources. The applicant is proposing a littoral shelf around Lake #1 to increase water quality benefits.

The applicant is proposing mitigation for impacts to on-site channels by making payment to the North Carolina Ecosystem Enhancement Program (NCEEP) in the amount necessary to restore 2,186 linear feet of stream channel in the Broad River basin. The payment into NCEEP is proposed to compensate for impacts associated with dam construction to 2,037 linear feet of stream channel at a 1:1 ratio. The

applicant is also proposing to make payment into NCEEP at a 1:1 ratio to compensate for the previously permitted impacts (149 linear feet). The applicant is also proposing to preserve the remaining 13,010 linear feet of stream channel and 0.42 acre of wetlands on the site with approximately 120-foot wide riparian buffers (average of 60-feet on each side). With these buffers, the applicant is proposing to preserve approximately 36 acres of upland buffers. The applicant is proposing to preserve these areas in perpetuity using a conservation easement or other approved preservation mechanism.

Other Required Authorizations

This notice and all applicable application materials are being forwarded to the appropriate State agencies for review. The Corps will generally not make a final permit decision until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice combined with appropriate application fee at the North Carolina Division of Water Quality central office in Raleigh will constitute initial receipt of an application for a 401 Water Quality Certification. A waiver will be deemed to occur if the NCDWQ fails to act on this request for certification within sixty days of the date of the receipt of this notice in the NCDWQ Central Office. Additional information regarding the Clean Water Act certification may be reviewed at the NCDWQ Central Office, 401 Oversight and Express Permits Unit, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260 Attention: Ms Cyndi Karoly by April 13, 2007.

Essential Fish Habitat

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The Corps' initial determination is that the proposed project will not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

Cultural Resources

The Corps has consulted the latest published version of the National Register of Historic Places and is not aware that any registered properties, or properties listed as being eligible for inclusion therein are located within the project area or will be affected by the proposed work. Presently, unknown archeological, scientific, prehistoric, or historical data may be located within the project area and/or could be affected by the proposed work.

Endangered Species

The Corps has 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 has determined pursuant to the Endangered Species Act of 1973, that the proposed project will have no effect on federally listed endangered or threatened species or their formally designated critical habitat.

Evaluation

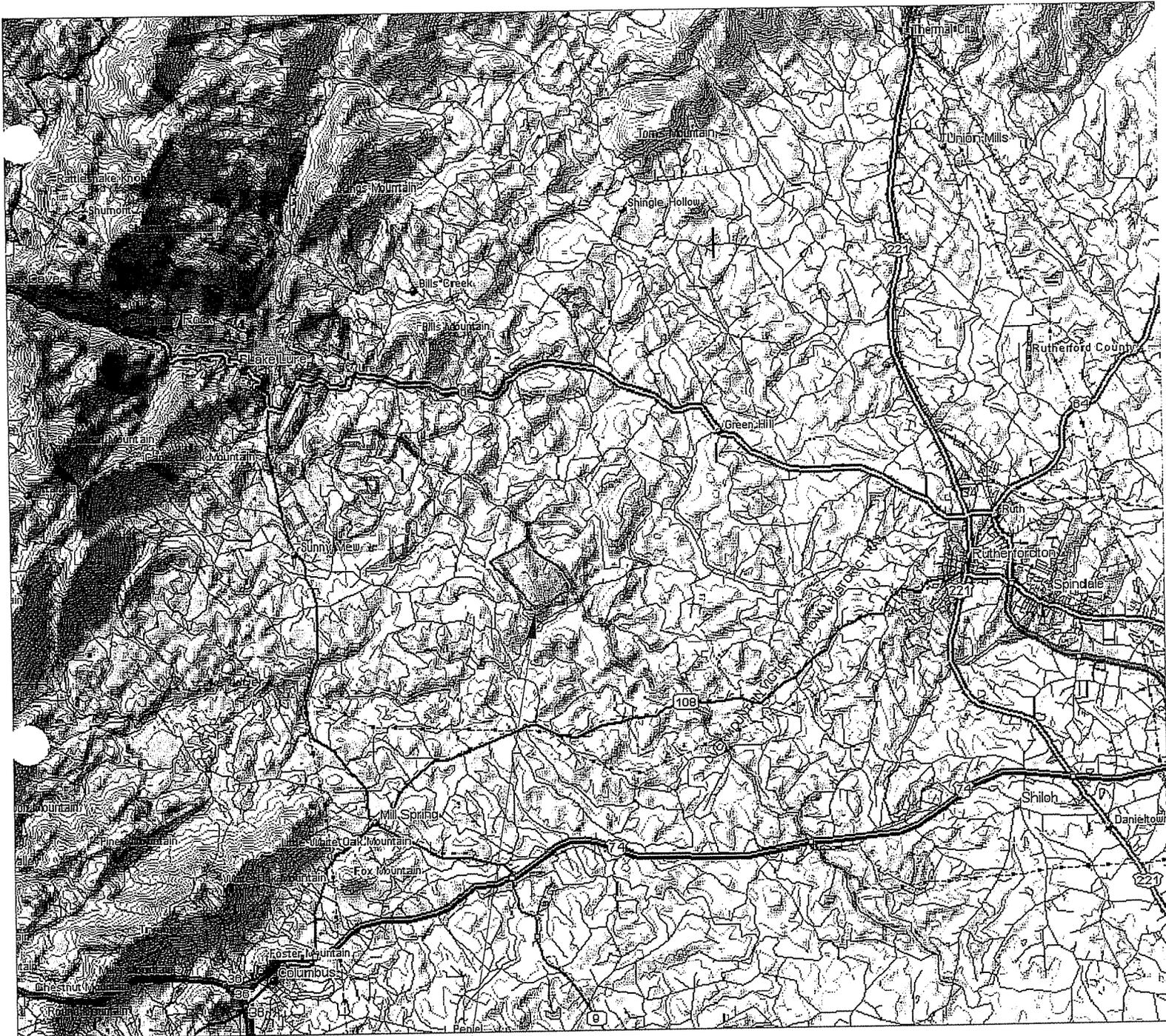
The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably 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 is soliciting comments from the public; Federal, State and local agencies and officials; 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 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.

