# US Army Corps Of Engineers Wilmington District

# **PUBLIC NOTICE**

Issue Date: October 3, 2014 Comment Deadline: November 3, 2014 Corps Action ID Number: SAW-2008-03216

The Wilmington District, Corps of Engineers (Corps) received an application from John Wieland Homes seeking Department of the Army authorization to impact 1,007 linear feet of stream and 0.313 acre of wetland, associated with the development of Phase II of a single-residential subdivision called Olmsted in Mecklenburg 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 <a href="http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx">http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx</a>

**Applicant:** Mr. Andrew McCoy

John Wieland Homes 8325-D Arrowridge Blvd

Charlotte, North Carolina 28273

**AGENT** (**if applicable**): Mr. Gregg Antemann

Carolina Wetland Services, Inc.

550 E Westinghouse Blvd

Charlotte, North Carolina 28273

# **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 (3 U.S.C. 1413)

# Location

Directions to Site: The site is located north of the terminus of Balcony Bridge Road, in Huntersville, Mecklenburg County, North Carolina. This site is located in the Rocky River Watershed of the Upper Pee Dee River Basin (8-Digit Cataloging Unit 03040105). From Interstate 485, drive north on NC Hwy115 (Old Statesville Road) for approximately 0.5 miles.

Turn right on Eastfield Road and drive for approximately 2.6 miles. Take a left onto Long Common Parkway and drive for 0.6 mile. Take a right onto Balcony Bridge Road and the project area is located immediately north of its terminus (See Figure 1, 2 & 4)

Project Area (acres): 292 Nearest Town: Huntersville Nearest Waterway: Ferrelltown Creek River Basin: Upper Pee Dee

Latitude and Longitude: 35.391817N, 80.795877W

# **Existing Site Conditions**

The project area is wooded with adjacent residential developments and utility line right-of-ways. Dominant vegetation within the project area consists of ironwood (*Carpinus caroliniana*), tulip poplar (*Liriodendron tulipifera*), sweetgum (*Liquidambar styraciflua*), Eastern red cedar (*Juniperus* virginiana), red elm (*Ulmus rubra*), red maple (*Acer rubrum*), Virginia creeper (*Parthenocissus quinquefolia*), Japanese honeysuckle (*Lonicera japonica*), false nettle (*Boehmeria cylindrical*), Chinese privet (*Ligustrum sinense*), bedstraw (*Galium* sp.) and various sedges (*Carex* spp.).

According to the Mecklenburg County Soil Survey (see Figure 4), on-site soils consist of Cecil sandy clay loam, 8-15 percent slopes, moderately eroded (CeD2), Enon sandy loam, 2-8 percent slopes (EnB), Monocan loam, 0-2 percent slopes, frequently flooded (MO), Wilkes loam 4-8 percent slopes, 8-15 percent slopes, and 15-25 percent slopes (WkB, WkD, and WkE, respectively).

On-site Cecil, Enon, and Wilkes soil units are well drained soils. Monocan loam, 0-2 percent slopes, frequently flooded (MO) is somewhat poorly drained and is listed in the North Carolina Hydric Soils List for Mecklenburg County as having hydric inclusions. Monocan loam, 0-2 percent slopes, frequently flooded (MO) is also listed as partially hydric on the National Hydric Soils List.

The project area contains several jurisdictional waters of the U.S. to include stream channels and wetlands. These on-site jurisdictional features were delineated by CWS on January 24-28, 2005 and verified by Ms. Amanda Jones of the USACE on March 15, 2006 (SAW-2005-31604). The site was reinvestigated by CSW in 2008 and re-verified by the USACE in association with a Nationwide Permit 29 issued in April of 2008 (SAW-2008-01130). On November 19, 2013, CWS reinvestigated the site and felt there were no changes to the limits of jurisdiction of on-site waters. On July 29, 2014, Mr. Steve Kichefski of USACE field reviewed on-site jurisdictional features in the locations of proposed impacts. The applicant's summary of Phase II jurisdictional Waters of the US are listed in Table 1 below.

Table 1. Summary of On-Site Jurisdictional Waters of the U.S.

Jurisdictional Feature	Classification	Approximate Length (lf)
Stream A	Perennial RPW (SCP1)	3,377
Stream F	Seasonal RPW	815
Stream G	Seasonal RPW	469
Stream H	Seasonal RPW	267
Stream J	Seasonal RPW	77

Jurisdictional Feature	Classification	Approximate Length (lf)	
Stream K	Seasonal RPW (SCP2)	1,167	
Stream L	Seasonal RPW	431	
Stream M	Seasonal RPW (SCP3)	745	
Stream N	Seasonal RPW	302	
Stream O	Seasonal RPW (SCP4)	600	
Stream P	Perennial RPW (SCP5)	2,370	
Sueam r	Seasonal RPW	585	
Stream Q	Seasonal RPW	440	
Stream R	Seasonal RPW	170	
Stream S	Seasonal RPW (SCP6)	670	
Stream T	Seasonal RPW (SCP7)	1,176	
Sueam 1	Perennial RPW	360	
Stream U	Seasonal RPW	471	
Stream V	Seasonal RPW	880	
Stream W	Seasonal RPW	230	
Stream X	Seasonal RPW	55	
Stream Y	Seasonal RPW	254	
	Seasonal RPW	9,804 lf	
	6,107 lf		
	15,911 lf		
Jurisdictional Feature	Classification	Approximate Acreage (ac)	
Wetland AA	Directly abutting RPW (DP3)	4.38	
Wetland BB	Directly abutting RPW	0.033	
Wetland CC	Directly abutting RPW	0.184	
Wetland DD	Directly abutting RPW (DP1)	0.331	
Wetland FF	Directly abutting RPW	0.099	
Wetland GG	Directly abutting RPW (DP2, DP4)	0.382	
Wetland LL	Directly abutting RPW	0.207	
Wetland MM	Directly abutting RPW	0.082 10.53	
Pond A	Pond A Impoundment of Stream A		
	Wetland Total	5.7 ac	
	Pond Total	10.53 ac	

# **Applicant's Stated Purpose**

The purpose of this sumbittal is to construct the final phase of the Olmsted Subdivision, Phase II. Phase II will develop approximately 292 acres of wooded area into a residential subdivision to provide single-family housing to meet the growth and demand of an area of Mecklenburg County that is experiencing significant population growth.

