



# Haw River Assembly

Phone: (919) 542-5790

P.O Box 187  
Bynum, NC 27228

www.hawriver.org

---

May 18, 2020

Paul Wojoski  
401 and Buffer Permitting Unit  
NC Division of Water Resources  
1617 Mail Service Center  
Raleigh, NC 27699-1617

James Lastinger  
Raleigh Regulatory Field Office  
US Army Corps of Engineers  
3331 Heritage Trade Drive, Suite 105  
Wake Forest, NC 27587

**Comments on the 404 permit and 401 State Certification for  
Chatham Park Investors and Department of Transportation,  
404 Permit ID # SAW-2020-00746**

Dear Mr. Wojoski and Mr. Lastinger:

The Haw River Assembly submits the following comments for the 404 permit and 401 certification for the Chatham Park Investors and Department of Transportation joint permit application to dredge and fill nearly one mile of linear feet of streams and over two acres of wetlands in the Haven and Robeson Creek sub basins in Chatham County. These comments are submitted on behalf of Haw River Assembly, our Board of Directors, and the over 1,000 members of our organization in the Haw River watershed. The Haw River Assembly and our Haw Riverkeeper have worked since 1982 to protect the Haw River watershed, and Jordan Lake in North Carolina, and we believe that approval of this permit will have numerous direct, indirect and cumulative negative impacts on these waters.

Because of the importance of this permit we are asking that a Public Hearing be held, when it is safe to do so, in order that the public has a a fuller opportunity to voice their comments in person. We are also requesting a 60 day extension of the comment period for the following reasons:

- It has not been possible for us, and the public at large, to thoroughly review the application documents in the time period allotted. Public Notice for this project was issued on April 29th, giving us less than a month to write comments on a permit application that is 921 pages long. Only the 12 page permit application was referenced in the US ACE public comment notice, not the full 912 page document, which meant even more lost time as we looked for it. The fact that this is a joint application of NC DOT and Chatham Park Investors makes the application even more complex, with differing data and narratives for aspects of the overall project.
- A very important reason for this requested delay is the difficulties presented to the public for examining documents during the Covid-19 pandemic. We have heard from community members that they do not have sufficient internet bandwidth to access the full set of documents in order to review them, and provide comments. Slow bandwidth is a common problem in many parts of Chatham County, and has been made worse by heavy internet traffic during the pandemic. Nor have people been able to use the faster internet service available at libraries and other public places during this time of stay at home orders.

**In the short time we have had available to review the full application, we have found many serious issues of concern, which are described here:**

### **1. Stream Delineations**

Approved jurisdictional determinations for streams and wetlands were issued on September 4, 2008 and May 11, 2010, and have since expired. A project of this scale, impacting so much area of surface waters within the proposed area and downstream should require current and approved final jurisdictional determination for all streams and wetlands. We have reason to believe that intermittent streams have been left out of the surveyed area in the southeastern corridor of the proposed project. On the application project maps, there are no intermittent streams in the southeastern corridor of the project area. Our team overlaid preexisting maps with likely intermittent streams based on topography and land characteristics, and found that most of our likely streams coincided with the intermittent streams in Chatham Parks plan ([Map 1](#)). However, the southeastern corridor of the parcel has several intermittent streams according to our map ([Map 2](#)), and none according to Chatham Park maps. Chatham Park has purchased all of this land, so we are unable to verify the streams. For a project of this scale, a current stream delineation survey and an Environmental Impact Statement (EIS) should be required. No EIS has ever been required for the North Village project area.

### **2. Impacts to Robeson and Haven Creeks**

The Haw River and Robeson Creek are nutrient impaired. Haven Creek has been repeatedly damaged by Chatham Park Investor's reckless management of sediment, erosion, and post construction stormwater. One incident involved heavy equipment driven through a stream during construction at The Mosaic development at Chatham Park. They had their Land Disturbance Permit revoked on January 10, 2020 by Chatham County's program for Sedimentation and Erosion Control (see photos below). Robeson Creek has an impairment for chlorophyll a, and a TMDL for a 71% reduction in phosphorus loading. The TMDL requires phosphorus reductions in all future developments. This proposed project would cause permanent damage to these creeks by increasing sediment loads, carrying nutrients from construction into the streams and wetlands.