Written comments pertinent to the proposed work, as outlined above, will be received by the Corps of Engineers, Wilmington District, until 5pm, April 13, 2007. Comments should be submitted to Ms Amanda Jones, US Army Corps of Engineers, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006. Questions about the proposed action can be directed to Ms Amanda Jones, Project Manager, Regulatory Division, telephone: (828) 271-7980 extension 231.



SITE LOCATION



SOURCE: DeLorme TopoUSA 3.0

ClearWater
Environmental Consultants, Inc.

718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

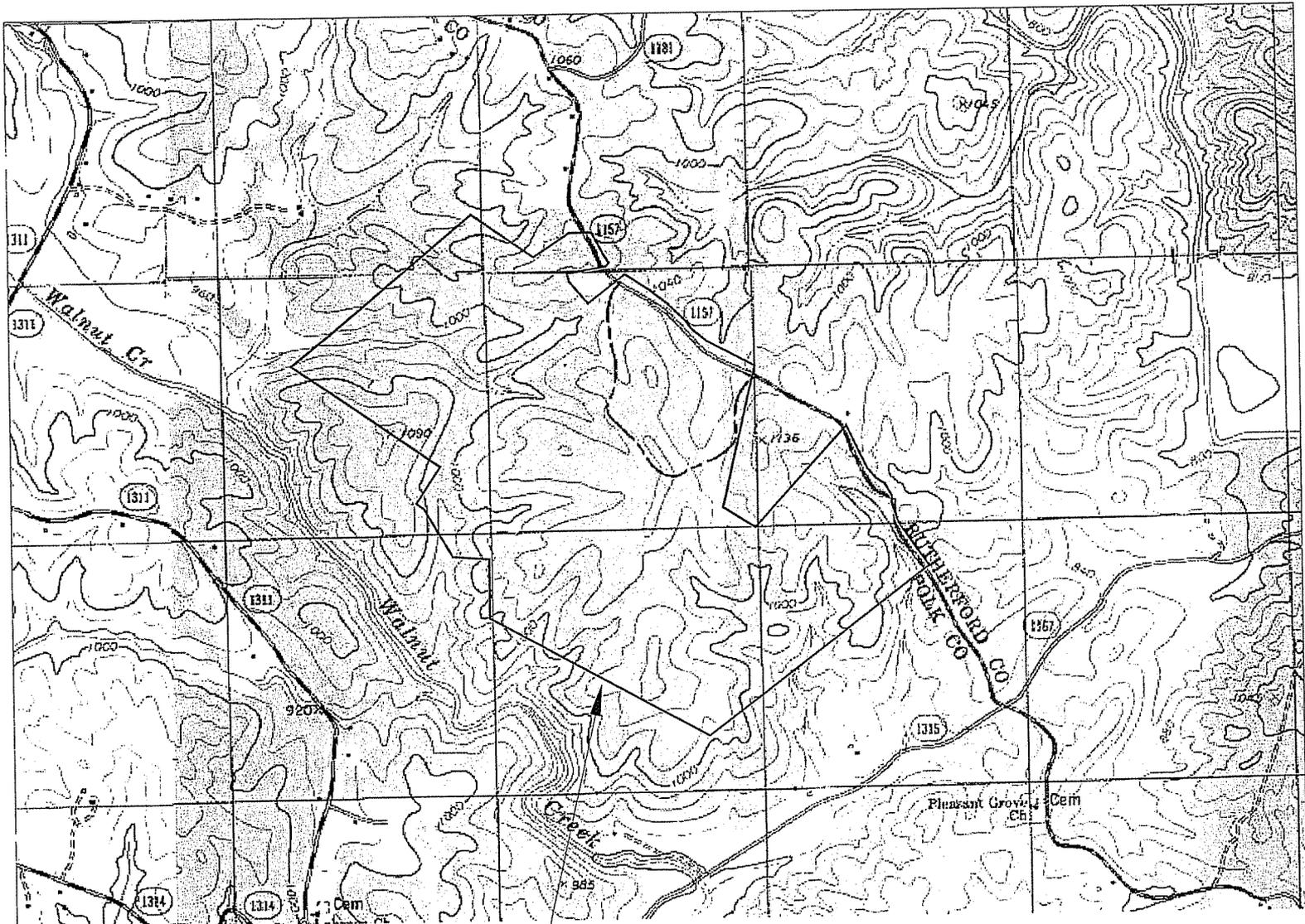
1 INCH = 20K FEET
DRAWN BY: CGG
DATE: 07FEB2007
CEC PROJECT NO.: 409

THE HIGHLANDS AT WALNUT CREEK
SITE LOCATION MAP

POLK/RUTHERFORD COUNTIES, NC

CHESTNUT OAK, LLC

SHEET NO.
1
OF 7



SITE LOCATION

SOURCE: DELORME 3D TOPO
SHINGLE HOLLOW & PEA RIDGE QUADS



ClearWater
Environmental Consultants, Inc.

718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

1 INCH = 2000 FEET
DRAWN BY: CSG
DATE: 07FEB2007
CEC PROJECT NO.: 409

THE HIGHLANDS AT WALNUT CREEK
USGS TOPO MAP

POLK/RUTHERFORD COUNTIES, NC

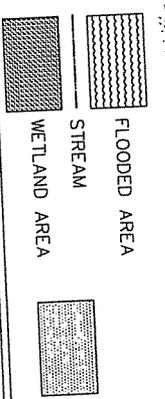
CHESTNUT OAK, LLC

SHEET NO.

