



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
2488 E 81st Street
Tulsa, OK 74137

SWT-2019-00290
Public Notice No.

July 8, 2021
Public Notice Date

August 8, 2021
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

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DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290

Application No. SWT-2020-00290

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS
AND
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
(30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act (CWA). The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

Applicant: Mr. Ed Lienbach
Leinbach Company
2240 East 49th Street
Tulsa, OK 74105

Agent: Mr. William Smith
HISINC, L.L.C.
28508 West 41st Street South
Mannford, OK 74044

Location: The proposed project is located at Latitude: 36.087733, Longitude: -95.824233, near Tulsa, Tulsa County, Oklahoma. The project site can be found on the Broken Arrow, Oklahoma 7.5 Minute USGS Quadrangle.

Project Description: The application is for the discharge of fill material into an unnamed tributary of Mingo Creek for the construction of a multi-unit apartment complex with parking area, roadways, and club house.

Purpose: The overall purpose of this work is to construct an apartment complex. The project is not a water dependent activity.

The basic purpose and need of the proposed action is to construct road crossings, erosion control, and stormwater conveyance.

Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Qty of Material cys below OHWM	Footprint (ac and/or lf)
FS-1		Wetland	Rip Rap	4	0.0066
FS-5		Intermittent Stream	Rip Rap and Earthen Material	1,640	0.258
FS-6		Pond	Rip Rap	18	0.012
FS-7		Intermittent Stream	Earthen Material	346	0.06
FS-8		Wetland	Rip Rap	18	0.001
Total					
cubic yards (cys), ordinary high water mark (OHWM), acre (ac), linear feet (lf)					

Description of Work: The applicant proposes the placement of dredged or fill materials using earthen materials consisting of clay, sand, and rip rap to construct a residential development, including roadways, detention basin, and parking lots.

Avoidance and Minimization Information: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

“To avoid impact to the existing pond (0.93 acres), the site development was moved to the west and an additional 14 acres was acquired, and the total count was reduced to 308 units.”

“The 14 acres west of the apartment community will be maintained as a common area for its residents...”

Mitigation: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project:

The applicant did not provide a proposed mitigation plan or a statement explaining why mitigation is not necessary for their project.

This mitigation plan is the applicant’s proposal. The Corps has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District’s Mitigation and Monitoring Guidelines. Compensatory Mitigation for unavoidable impacts may be required to ensure that this activity requiring a Section 404 permit, if issued, complies with the Section 404 (b)(1) Guidelines. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Project Setting: The project is located within the Osage Cuestas Ecoregion. The Osage Cuesta Ecoregion is characterized by tall grass prairie with oak-hickory forest in the east. The project area is within an area that has been used for livestock grazing.

Existing Condition: The project is currently an undeveloped parcel of land surrounded by existing residential and commercial developments. The land is mostly composed of grasslands and riparian area and is the site of a resolved CWA violation.

Cultural Resources: The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended, and other cultural resources laws and Executive Orders. A preliminary review of the state's records has been completed for the presence of sites included in, or eligible for, inclusion in the National Register of Historic Places, as well as the Oklahoma Landmark Inventory Database. There are no known historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area.

Threatened and Endangered Species: The following federally listed species are known to occur in the vicinity or are listed for the county in which the proposed action is located: Northern long-eared bat (*Myotis septentrionalis*), Piping plover (*Charadrius melodus*), Red knot (*Calidris canutus rufa*), American burying beetle (*Nicrophorus americanus*). A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. The IPAC consultation number is 02EKOK00-2021-SLI-2046.

We are currently assessing the potential effects of the proposed action on these species and will comply with the Endangered Species Act with regard to any effect of our decision on this permit application.