*Haven Creek wetlands below Chatham Park Mosaic development. Photo by Peter Theye*



*Haven Creek entering the Haw River below Chatham Park development. Photo by Peter Theye*



*January, 2020 stream destruction incident at Mosaic development.  
Photo courtesy of Chatham County Watershed Protection Department.*

### **3. Slopes and Soil Types**

The application states that “The project area is located within the Piedmont ecoregion, specifically within the Carolina Slate Belt, and has moderate slopes elevations ranging from 276 feet above mean sea level (MSL) to 598 feet MSL within project area boundaries. Soils mapped on site are presented in the table below: (this is followed by chart of soils that were mapped) The chart shows steep slopes in these 3 soil types that were mapped. We calculated that this is almost 30% of the total area:

- Badin-Nanford complex, 15-30%, BaE;
- Georgeville-Badin complex, 15-30% GkE
- Goldston-Badin complex, 15-35% GoE
- In addition Georgeville-Badin complex, 10-15% GkD and Nanford-Badin complex, 10-15% NaD make up another 15% of the area and the “D” for slope may indicate steeper areas within them.

The applicant’s statement concerning slopes as “moderate” needs further review, which again would be provided in a thorough EIS.

#### **4. Incomplete Plant Inventory**

The lists of plants that could be impacted within the project area is very inadequate. The field evaluation of flora done as part of the Triangle Land Conservancy-UNC “Southwest Shore Conservation Assessment”<sup>1</sup> listed 113 plants in this project area, not including plants that were only found on what is now State Park land for the Lower Haw River State Natural Area, which bounds this project along the river. These plants are listed in Appendix A of these comments. Particularly egregious in the applicant’s plant lists are the missing native understory trees, shrubs and herbaceous plants that are in the project area, and listed in the Southwest Shore Conservation Assessment. The applicant does mention invasive species that are a problem in much of this part of the state, including *microstegium vimineum*. The shrubby invasive species *elaegnus angustifolia*, known locally as silverberry or Russian olive is repeatedly mis-identified in the application as *elaegnus communata*, a plant of the western United States. The land disturbance, and opening of more edges, that will be a consequence of this road building will only exacerbate the spread of these invasives. A thorough and current field inventory of plant species within the project boundaries should be done before this permit application is considered complete and would be accomplished by an EIS.

#### **5. Endangered and Protected Species, Wildlife and Conservation Areas - NHI letter**

The letter included in the application from USFWS dated March 19, 2020 lists three Federal threatened and endangered species: Red-cockaded woodpecker, Cape Fear shiner, and the plant species, Harperella. Although the critical habitat in the Haw River is considered outside the project boundary area, there is an earlier letter from USFWS from 2017 that raises concerns about the project’s impact on downstream aquatic species from possible sediment pollution, and offers guidance on avoidance of sedimentation impacts. It also raises the concern about Bald eagle protection, and though the applicants did not see any Bald eagle nest sites, this section of the Haw River is a popular fishing ground for the eagles and provides excellent habitat for nests (which have been seen upstream and downstream of the project area).

The applicant also includes a letter from the NC Natural Heritage Program dated March 28, 2019 that lists 6 state status endangered or significantly rare species, including Buttercup Phacelia. It also lists three forest communities of interest and three significant natural areas, all within the project: the Pittsboro Wilderness; Haw River Levees and Bluffs; and Haw River Aquatic Habitat.

---

<sup>1</sup> April 2 & 8, 2008 Preston Parks, compiled by Ed Corey, Harry LeGrand, & Misty Buchanan  
[https://www.triangleland.org/cms/wp-content/uploads/2016/04/final\\_report\\_with\\_appendix\\_small.pdf](https://www.triangleland.org/cms/wp-content/uploads/2016/04/final_report_with_appendix_small.pdf)  
[https://www.triangleland.org/cms/wp-content/uploads/2016/04/final\\_report\\_with\\_appendix\\_small.pdf](https://www.triangleland.org/cms/wp-content/uploads/2016/04/final_report_with_appendix_small.pdf)

A letter from the NC Division of Wildlife Resources, Sept 30, 2019, to DOT recommends that the project study area be widened to better understand impacts on natural resources and other guidance. It is not clear to us that this was undertaken. We did not find a comprehensive list of wildlife in the applicant's package. It is very important to know what native animal species inhabit this project area – birds, mammals, reptiles, amphibians, insects – since for many, the loss of this habitat will be a death sentence, either quickly as forest is removed, or slowly, due to increased competition for habitat and food elsewhere.