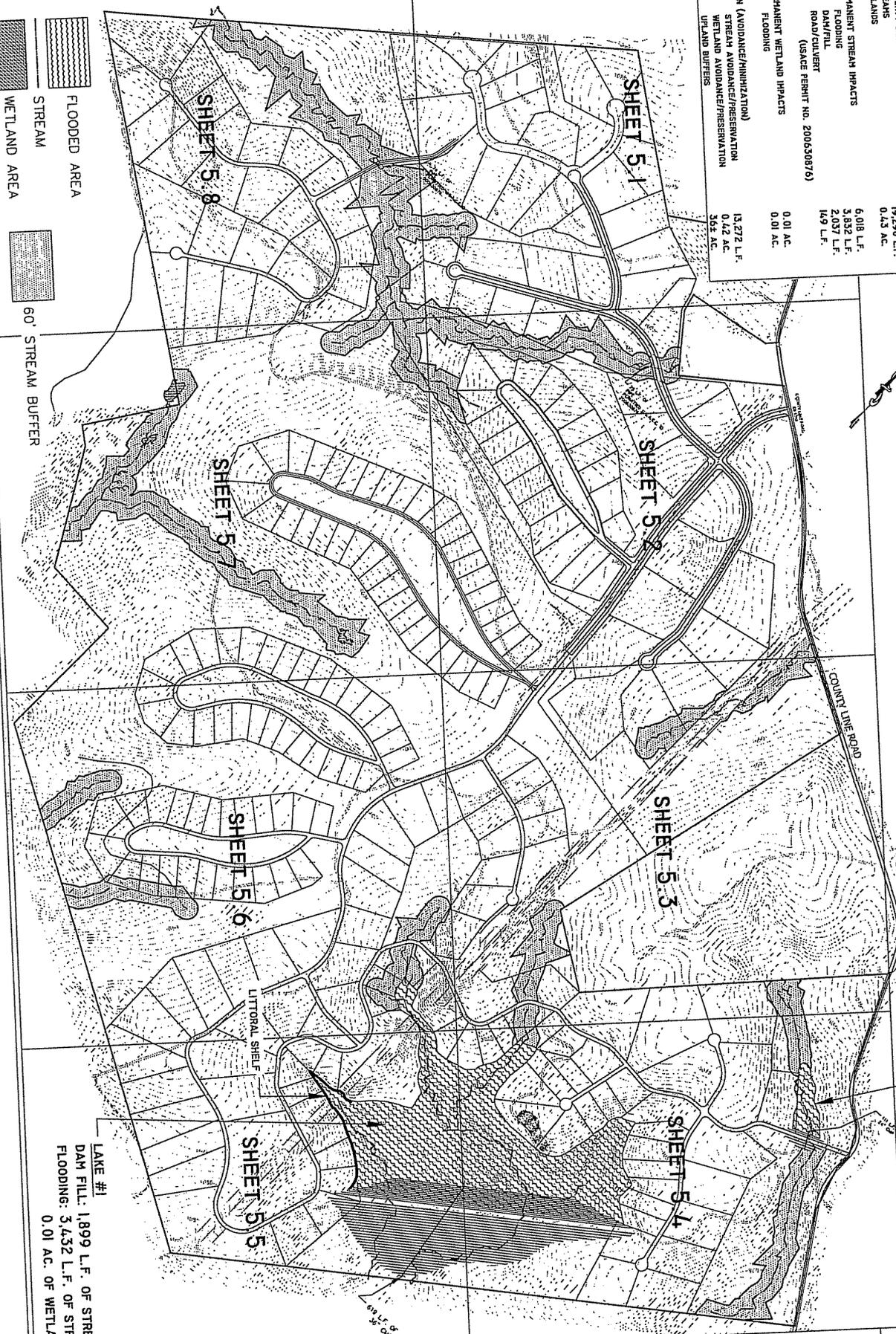
2

OF 7

TOTAL PROPERTY SIZE	582 AC.
TOTAL STREAMS	19,290 L.F.
TOTAL WETLANDS	0.43 AC.
TOTAL PERMANENT STREAM IMPACTS	6,018 L.F.
FLOODING	3,832 L.F.
DAM/FILL	2,037 L.F.
ROAD/CULVERT	149 L.F.
(USACE PERMIT NO. 200530876)	
TOTAL PERMANENT WETLAND IMPACTS	0.01 AC.
FLOODING	0.01 AC.
HITIGATION (AVOIDANCE/MINIMIZATION)	13,272 L.F.
STREAM AVOIDANCE/PRESERVATION	0.42 AC.
WETLAND AVOIDANCE/PRESERVATION	363 AC.
WETLAND BUFFERS	



SOURCE: ODOM HOLLIFIELD & ASSOC., INC.



LAKE #2
DAM FILL 138 L.F. OF STREAM
FLOODING: 400 L.F. OF STREAM

LAKE #1
DAM FILL: 1,899 L.F. OF STREAM
FLOODING: 3,432 L.F. OF STREAM
0.01 AC. OF WETLAND

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Environmental Consultants, Inc.

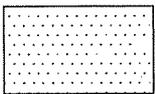
718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

1 INCH = 500 FEET
DRAWN BY: CMA
DATE: 07/28/2007
CCC PROJECT NO.: 409

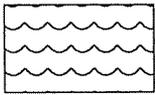
THE HIGHLANDS AT WALNUT CREEK
MASTER WETLAND PLAN
POLK/RUTHERFORD COUNTIES, NC
CHESTNUT OAK, LLC

SHEET NO.
5.0

TOTAL PROPERTY SIZE	582 AC.
TOTAL STREAMS	19,290 L.F.
TOTAL WETLANDS	0.43 AC.
TOTAL PERMANENT STREAM IMPACTS	6,018 L.F.
FLOODING	3,832 L.F.
DAM/FILL	2,037 L.F.
ROAD/CULVERT	149 L.F.
(USACE PERMIT NO. 200630876)	
TOTAL PERMANENT WETLAND IMPACTS	0.01 AC.
FLOODING	0.01 AC.
MITIGATION (AVOIDANCE/MINIMIZATION)	
STREAM AVOIDANCE/PRESERVATION	13,272 L.F.
WETLAND AVOIDANCE/PRESERVATION	0.42 AC.
UPLAND BUFFERS	36± AC.