# **Project Description**

According to the applicant, the currently proposed site plan (see Figure 5) was developed as a result of the applicant's alternative analysis and avoidance and minimization process. They felt that the impacts and crossing locations were constrained by the existing road layout from Phase I as well as the natural site topography and existing natural resources. The Olmsted Phase II

proposed impacts to jurisdictional waters include 1,007 linear feet of stream and 0.313 acre of wetland. Impacts to on-site seasonal stream channels total 707 linear feet and most are the result of culverts and rip rap aprons associated with roadway crossings 1, 3, 4, and 10. Impacts to on-site perennial stream channels total 300 linear feet and are the result of the installation of culverts and rip rap aprons associated with crossings 6 and 7. Permanent impacts to jurisdictional wetlands total 0.313 acre and are the result of the placement of fill for road crossings, building pads and the conversion of forested wetlands to maintained herbaceous wetlands in utility easements. Proposed impacts are summarized in Table 2 below.

Table 2. Phase II Proposed Impacts to Jurisdictional Waters

Jurisdictional Feature	NCDWR Score	USACE Score	Type of Impact	Temporary / Permanent	Impacts (lf)	Impact (acres)	Figure Number
Seasonal RPW Stream K	27.5	63	Culvert & Rip Rap	Permanent	168	0.012	13 & 14
Seasonal RPW Stream M	28.5	59	Culvert & Rip Rap	Permanent	164	0.009	16 & 17
Seasonal RPW Stream O	18.5	55	Culvert & Rip Rap	Permanent	132	0.009	18 & 19
Seasonal RPW Stream S	28	50	Utility Crossing	Temporary	15	0.001	20 & 21
Seasonal RPW Stream T	20.5	46	Culvert & Rip Rap	Permanent	228	0.015	30 & 29
Perennial RPW Stream P	32.5	59	Culvert & Rip Rap	Permanent	162	0.011	22 & 23
			Culvert & Rip Rap	Permanent	138	0.015	24 & 28
Wetland AA	n/a	n/a	Fill (footers for aerial sewer)	Permanent		0.0005	27
	n/a	n/a	Conversion from Forested to Herbaceous (Sewer)	Permanent		0.032	27
	n/a	n/a	Fill (Road Crossing)	Permanent		0.070	16 & 17
Wetland DD	n/a	n/a	Fill (Road Crossing)	Permanent		0.050	31
Wetland GG	n/a	n/a	Fill	Permanent		0.160	30
<b>Total Permanent Wetland Impacts</b>						0.313 acre	
Total Permanent Seasonal RPW Stream Impacts				692 lf	0.045 acre		
Total Permanent Perennial RPW Stream Impacts				300 lf	0.026 acre		

# **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: Impacts to on-site jurisdictional waters of the U.S. have been reduced to the maximum extent practicable. Road and utility crossings of jurisdictional waters of the U.S. were avoided and/or combined wherever possible in order to reduce impacts. Road crossings have been reduced to the minimum number necessary to meet local planning ordinances requiring appropriate emergency disturbances to jurisdictional waters of the United States. Additionally, a bottomless culvert will be implemented on one road crossing in order to reduce impacts to Perennial RWP Stream A. According to the applicant, a bottomless culvert was utilized despite the considerable expense involved, due to the high quality of this stream.

Retaining walls are used at headwalls and endwalls to minimize the length of culvert required for each crossing. In addition, the required amount of rip rap was limited to the maximum extent practicable and within specification of local ordinances. The temporary construction easement for the sanitary sewer will be limited to 15 feet in width through wetlands. Proper sediment and erosion control measures will be applied to minimize disturbances to downstream waters.

# **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: The applicant is proposing to offset impacts associated with this project by making payment into the North Carolina Ecosystem Enhancement (NCEEP) In Lieu Fee Program according to the ratios listed in the following table. NCEEP has agreed to accept this mitigation by letter dated August 26, 2014 in the Yadkin Basin (HUC 03040105).

**Table 3. Total Proposed Mitigation** 

Rapanos Classification	on Status of Impacts Impacts (acre)		Impacts (lf)	Mitigation Required
Seasonal RPW	Completed	Completed 470		None (grandfathered)
Seasonal RPW with Low Aquatic Function (Stream T)	Proposed		228	None
Seasonal RPW	Proposed		464	Yes (1:1) 464 credits
Perennial RPW	Proposed		300	Yes (2:1) 600 credits
Directly Abutting Wetlands	Proposed	Proposed 0.313		Yes (2:1) 0.626 credits
Tota	1,064 linear feet			
Total	0.626 acre			

### **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 <u>no historic properties</u> <u>affected</u>. 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-indentified 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 November 3, 2014 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 requests, via this Public Notice, 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.

