



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: September 3, 2008  
Comment Deadline: October 3, 2008  
Corps Action ID #: SAW-2008-1702

The Wilmington District, Corps of Engineers (Corps) has received an application from Mr. David Day, seeking After-The-Fact Department of the Army (DA) authorization to impact 400 linear feet of stream channel associated with the development of an approximately 35 acre mixed use subdivision known as Scenic View Terrace. The project is located north of Asheville in Buncombe 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 [www.saw.usace.army.mil/wetlands](http://www.saw.usace.army.mil/wetlands)

**Applicant:** Mr. David Day  
6 Roberts Road  
Asheville, North Carolina 28803

**AGENT (if applicable):** Clement Riddle  
ClearWater Environmental Consultants, Inc.  
718 Oakland Street  
Hendersonville, NC 28739

## 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.

## Location

The 35 acre project site is located north of Asheville on the southern side of New Leicester Highway (NC 63) approximately 3 miles north of the intersection of NC 63 and US 74A, in Buncombe County, North Carolina. Lat. 35.6123N, Long. 82.6327W.

## **Existing Site Conditions**

The project site has been partially developed into a mixed use (commercial and residential) subdivision. The surrounding property is urban and mostly residential and light commercial development. The impacted stream is an unnamed perennial tributary of Lee Creek and runs from south to north in the eastern portion of the project site. The impacted stream has been culverted and the overlying fill along with the surrounding area has been graded and filled in preparation for further development. Immediately downstream of the development the stream flows a short distance through a rip-rap lined roadside ditch and then into a culvert under New Leicester Highway. The stream then flows through a rip-rap lined channel into Lee Creek. Upstream of the project site, the stream flows from its source, through a residential subdivision. In the upstream section, the stream has been partially channelized and most of the wooded buffer has been removed and is maintained as residential lawn. There is an approximately 30-foot road culvert approximately 330 feet upstream of the project site.

## **Project History**

Mr. Day received a Nationwide Permit 39 (AID: 200230141) from the US Army Corps of Engineers (Corps) on January 3, 2002, authorizing impacts to 150 feet of an unnamed tributary to Lee Creek on the western side of the property. These impacts were in connection with development of the residential portion of the subdivision. The phased development of the site began in 2002 and is on-going.

On March 23, 2007, the North Carolina Division of Water Quality (DWQ) issued a notice of violation for impacts to approximately 415 linear feet of stream associated with the current phase of construction. Investigation by Corps and DWQ personnel revealed that, in addition to the 150 feet of authorized impacts, Mr. Day had culverted approximately 400 linear feet of a second unnamed tributary to Lee Creek and had constructed an in-line sediment basin within approximately 15 feet of this second tributary.

Mr. Day has applied for After-The-Fact authorization to retain the 400 feet of culvert and remove the sediment basin and restore the associated 15 feet of stream.

## **Applicant's Stated Purpose**

According to Mr. Day's application, the purpose of the work is to allow the site to be prepared for economically viable affordable housing and commercial development.

## **Project Description**

The applicant is proposing the development of a multi-use community including single-family homes, commercial real estate, and all associated infrastructure. The applicant proposes to retain the 400 linear feet of stream channel impacts associated with the culvert installation. According to the applicant, this culvert is necessary to provide the suitable, level building surface needed to meet the cost and building requirements for a viable project in this location. No additional impacts to waters of the US are expected.

The applicant also proposes to remove the sediment basin from the tributary. According to the application materials, removal of the basin should eliminate standing water upstream of the project site. The applicant further proposes to restore this section of stream and connect it directly to the subject culvert. Natural stream channel design will be applied in the restoration of the 15 foot section.

### **Proposed Compensatory Mitigation**

The applicant is proposing to mitigate for the 400 linear feet of impacts by conducting stream enhancement activities on the 469 linear feet of channel immediately upstream of the project site to the streams origin. This section of stream has a degraded riparian buffer consisting mostly of maintained lawn, early successional and invasive species. Few large trees remain. As a result of channelization activities, the stream through this reach has a steep slope and vertical, eroding banks.

The stream segment proposed for mitigation has been impacted by sediment runoff from adjacent development and the installation of rip-rap check dams. Removal of sediment from approximately 270 linear feet of this stream segment was required in the March 23, 2007, DWQ Notice of Violation. This material will be removed using hand labor and will be contained in upland areas. This sediment removal is not a part of the proposed mitigation.

Once the sediment removal has been accomplished, the applicant proposes to Enhance the stream segment by installing step pool structures and sloping the banks at 3:1 to reduce erosion. Following the step-pool and bank construction, the banks will be matted, seeded and live staked. A buffer of 30 feet on either side of the stream will be planted with native tree and shrub species.