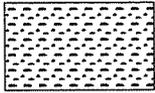
60' STREAM BUFFER



FLOODED AREA

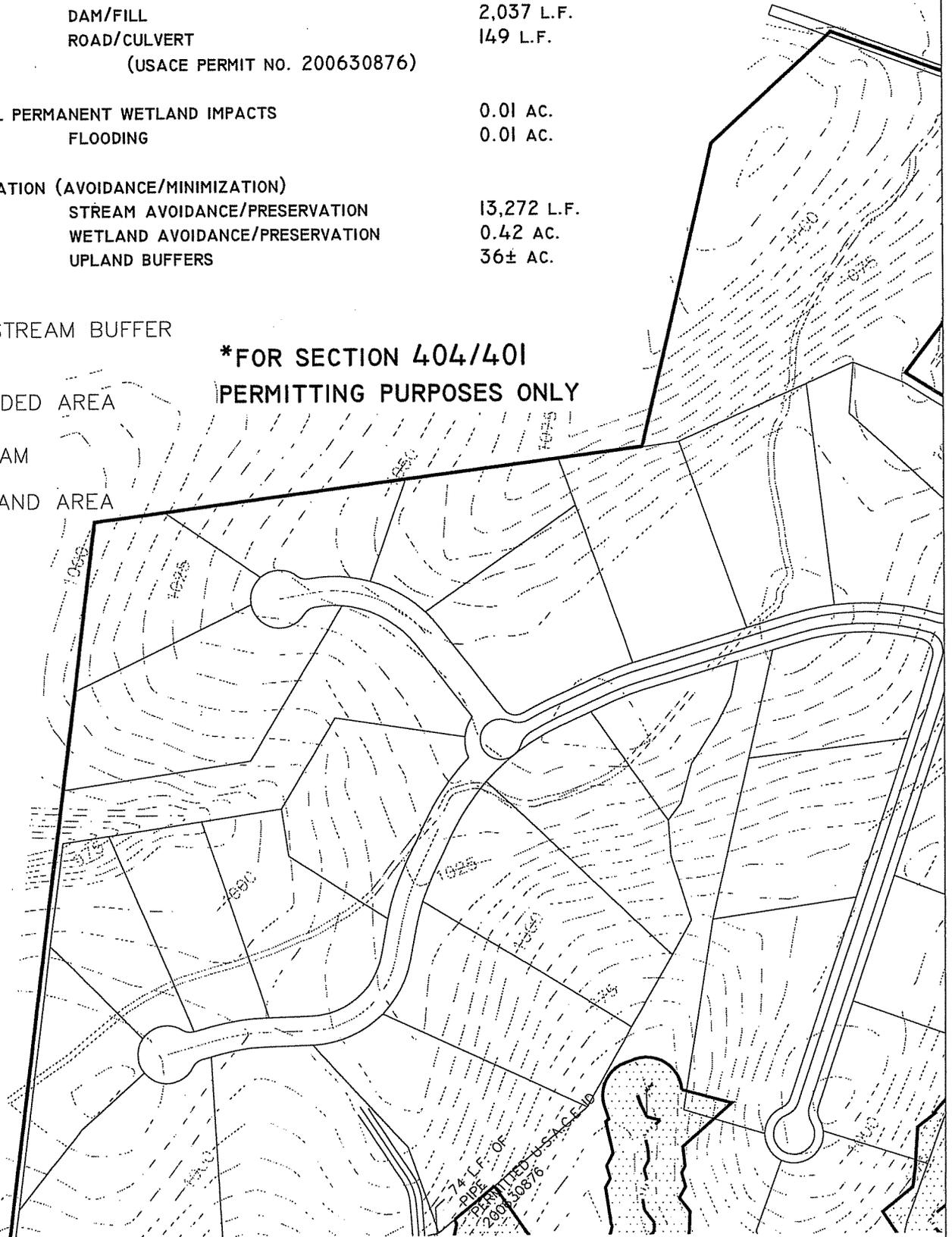


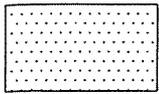
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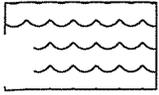
WETLAND AREA

***FOR SECTION 404/401
PERMITTING PURPOSES ONLY**





60' STREAM BUFFER



FLOODED AREA



STREAM



WETLAND AREA

***FOR SECTION 404/401
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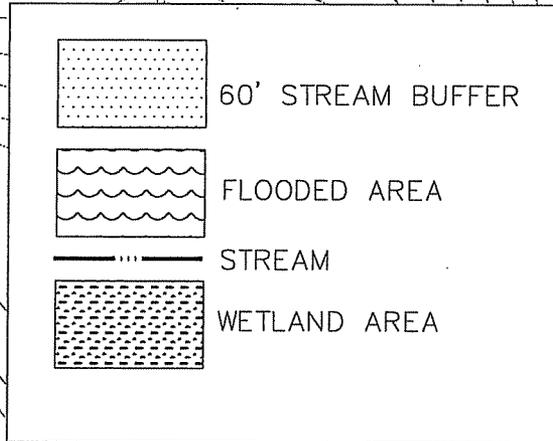
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DATE: 07/19/2007
CEC PROJECT NO.: 409