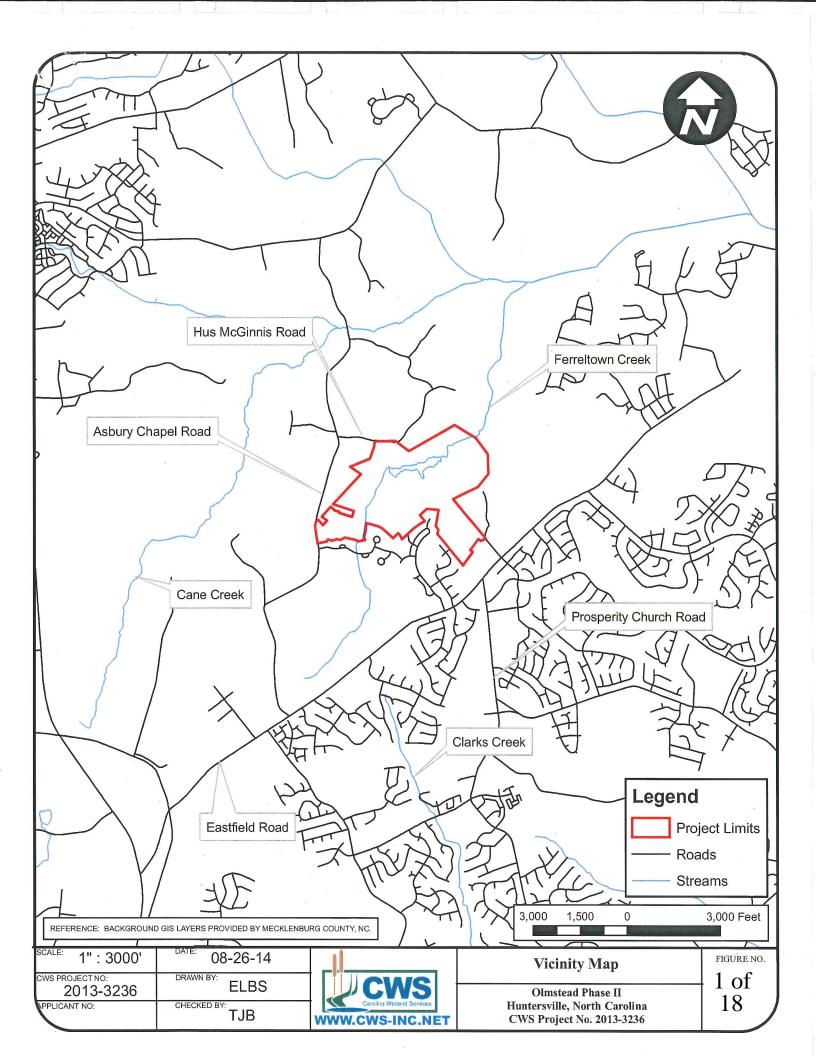
# **Commenting Information**

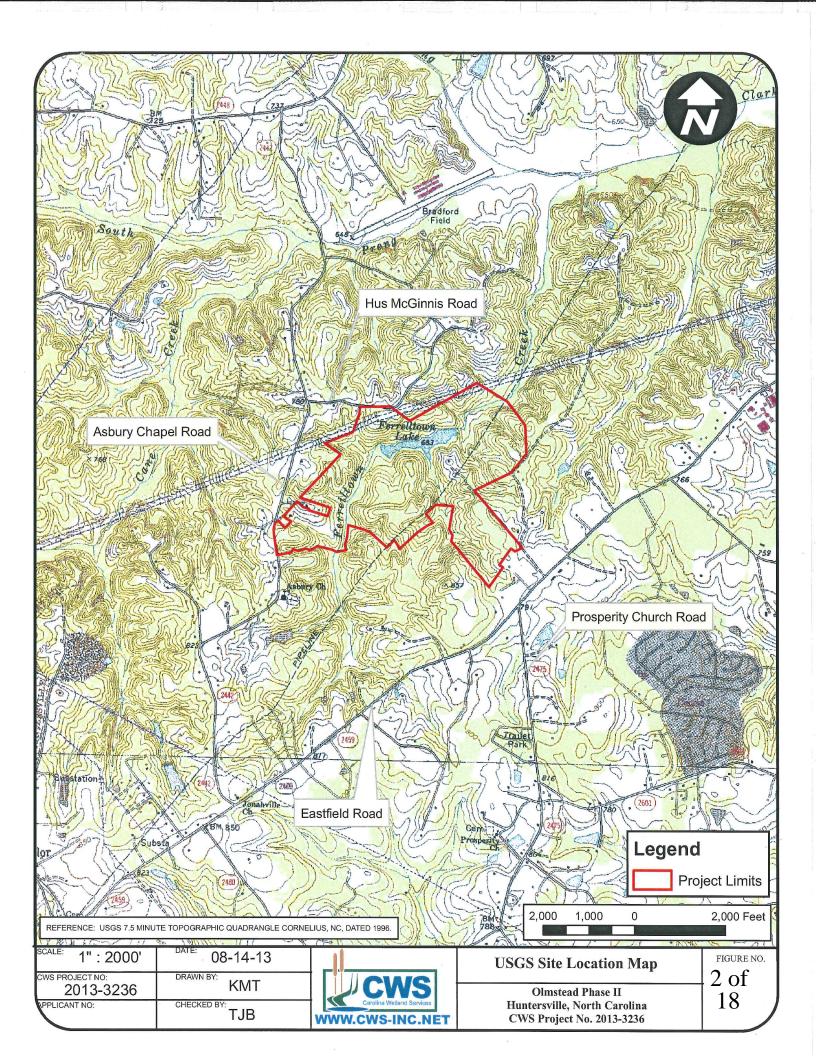
The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. 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

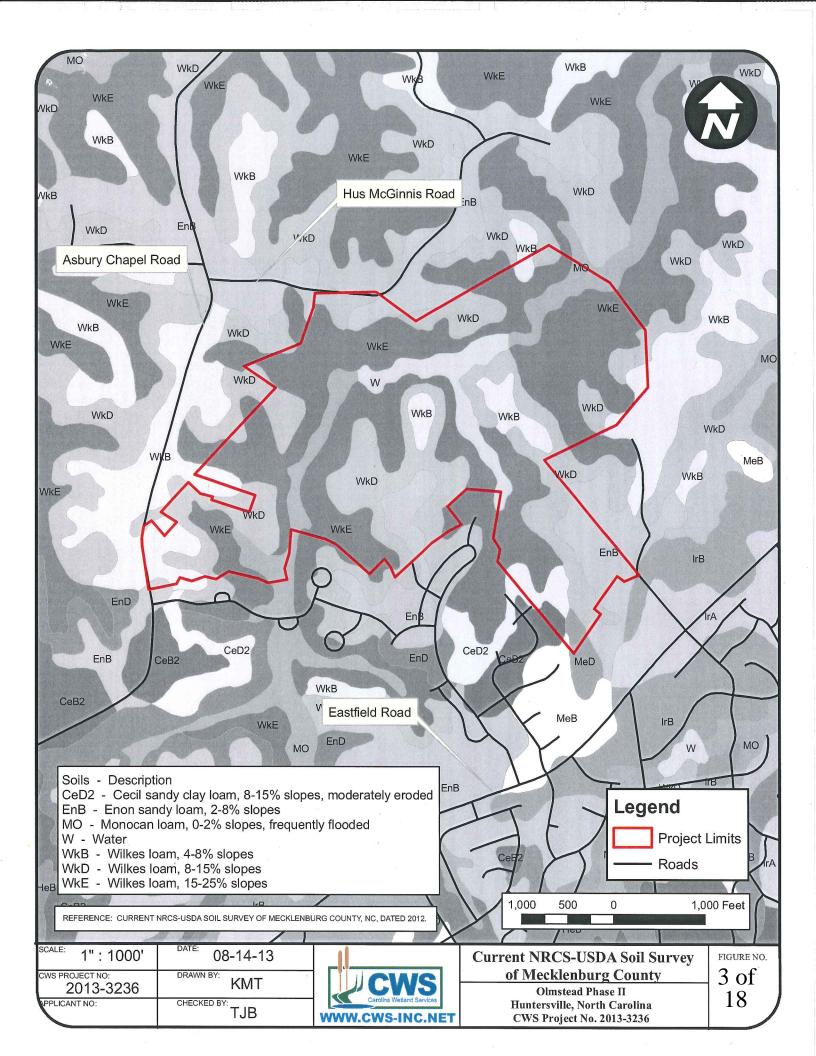
decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement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