### **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 in the NCDWQ Central Office in Raleigh serves as application to the NCDWQ for 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), 1650 Mail Service Center, Raleigh, North Carolina 27699-1650 Attention: Ms Cyndi Karoly by October 3, 2008.

## **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, 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 of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidate 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

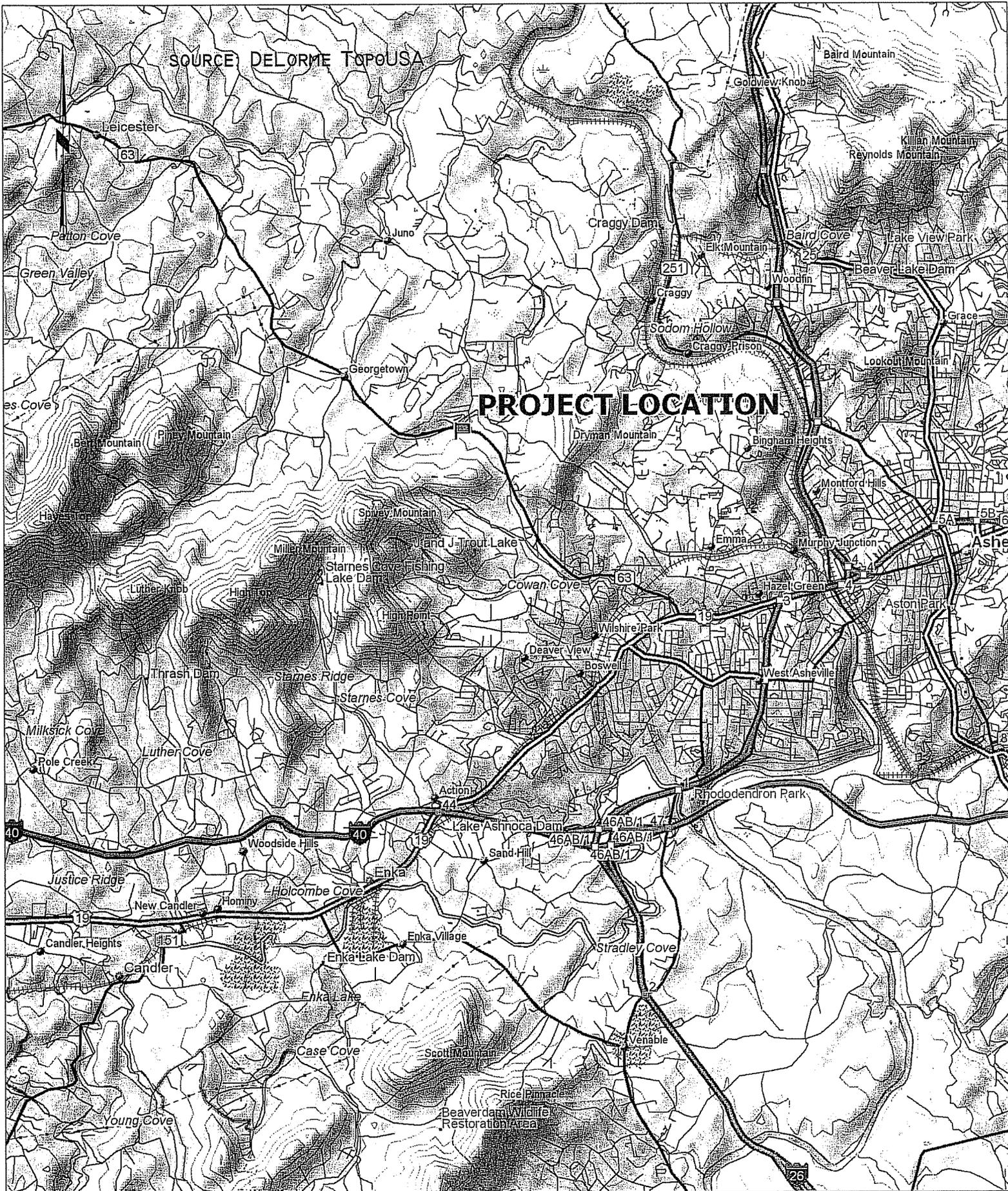
this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental 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.

Written comments pertinent to the proposed work, as outlined above, will be received by the Corps of Engineers, Wilmington District, until 5pm, October 3, 2008. Comments should be submitted to Mr. Tom Walker, US Army Corps of Engineers, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, NC 28801-5006, telephone 828-271-7980.