THE HIGHLANDS AT WALNUT CREEK
WETLAND DETAIL SHEET 2
POLK/RUTHERFORD COUNTIES, NC
CHESTNUT OAK, LLC

SHEET NO.
5.2

COUNTY LINE ROAD

*FOR SECTION 404/401
PERMITTING PURPOSES ONLY

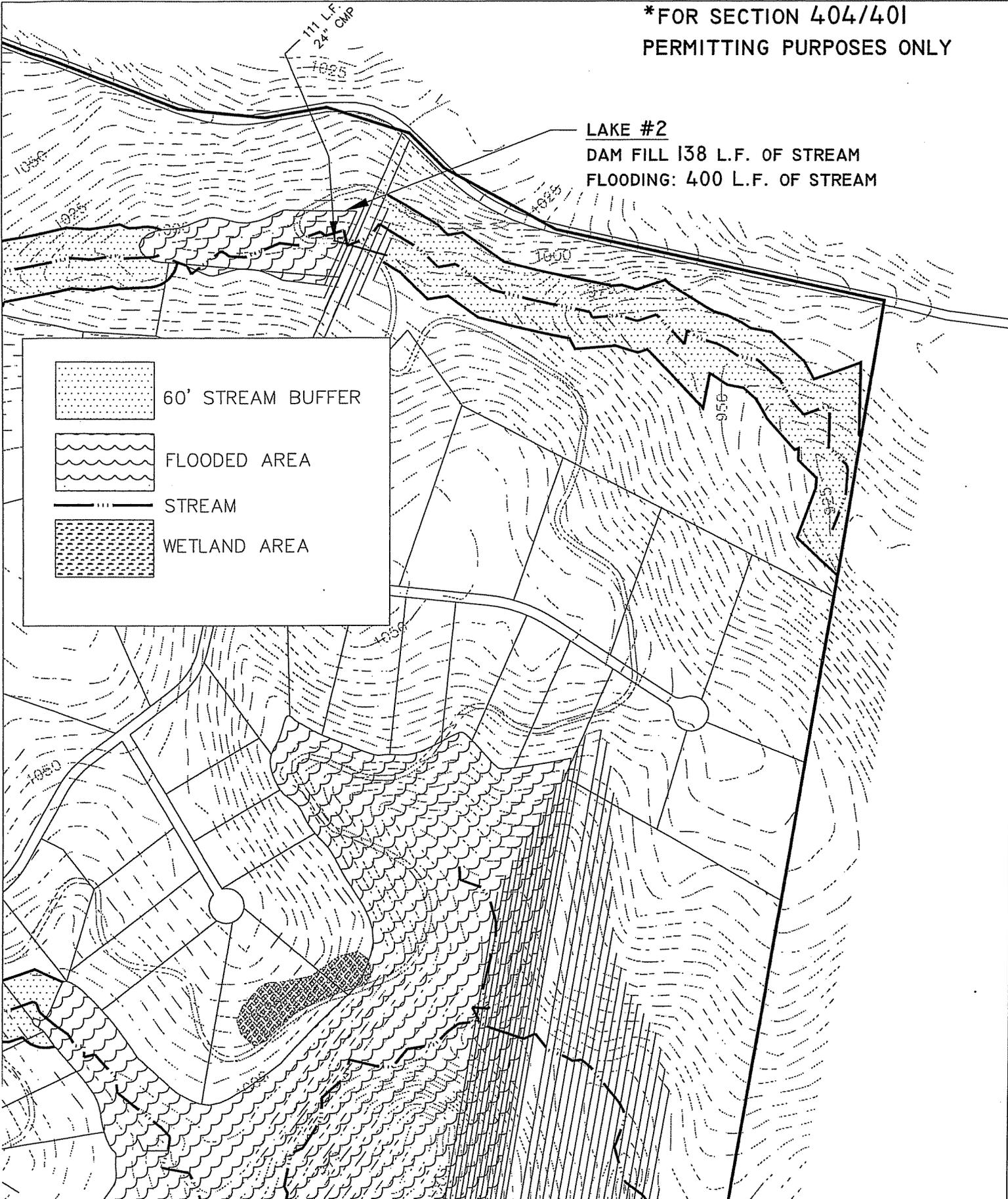


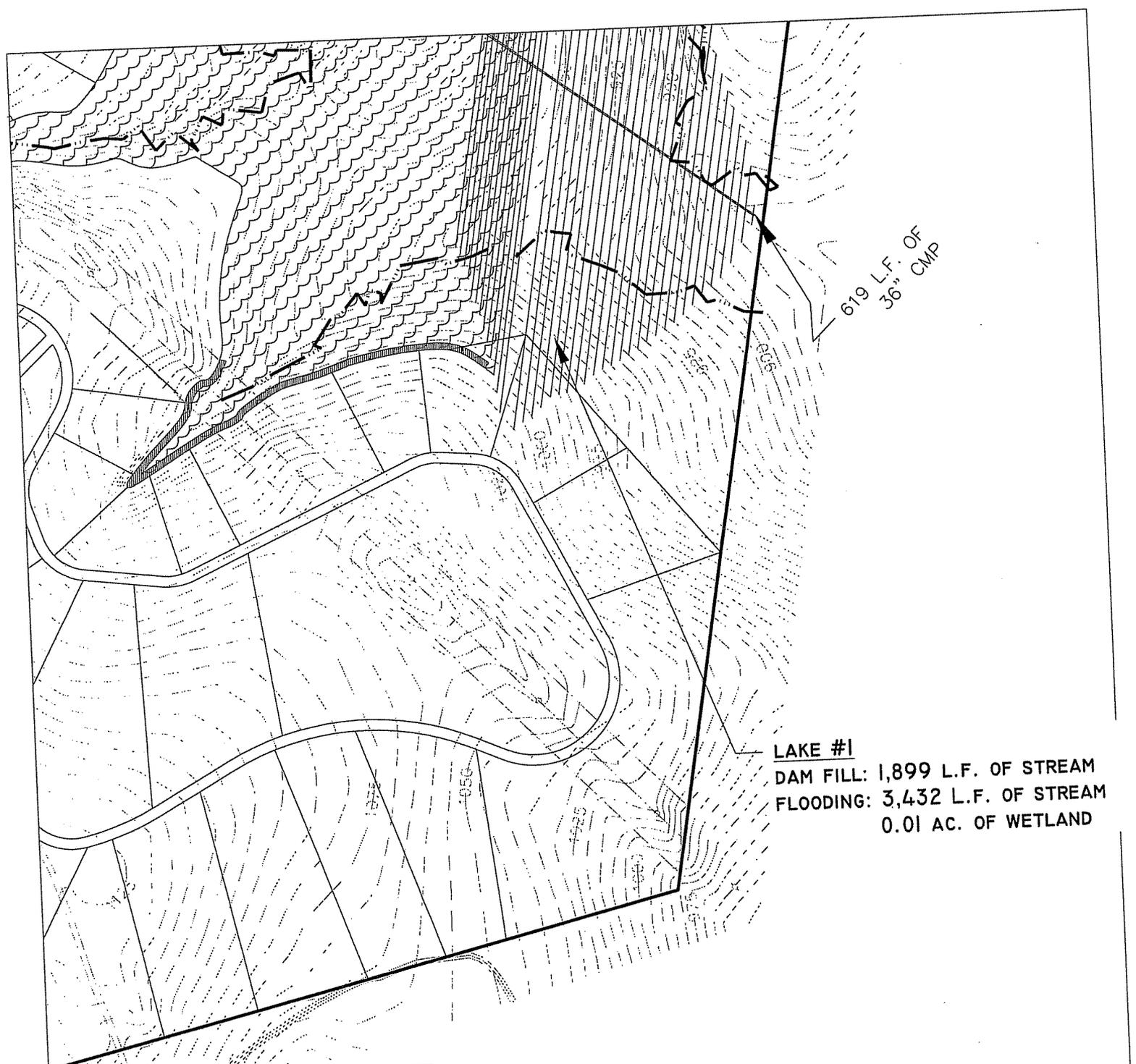
60' STREAM BUFFER
FLOODED AREA
STREAM
WETLAND AREA

*FOR SECTION 404/401
PERMITTING PURPOSES ONLY

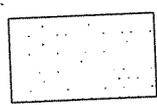
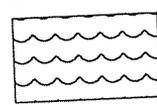
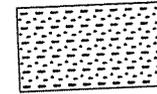
LAKE #2
DAM FILL 138 L.F. OF STREAM
FLOODING: 400 L.F. OF STREAM

60' STREAM BUFFER
FLOODED AREA
STREAM
WETLAND AREA





LAKE #1
 DAM FILL: 1,899 L.F. OF STREAM
 FLOODING: 3,432 L.F. OF STREAM
 0.01 AC. OF WETLAND

-  60' STREAM BUFFER
-  FLOODED AREA
-  STREAM
-  WETLAND AREA

***FOR SECTION 404/401
 PERMITTING PURPOSES ONLY**

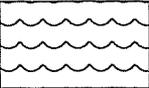
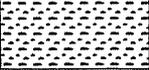
ClearWater
 Environmental Consultants, Inc.