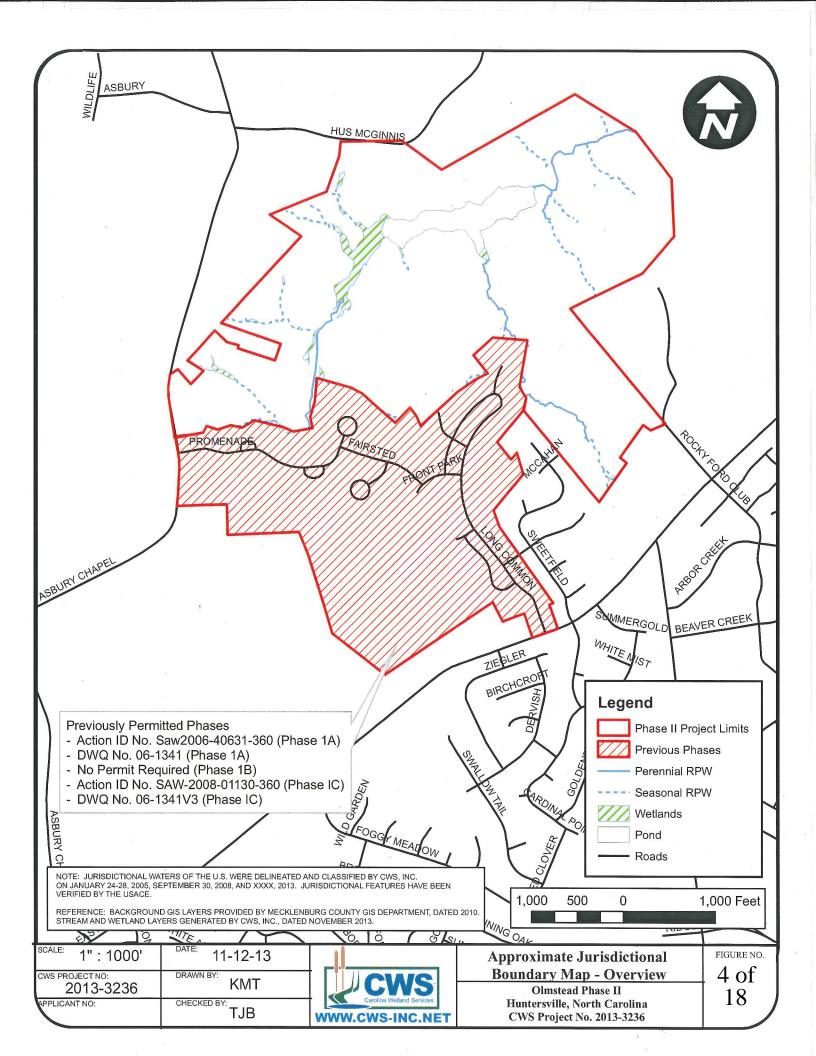
Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

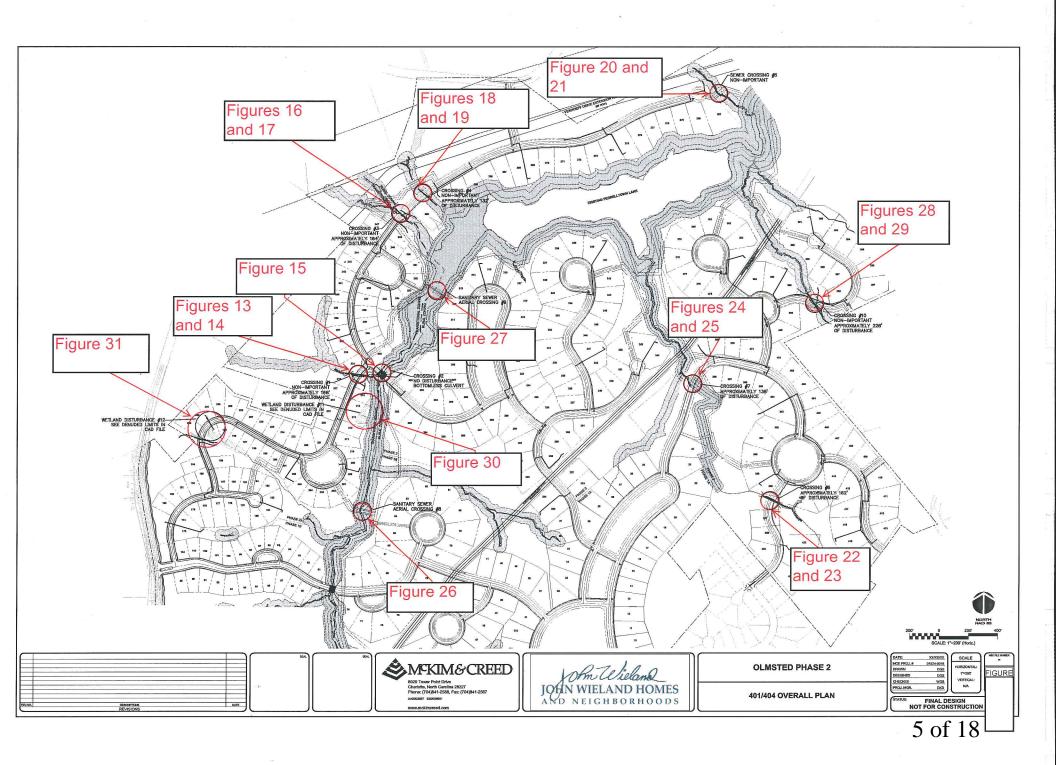
The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, November 3, 2014. Comments should be submitted to Mr. Steve Kichefski, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980.