SOURCE: DELORME TOPOUSA

# PROJECT LOCATION



**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: 15FEB08  
CEC PROJECT NO.: 538

DAY ASSOCIATES

## SCENIC VIEW TERRACE SITE LOCATION MAP

BUNCOMBE COUNTY, NC

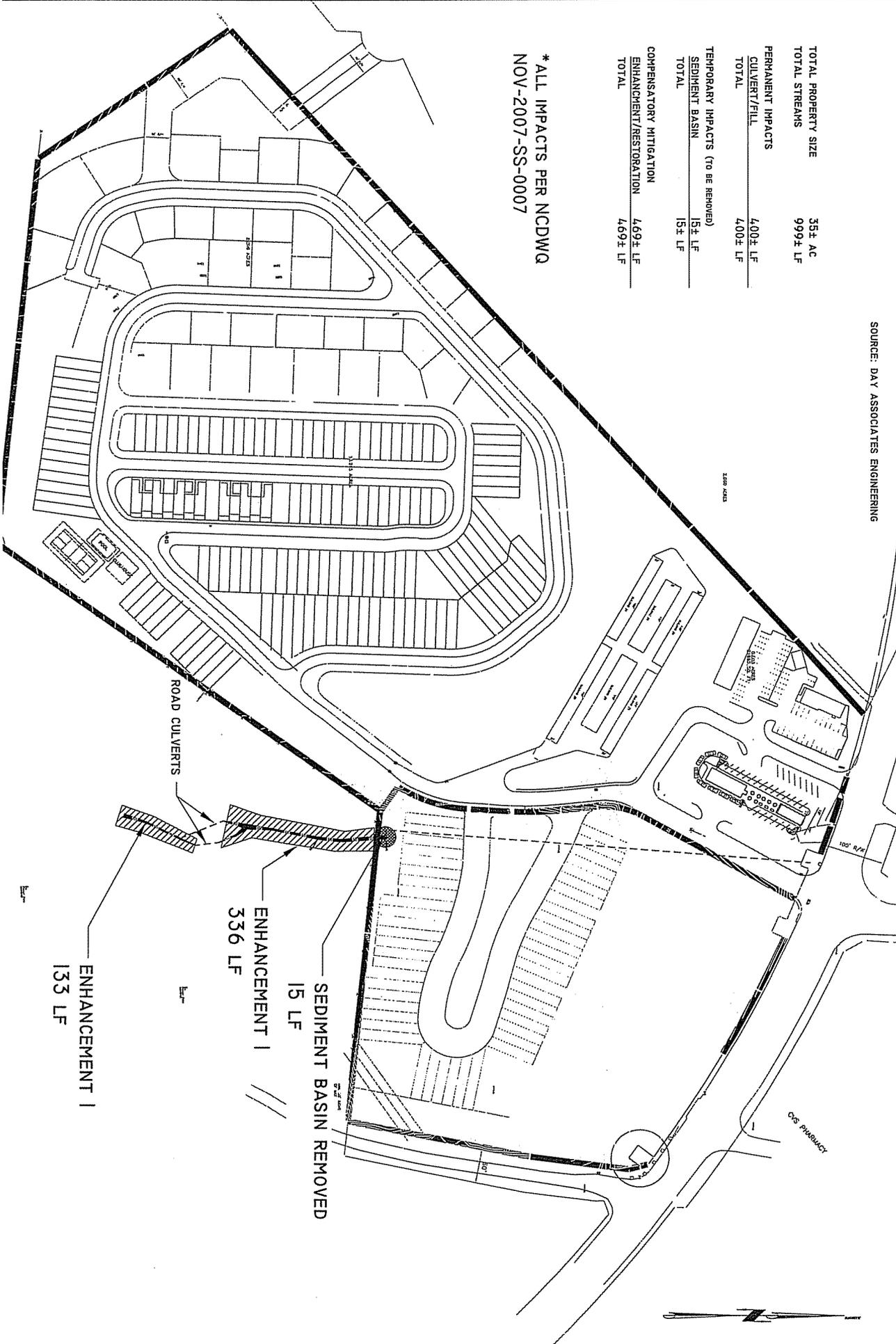
SHEET NO.

1

SOURCE: DAY ASSOCIATES ENGINEERING

|   |          |
|---|----------|
| TOTAL PROPERTY SIZE                                 | 35± AC   |
| TOTAL STREAMS                                       | 999± LF  |
| PERMANENT IMPACTS<br>CULVERT/FILL                   | 4,00± LF |
| TOTAL   | 4,00± LF |
| TEMPORARY IMPACTS (TO BE REMOVED)<br>SEDIMENT BASIN | 15± LF   |
| TOTAL   | 15± LF   |
| COMPENSATORY MITIGATION<br>ENHANCEMENT/RESTORATION  | 4,69± LF |
| TOTAL   | 4,69± LF |