Much more complete information on wildlife and their habitat could be provided in an EIS for the entire North Village project area, which encompasses Chatham Parkway.

## **5. Cultural Resources**

It appears that all archaeological studies have not been done yet for this project area. If so, it would seem important to have that information as part of the permit application, not afterwards. We noted the request in the letter from the State Historic Preservation Office to DOT on Dec. 28, 2019 that was included in the permit application that the Catawba Indian Nation expressed interest in projects in Chatham County. Were they contacted?

## **6. Stormwater Impacts**

This project would cause severe and permanent degradation to Haven and Robeson creeks and their wetlands. These wetlands and streams serve as flood management for Jordan Lake, and provide the area needed for stormwater from and urbanizing landscape in Pittsboro to move through the river system. The Town of Pittsboro has spent thousands of dollars repairing infrastructure damaged due to flooding of Robeson creek (see photo below). These flood events will only be exacerbated by increase holding time for flooded waters to settle into the ground

We have seen dozens of sediment and erosion control and stormwater violations from current development projects within Chatham Park. Haven Creek wetlands have been inundated with sediment from poorly managed construction and post-construction stormwater BMPs.

According to Chatham Park's own maps, included in this application, their stormwater management plan is to flood wetlands as part of their stormwater control ponds. This is not a best management practice that should be allowed. This would cause total destruction of the wetlands.



*Photo of Robeson Creek tributary flooding damage, resulting in road closures for over six months and thousands of dollars from Pittsboro town budget and FEMA. Photo by Chatham News and Record<sup>2</sup>*

## **7. Applicant's Stated Purpose**

This section of the application needs an independent analysis of population growth and housing needs in Chatham County's future. In some respects the stated purpose is circular – the applicant wants to build a massive development (the largest ever built in NC and one of the largest in USA). In order to do so, they need to build these roads. But is that a sufficient need, and is it best for Chatham's future? The amount of retail space, housing and the number of jobs that Chatham Park plans to provide could be drastically altered by the post-pandemic economy ahead. There is no mention in this report of how any of the project plans are taking into account changes to accommodate more stormwater and flooding than they engineered for, with larger storms expected to increase with climate change.

The "North Village" development for which CPI has applied for a permit has not been approved yet. Although the Master Plan was approved in 2015, that was an approval of a zoning classification and overall master plan. Small Area Plans (SAP) for site and subdivision development must be approved by the Town of Pittsboro, The Small Area Plan for North Village (originally envisioned as many SAPs) has not been submitted to the Town yet, much less approved.

## **Evaluation**

The Chatham Park Investors summary of possible indirect and cumulative impacts is insufficient. The NC DOT response to these issues is in Appendix K and contains many concerns about the indirect and cumulative impacts that could result from this project as currently proposed in the permit application. Based on the findings in their own report they believe a Land

---

<sup>2</sup> <https://www.chathamnewsrecord.com/stories/road-in-pittsboro-closed-by-storm-damage-moving-closer-to-re-opening,932>

Use Scenario Assessment (LUSA) is warranted for this project. We urge that this be done before the permit application is considered complete. This is another example of two entities - Chatham Park Investors and NC DOT - having differing information within one joint application.

We are confident that with additional time we can submit more comprehensive comments and additional data to support our findings presented here. We urge NCDEQ leadership and staff to

- 1) grant a comment extension of 60 days,
- 2) to hold a public hearing when it is safe to do so, and
- 3) require an Environmental Impact Statement that includes current stream surveys, complete information on natural and cultural resources, alternatives analysis, and other information missing from this permit application.

Without an extension of the comment period, based on our evaluation of the application we would urge you to deny this 404 permit application and 401 certification.

Sincerely,

Elaine Chiosso  
Executive Director  
[chiosso@hawriver.org](mailto:chiosso@hawriver.org)

Emily Sutton  
Haw Riverkeeper  
[emily@hawriver.org](mailto:emily@hawriver.org)