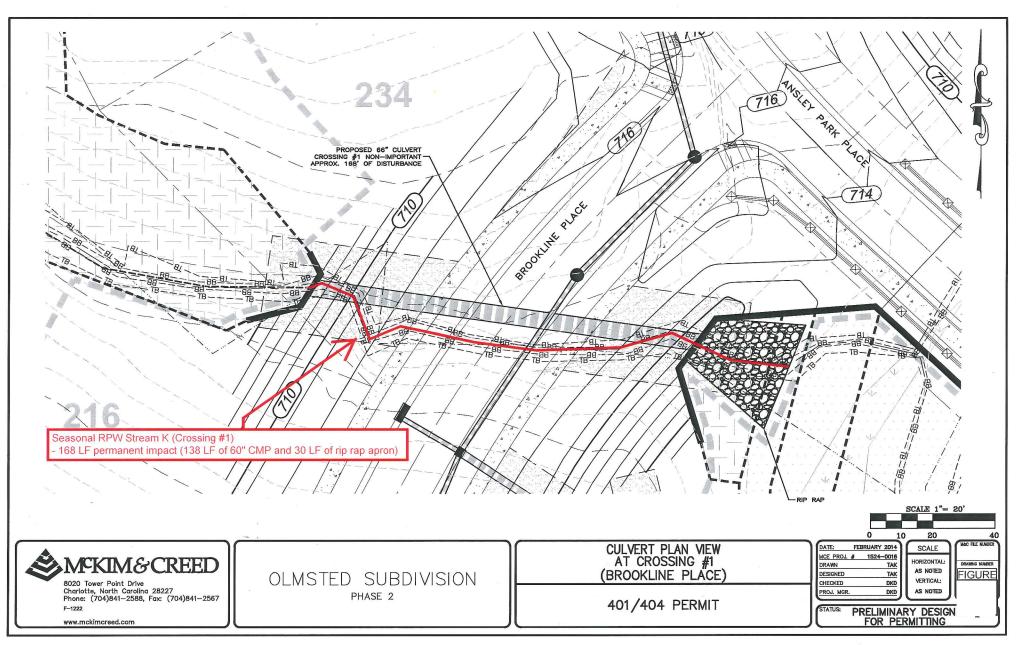


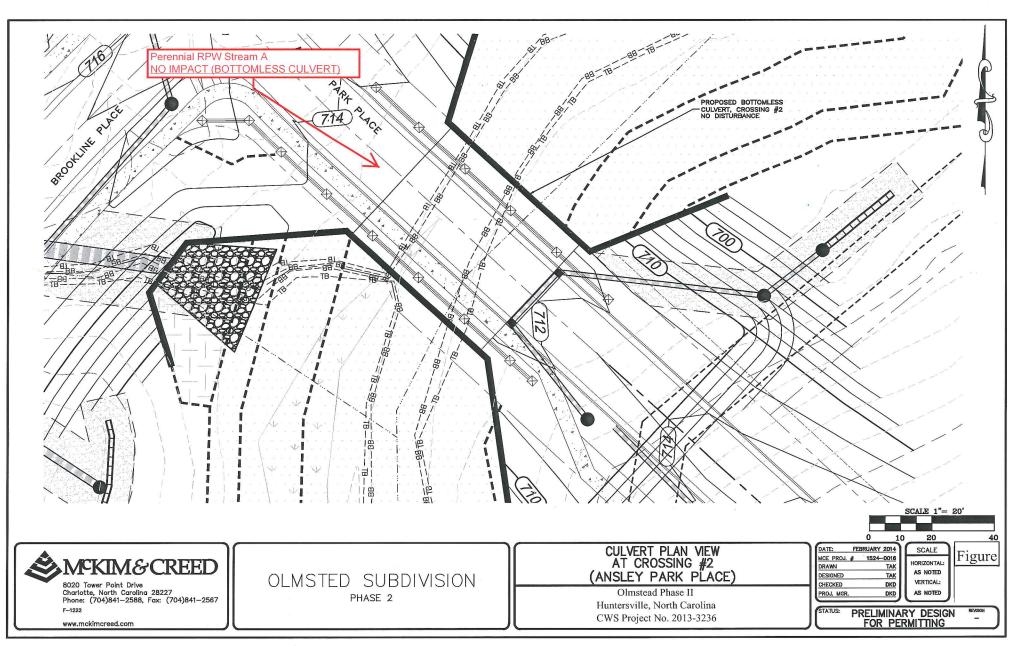


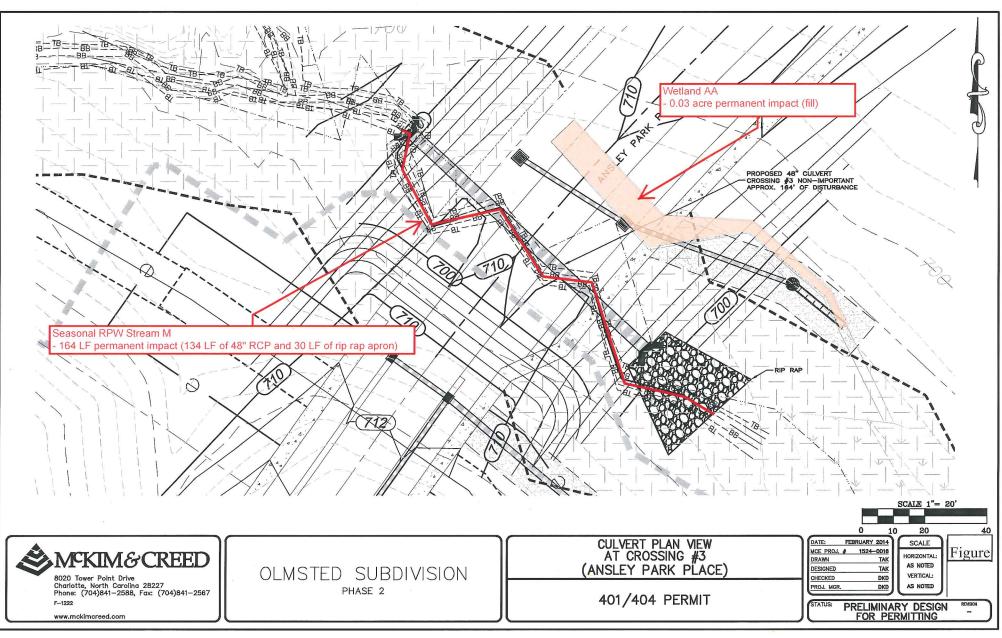


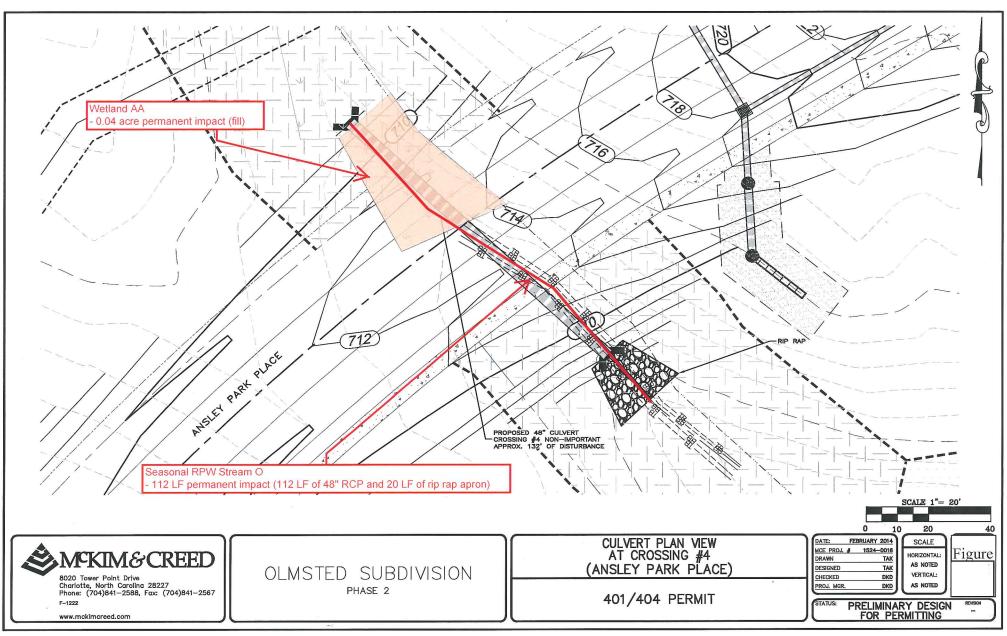