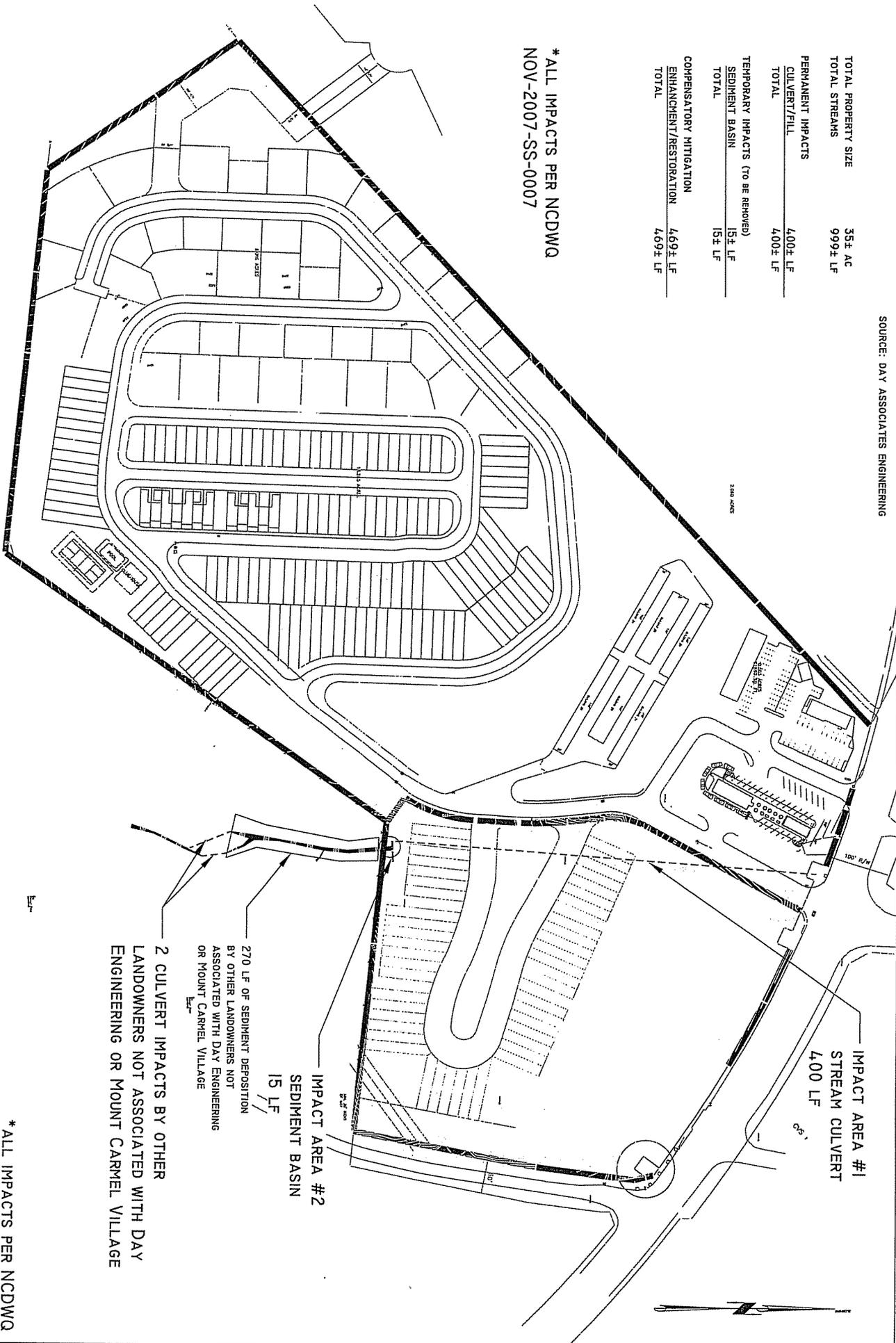
\* ALL IMPACTS PER NCDWQ  
NOV-2007-SS-0007



SOURCE: DAY ASSOCIATES ENGINEERING

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|--|----------|
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| TOTAL                                    | 15± LF   |
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NOV-2007-SS-0007



IMPACT AREA #1  
STREAM CULVERT  
4,00 LF

IMPACT AREA #2  
SEDIMENT BASIN  
15 LF

270 LF OF SEDIMENT DEPOSITION  
BY OTHER LANDOWNERS NOT  
ASSOCIATED WITH DAY ENGINEERING  
OR MOUNT CARMEL VILLAGE

2 CULVERT IMPACTS BY OTHER  
LANDOWNERS NOT ASSOCIATED WITH DAY  
ENGINEERING OR MOUNT CARMEL VILLAGE

\* ALL IMPACTS PER NCDWQ