Evaluation Factors: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use 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: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, 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 ownerships, and, in general, the needs and welfare of the people. A permit will be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) Guidelines. Subject to the 404(b)(1) Guidelines and any other applicable guidelines or criteria, a permit will be granted unless the DE determines that it would be contrary to the public interest.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from Ms. Eva Zaki-Dellitt, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

Comments: The Corps of Engineers 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 and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

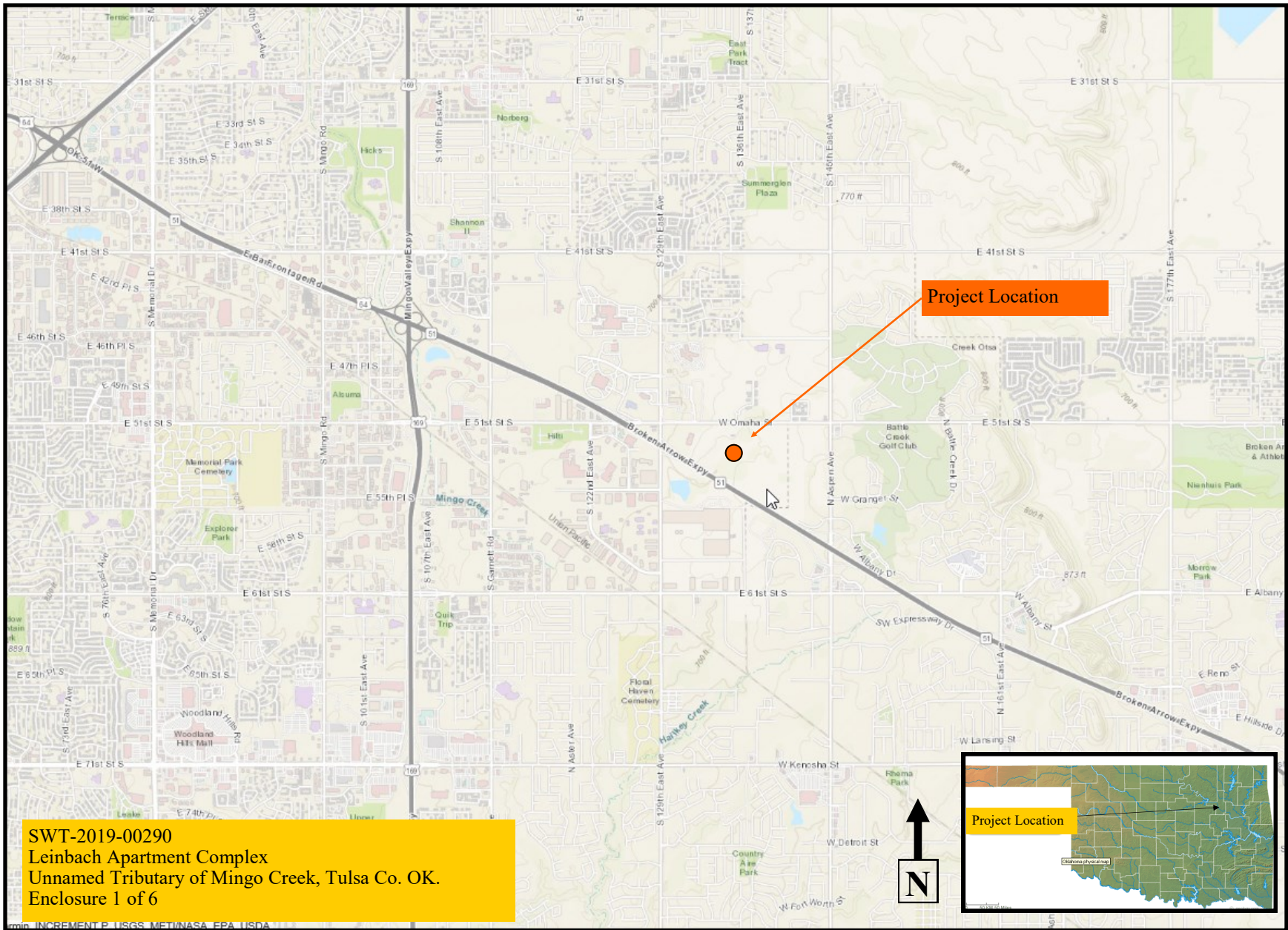
Any comments on this proposal must be submitted to be received by the Corps by the expiration date of this public notice comment period. Comments received after this date will not be considered in our decision. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137 or email CESWT-RO@usace.army.mil. Please include the public notice number SWT-2019-00290 in the subject line of your email message.