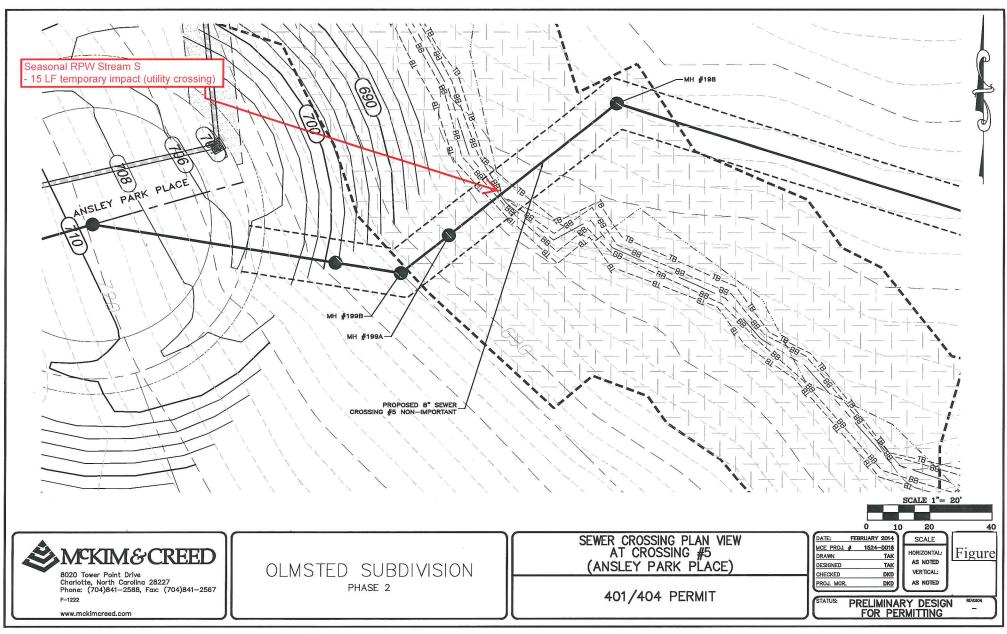




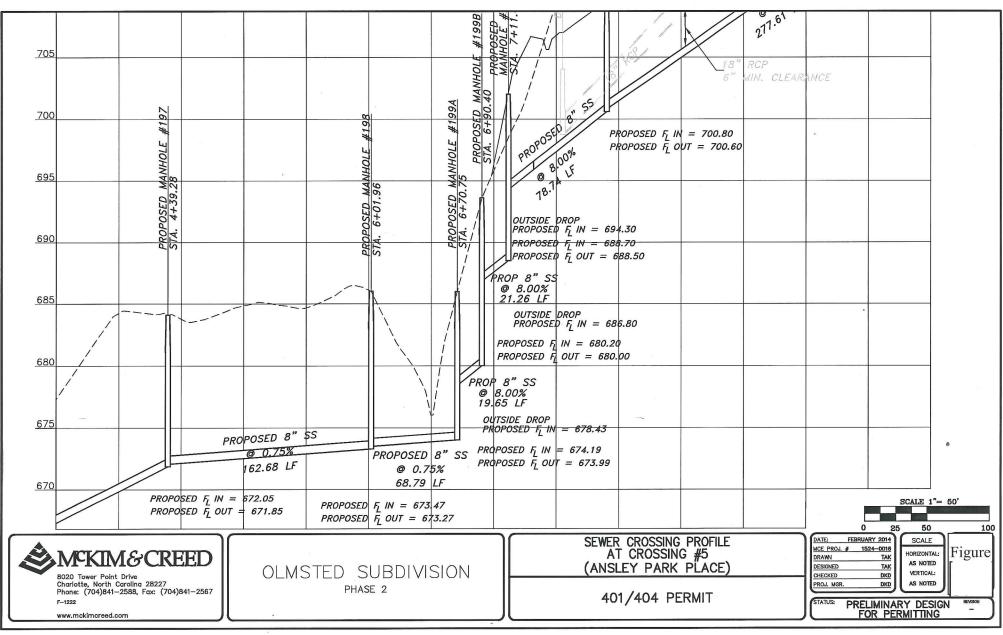




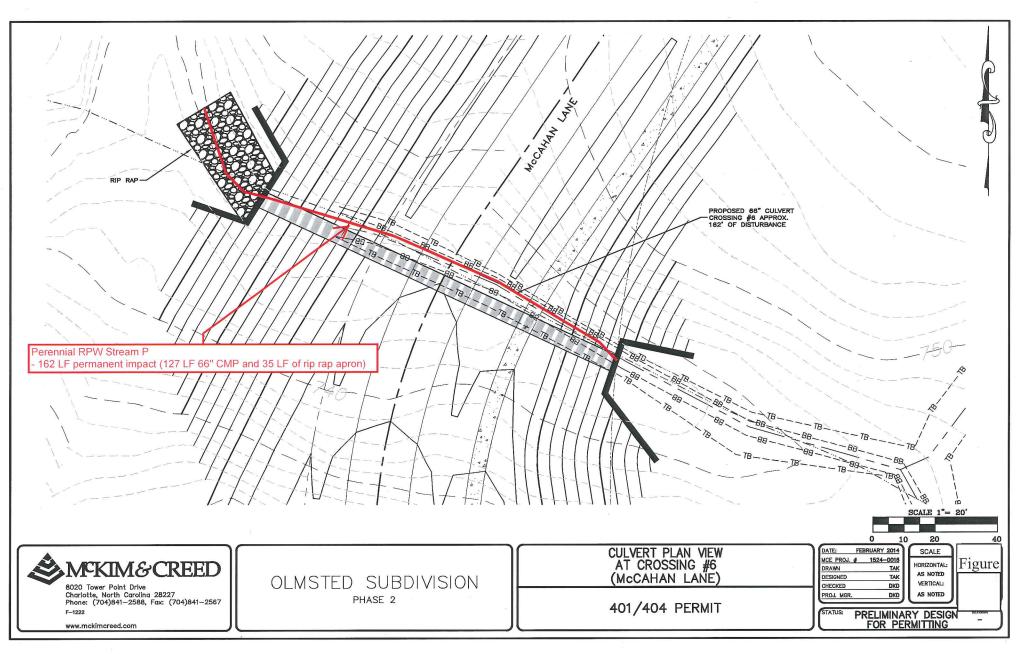


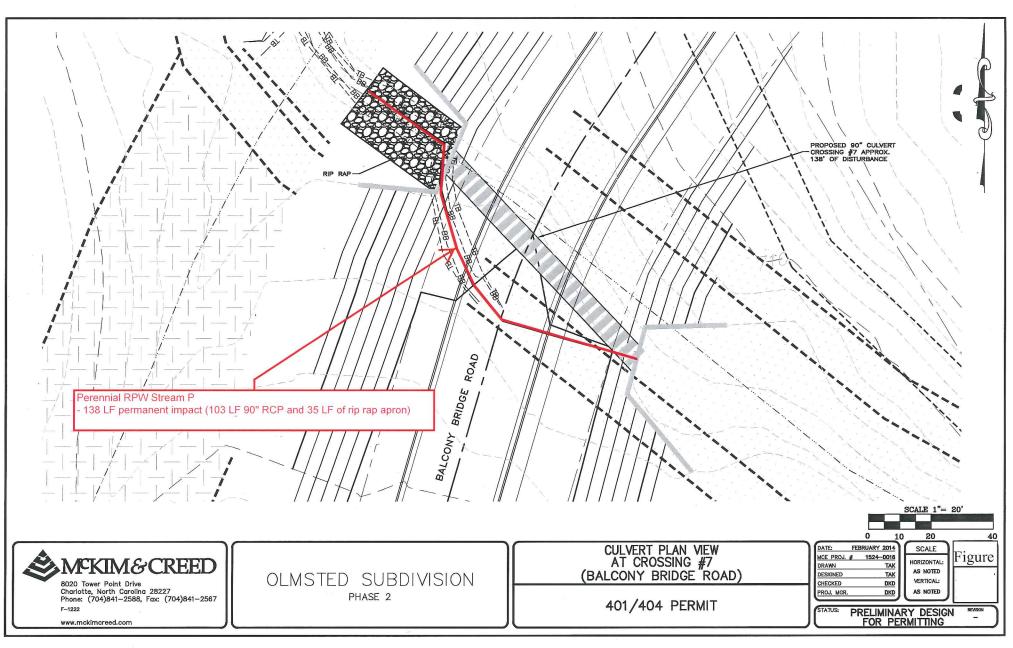