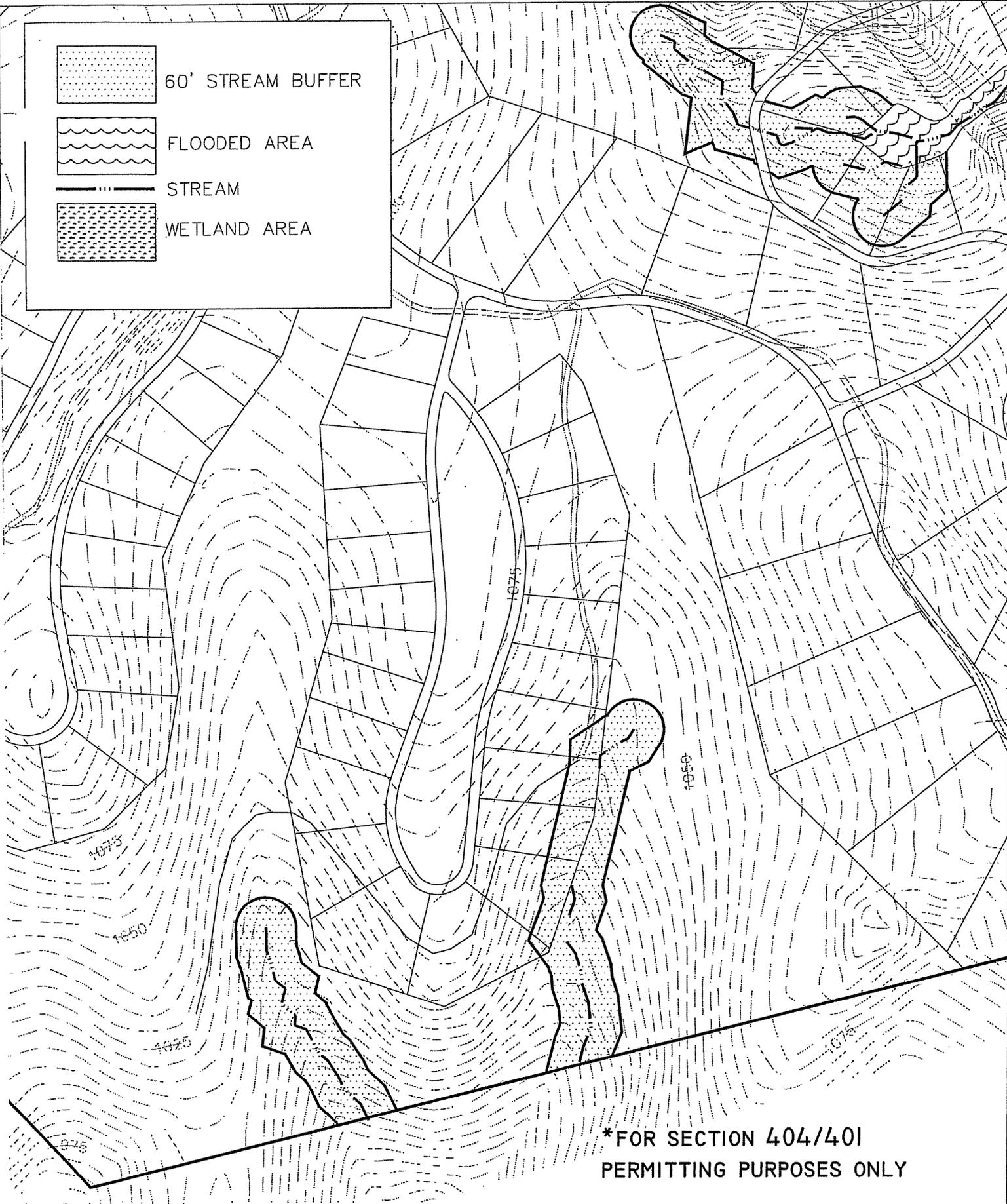
718 OAKLAND ST
 HENDERSONVILLE NC 28791
 PHONE: (828) 698-9800
 FAX: (828) 698-9003