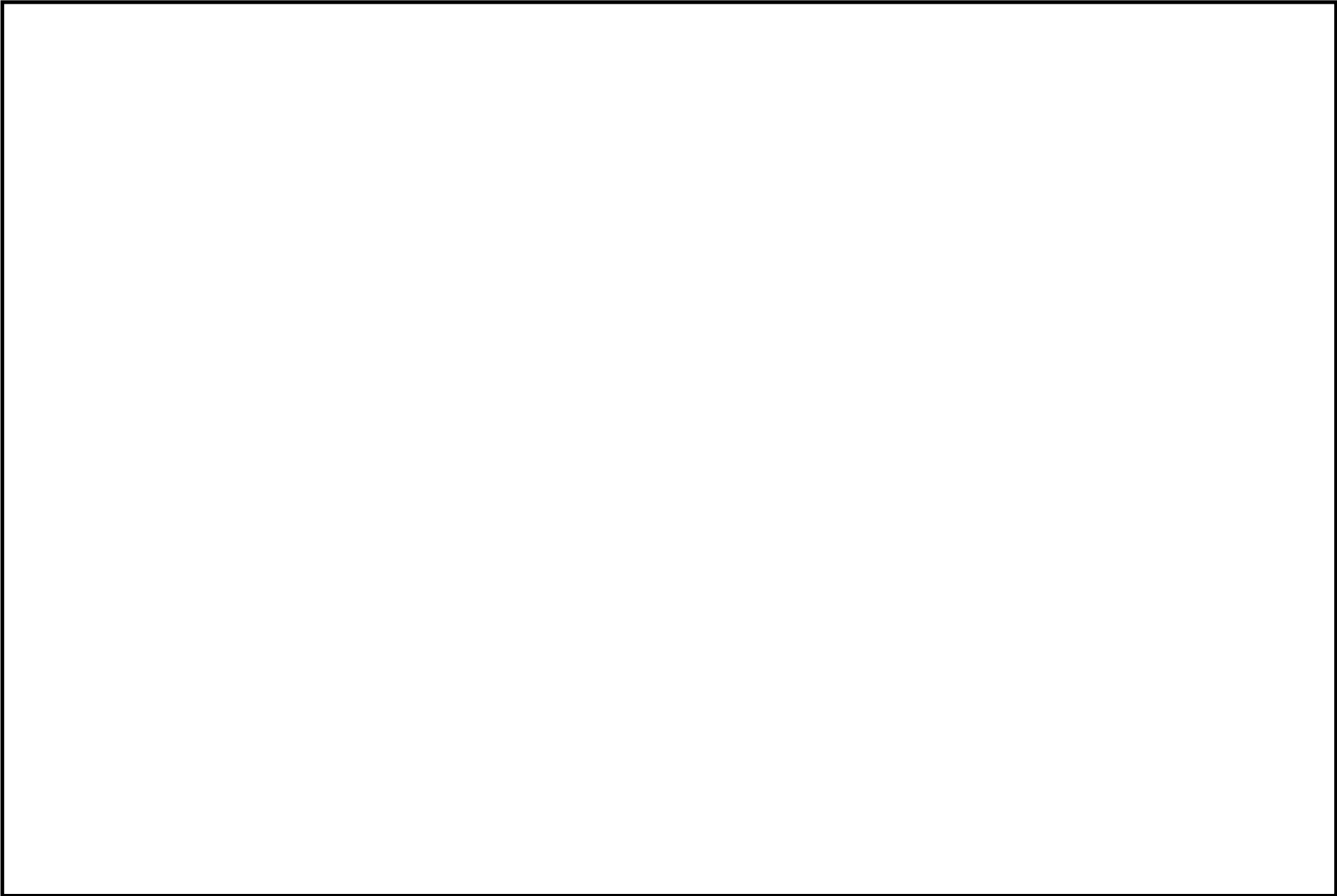
Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer
Chief, Regulatory Office

Enclosures

Vicinity map:





SWT-2019-00290
Leinbach Apartment Complex
Unnamed Tributary of Mingo Creek, Tulsa Co. OK.
Enclosure 6 of 6