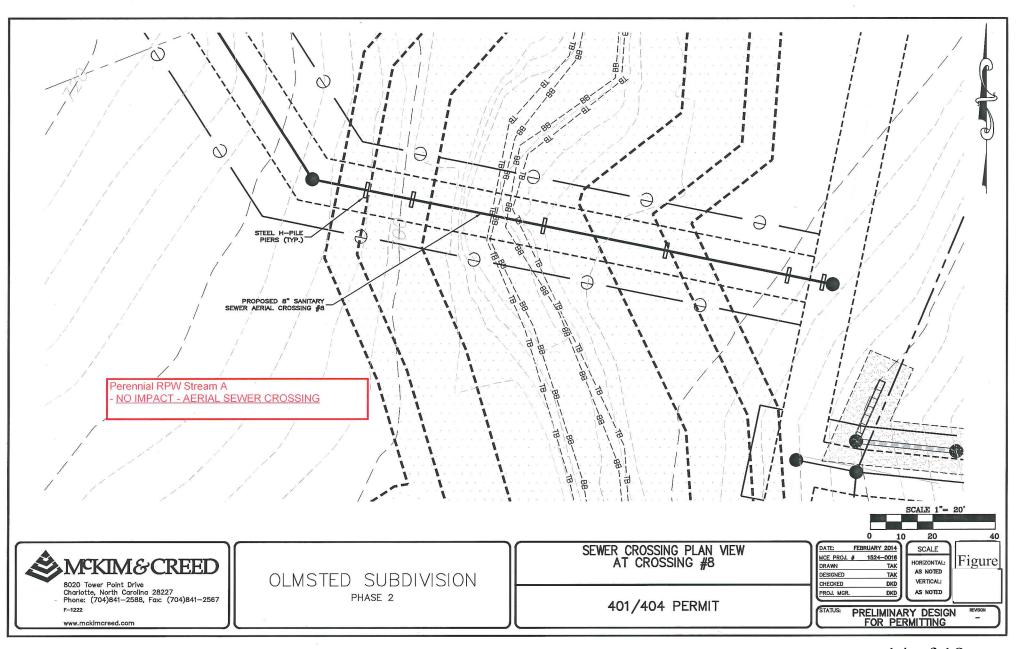
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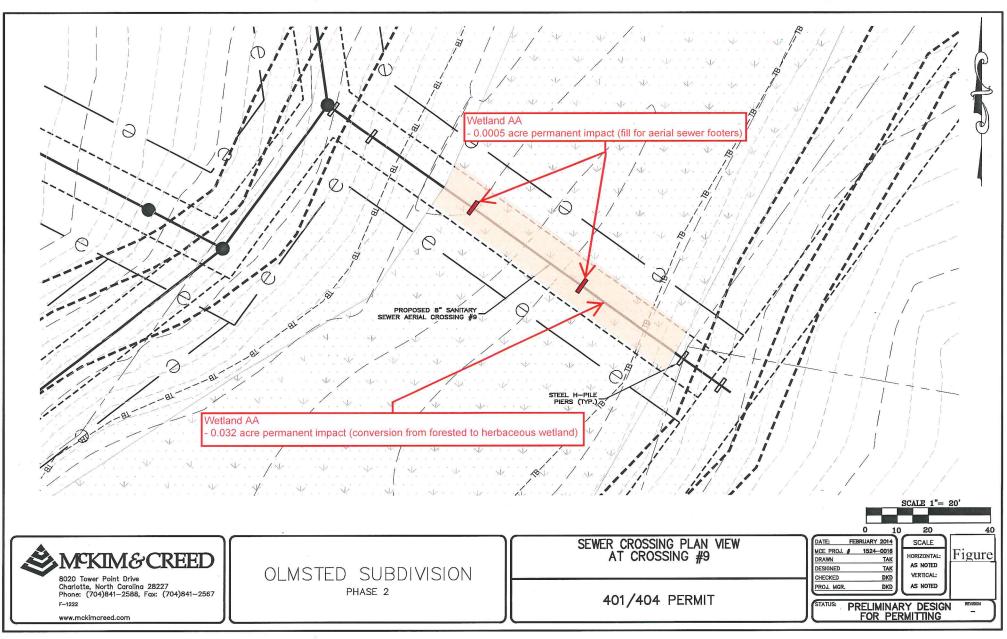