1 INCH = 250 FEET
 DRAWN BY: **CEW**
 DATE: **07/19/2007**
 CEC PROJECT NO.: **409**

**THE HIGHLANDS AT WALNUT CREEK
 WETLAND DETAIL SHEET 5**
 POLK/RUTHERFORD COUNTIES, NC
 CHESTNUT OAK, LLC

SHEET NO.
5.5
 OF 9

	60' STREAM BUFFER
	FLOODED AREA
	STREAM
	WETLAND AREA



***FOR SECTION 404/401
PERMITTING PURPOSES ONLY**

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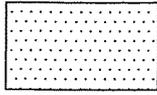
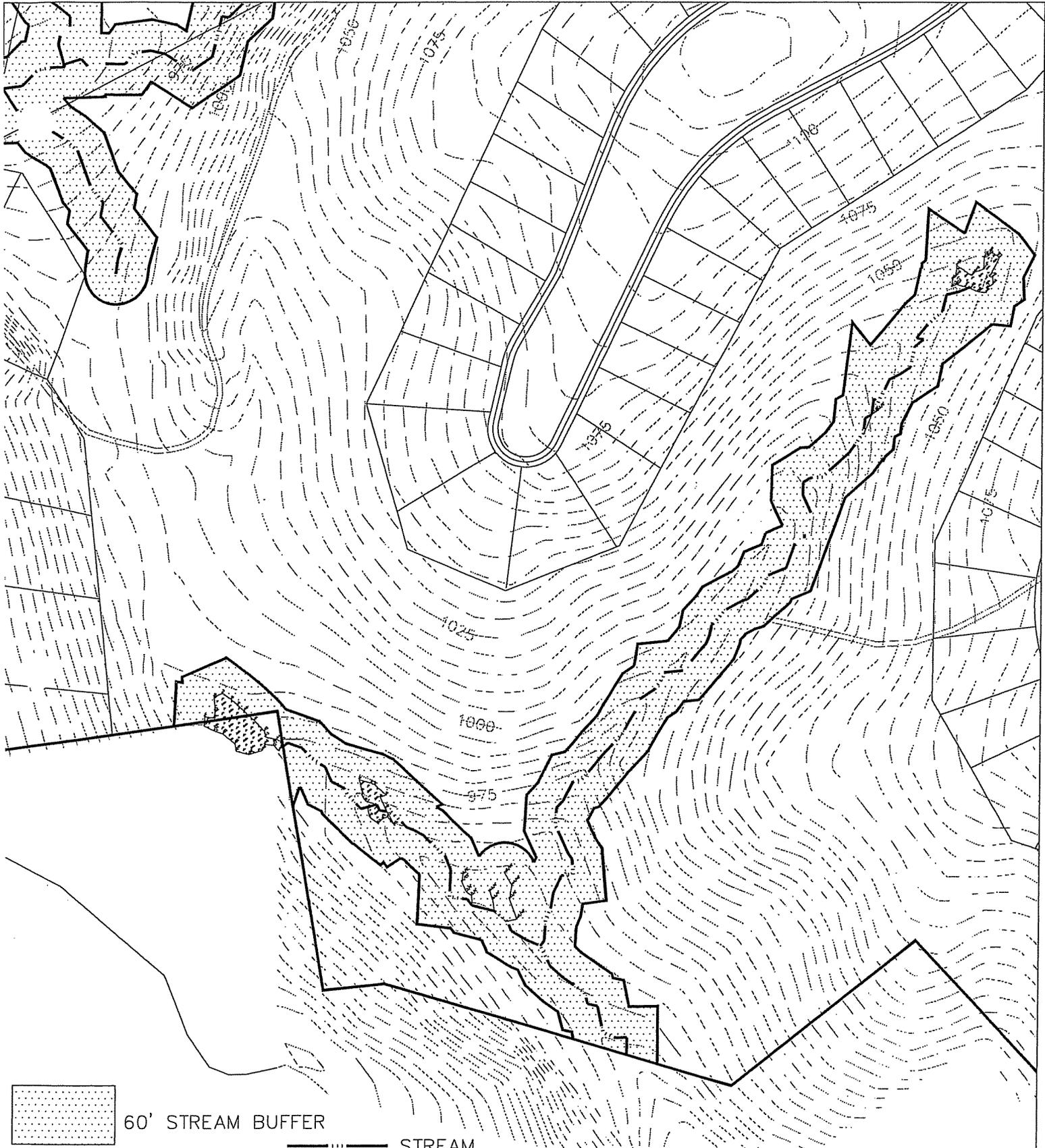
718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

1 INCH = 250 FEET
DRAWN BY: CSG
DATE: 07FEB2007
CEC PROJECT NO.: 409

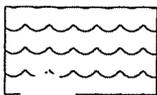
THE HIGHLANDS AT WALNUT CREEK
WETLAND DETAIL SHEET 6
POLK/RUTHERFORD COUNTIES, NC

SHEET NO.
5.6

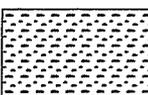
CHESTNUT OAK, LLC



60' STREAM BUFFER



FLOODED AREA



WETLAND AREA

STREAM

*** FOR SECTION 404/401
PERMITTING PURPOSES ONLY**

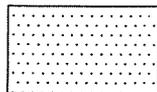
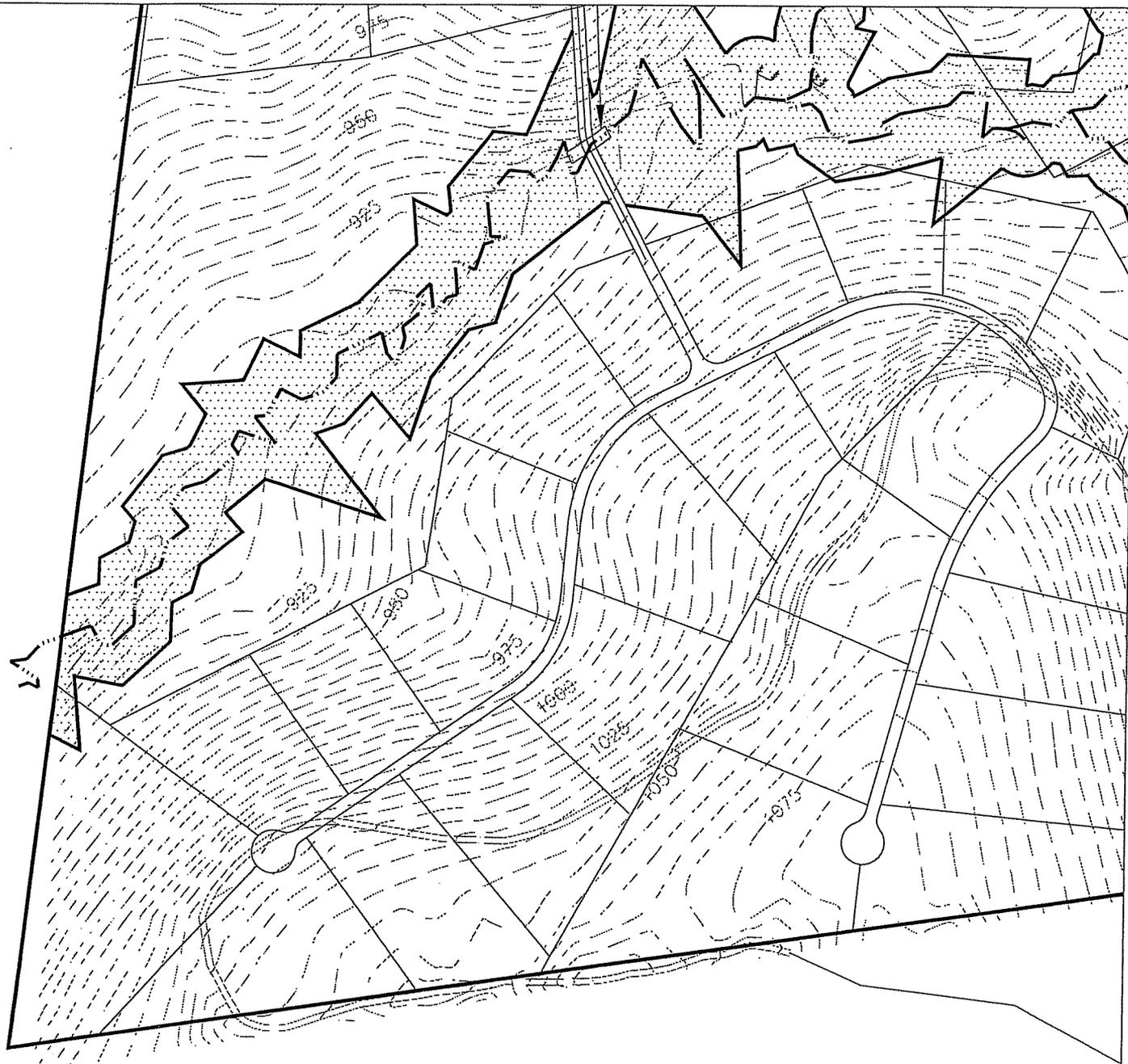
ClearWater
Environmental Consultants, Inc.