Haw River Assembly  
P.O. Box 187  
Bynum, NC 27228  
919-542-5790



**Appendix A: Documented Plant Species in Project Area  
Southwest Shore Conservation Assessment**

<i>Acer rubrum</i>	<i>Houstonia caerulea</i>	<i>Quercus stellata</i>
<i>Aesculus sylvatica</i>	<i>Hypericum stragalum</i>	<i>Quercus velutina</i>
<i>Ailanthus altissima</i>	<i>Hystrix</i> sp.	<i>Rhus copallina</i>
<i>Allium vineale</i>	<i>Ilex opaca</i>	<i>Rubus</i> sp.
<i>Andropogonvirginicus</i>	<i>Iris cristata</i>	<i>Salvia lyrata</i>
<i>Antennaria parlinii</i> ssp. <i>Parlinii</i>	<i>Juglans nigra</i>	<i>Sisyrinchium mucronatum</i>
<i>Antennaria plantaginifolia</i>	<i>Juniperus virginianus</i>	<i>Smilax glauca</i>
<i>Aplectrum hyemale</i>	<i>Liquidambar styraciflua</i>	<i>Smilax rotundifolia</i>
<i>Arisaema triphyllum</i>	<i>Liriodendron tulipifera</i>	<i>Stellaria media</i>
<i>Asplenium platyneuron</i>	<i>Lonicera japonica</i>	<i>Stellaria pubera</i>
<i>Athyrium asplenioides</i>	<i>Lonicera sempervirens</i>	<i>Symphoricarpos orbiculatus</i>
<i>Betula nigra</i>	<i>Luzula</i> sp.	<i>Taenidia integerrima</i>
<i>Bignonia capreolata</i>	<i>Maianthemum racemosa</i>	<i>Taraxacum officinale</i>
<i>Botrychium virginianum</i>	<i>Microstegium vimineum</i>	<i>Thalictrum thalictroides</i>
<i>Cardamine angustata</i>	<i>Myosotis</i> sp.	(= <i>Anemonella</i> th
<i>Cardamine concatenata</i>	<i>Narcissus pseudonarcissus</i>	<i>Tiarella cordiformis</i>
<i>Carex</i> spp.	<i>Nemophila microcalyx</i> (=N.	<i>Tipularia discolor</i>
<i>Carpinus caroliniana</i>	<i>aphylla</i> )	<i>Toxicodendron radicans</i>
<i>Carya alba</i>	<i>Nyssa sylvatica</i>	<i>Uvularia sessilifolia</i>
<i>Carya glabra</i>	<i>Osmorhiza longistylis</i>	<i>Vaccinium pallidum</i>
<i>Carya ovalis</i>	<i>Ostrya virginiana</i>	<i>Viburnum prunifolium</i>
<i>Cercis canadensis</i>	<i>Oxalis</i> sp.	<i>Viola affinis</i>
<i>Chaerophyllum procumbens</i>	<i>Oxydendrum arboreum</i>	<i>Viola sagittata</i>
<i>Chimaphila maculata</i>	<i>Packera anonyma</i>	<i>Viola sororia</i>
<i>Cimicifuga racemosa</i>	<i>Paulownia tomentosa</i>	<i>Vitis rotundifolia</i>
<i>Cirsium (horridulum)</i>	<i>Perilla frutescens</i>	<i>Zizia aurea</i>
<i>Cornus florida</i>	<i>Phacelia covillei</i>	
<i>Elaeagnus umbellata</i>	<i>Phlox nivalis</i> var. <i>nivalis</i>	
<i>Epifagus virginiana</i>	<i>Phoradendron leucarpum</i>	
<i>Euonymus americanus</i>	<i>Pinus echinata</i>	
<i>Fagus grandifolia</i>	<i>Pinus taeda</i>	
<i>Fraxinus americana</i>	<i>Platanus occidentalis</i>	
<i>Fraxinus pennsylvanica</i>	<i>Poa cuspidata</i>	
<i>Galium aparine</i>	<i>Podophyllum peltatum</i>	
<i>Galium circaezens</i>	<i>Polygonatum biflorum</i>	
<i>Galium tinctorium</i>	<i>Polystichum acrostichoides</i>	
<i>Gelsemium sempervirens</i>	<i>Potentilla canadensis</i>	
<i>Geranium carolinianum</i>	<i>Prenanthes</i> sp.	
<i>Geranium maculatum</i>	<i>Prunus serotina</i>	
<i>Geum (canadense?)</i>	<i>Quercus alba</i>	
<i>Goodyera pubescens</i>	<i>Quercus coccinea</i>	
<i>Hamamelis virginiana</i>	<i>Quercus falcata</i>	
<i>Hepatica americana</i>	<i>Quercus rubra</i>	
<i>Hexastylis arifolia</i>		
<i>Hieracium venosum</i>		