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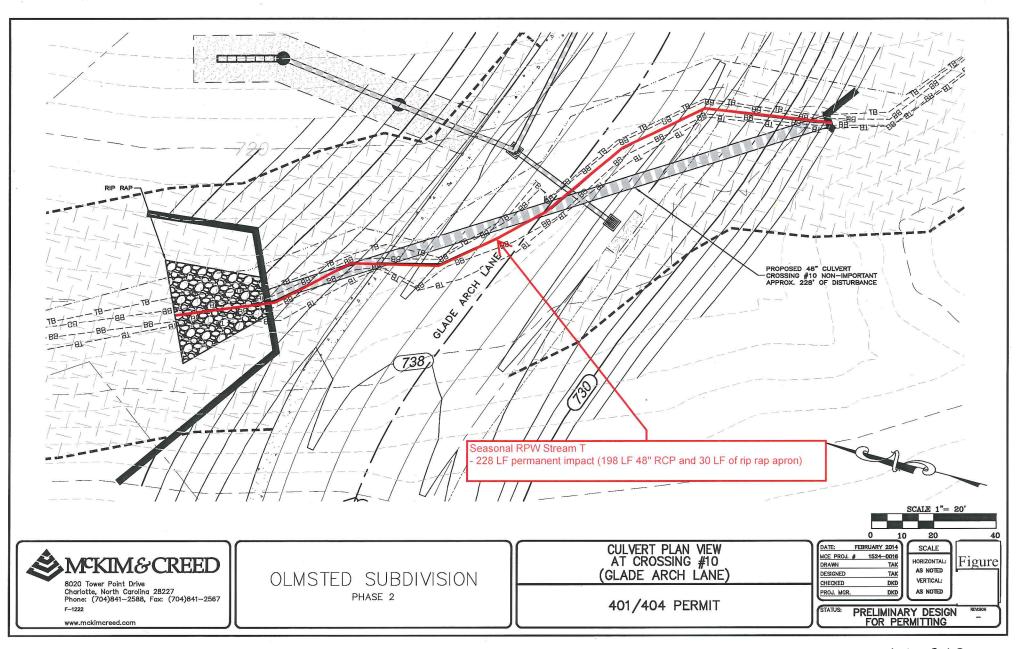




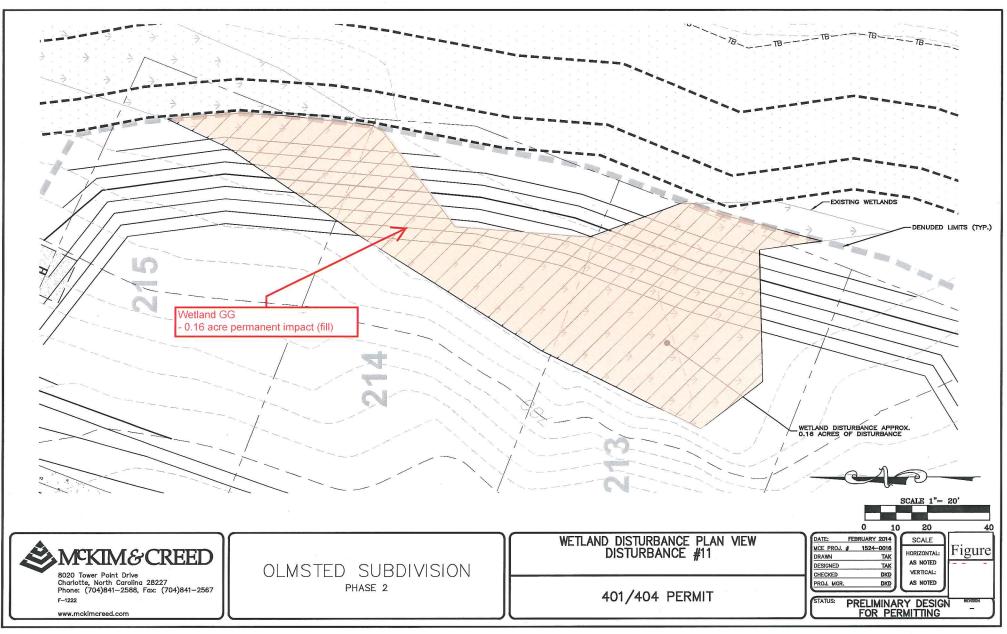
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