718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

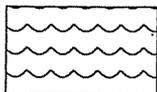
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DRAWN BY: CEC
DATE: 07FEB2007
CEC PROJECT NO.: 409

THE HIGHLANDS AT WALNUT CREEK
WETLAND DETAIL SHEET 7
POLK/RUTHERFORD COUNTIES, NC
CHESTNUT OAK, LLC

SHEET NO.
5.7



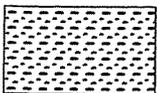
60' STREAM BUFFER



FLOODED AREA



STREAM



WETLAND AREA

***FOR SECTION 404/401
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Environmental Consultants, Inc.

718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9005

1 INCH = 250 FEET
DRAWN BY: CSO
DATE: 07/18/2007
CEC PROJECT NO.: 409

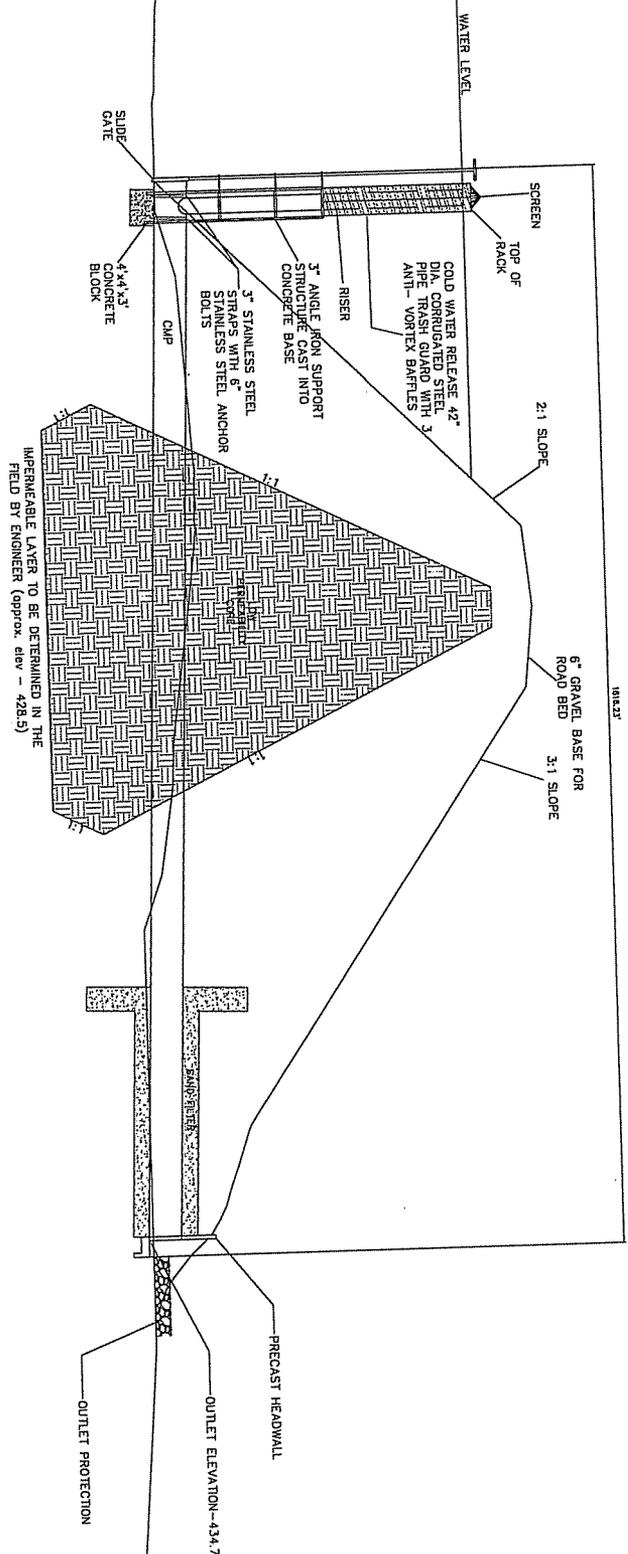
THE HIGHLANDS AT WALNUT CREEK
WETLAND DETAIL SHEET 8

POLK/RUTHERFORD COUNTIES, NC

CHESTNUT OAK, LLC

SHEET NO.
5.8

TYPICAL DAM LAYOUT
N.T.S.



ClearWater
Environmental Consultants, Inc.

718 OAKLAND ST
HENDERSONVILLE NC 28791
PHONE: (828) 698-9800
FAX: (828) 698-9003

1 INCH = NTS FEET
DRAWN BY: CSG
DATE: 07FEB2007
CEC PROJECT NO.: 409

THE HIGHLANDS AT WALNUT CREEK
TYPICAL DAM CROSS SECTION
POLK/RUTHERFORD COUNTIES, NC
CHESTNUT OAK, LLC

SHEET NO.
6
OF 7