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**Coastal Carolina Riverwatch**  
700 Arendell Street, Suite 2  
Morehead City, North Carolina 28557



March 26th, 2022

US Army Corps of Engineers, Wilmington District  
2407 West Fifth Street  
Washington, North Carolina 27889

Dear Ms. Thompson,

Thank you for the opportunity to submit comments regarding the Martin Marietta Materials, Inc. application associated with the expansion of Belgrade Quarry in Jones County, North Carolina.

We submit these comments on behalf of **Coastal Carolina Riverwatch**. We represent a coalition of eastern North Carolina citizens, committed to protecting the waterways of the White Oak River Basin.

1. The proposal's purpose and need are too narrowly defined. On page 3 of the "Public Notice," the applicant states the purpose of this project is "to cost-effectively continue operation of the limestone aggregate quarry facility at Belgrade by expanding the existing quarry area to mine suitable stone reserves in a systematic and economically viable fashion for supply to the market during the short and medium term."

This purpose does not indicate the Corps has exercised independent judgment. The Corp should have a basis to set up alternatives and select the best. It also does not notify the public that the Bender Pit is a new proposed pit, not an expansion of the existing mine pit farther north. Finally, the purpose and need as currently articulated are too narrowly drawn to allow consideration of alternatives, such as alternate locations.

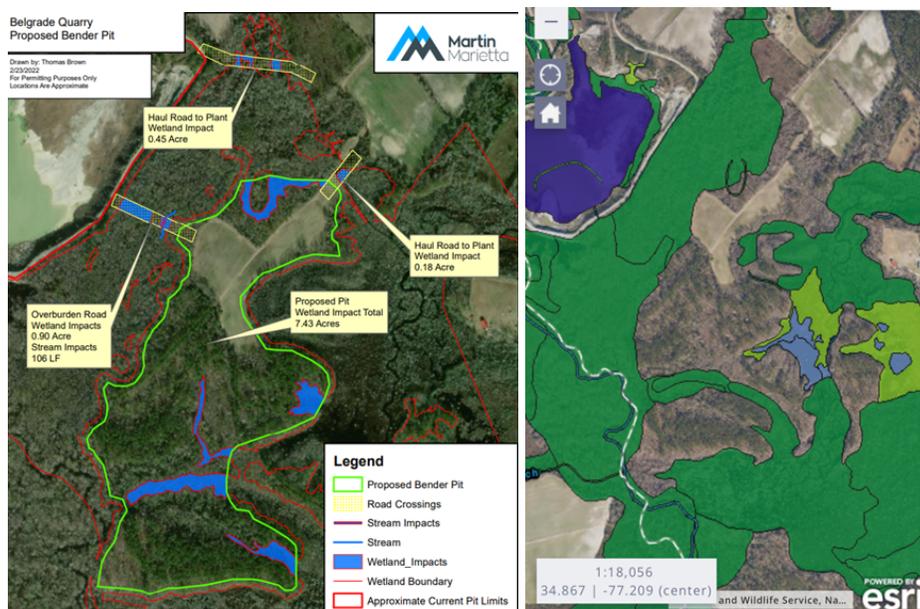
2. The application shows that aggregate mining at the proposed expansion is not a water-dependent use, because the applicant states most of the proposed mining is uplands.
- a. Because the use is not water-dependent, the applicant has not met its burden to rebut the presumption that wetlands can be avoided<sup>1</sup>.
  - b. The lack of a water-dependent use may affect the avoidance and minimization criteria for this proposal.

3. The proposal's impacts may be greater than the total acreage of wetlands impacts (8.96).

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<sup>1</sup> LII / Legal Information Institute. 2022. *40 CFR § 230.10 - Restrictions on discharge*. <<https://www.law.cornell.edu/cfr/text/40/230.10>>

- a. The Bender Pit expansion site is entirely surrounded by jurisdictional wetlands. Compare the side-by-side images below. There is also a 6.19-acre freshwater pond directly adjacent to the new proposed pit (shown in blue on the map at right).



- b. Excavating the upland separating the White Oak River and Black Swamp Creek may alter existing hydrology over a larger area. There is a need for more information about how the expansion will affect the surrounding hydrology.
- c. One of the proposed haul roads goes over a major wetlands complex. This road may not be justified, and more information is needed to evaluate how the road would affect the wetland complex. Additionally, there seems to be another way to access the pit through uplands, raising questions of whether the proposal adequately avoids and minimizes impacts to wetlands.
- d. Impacts to edge of jurisdictional wetland boundary and the freshwater pond adjacent to Black Swamp Creek may require a Clean Water Act § 402 discharge permit<sup>2</sup>.

4. A jurisdictional determination is necessary for the proposal.

- a. There is no approved jurisdictional determination (AJD) for this proposal. Although the applicant is proceeding on a preliminary jurisdictional determination, satellite photos indicate some land clearing and some ditches present. This presents a question of whether those activities have altered the natural hydrology and influenced the jurisdictional determination, and if so, whether this alteration was legal under Clean Water Act § 404<sup>3</sup>. Accordingly, an AJD is needed for this proposal to proceed.

<sup>2</sup> US EPA. 2022. *Clean Water Act, Section 402: National Pollutant Discharge Elimination System* | US EPA. <<https://www.epa.gov/cwa-404/clean-water-act-section-402-national-pollutant-discharge-elimination-system>>

<sup>3</sup> US EPA. 2022. *Overview of Clean Water Act Section 404* | US EPA. <<https://www.epa.gov/cwa-404/overview-clean-water-act-section-404>>

5. The preservation of existing wetlands does not accomplish the mitigation needs for this project.

a. According to the mitigation hierarchy in 40 C.F.R. § 230.93(a)(2)<sup>4</sup> provides that mitigation by restoration is generally preferable to establishment, enhancement, or preservation. With regard to the use of mitigation banks in particular, § 230.93(b)(2)<sup>5</sup> describes a number of benefits to using mitigation bank credits and then provides that “[f]or these reasons, the district engineer should give preference to the use of mitigation bank credits when these considerations are applicable.” Furthermore, § 230.93(b)(3)<sup>6</sup> provides that, under certain conditions described in the regulation, “in-lieu fee mitigation, if available, is generally preferable to permittee-responsible mitigation.” Also, § 230.93(e)(1)<sup>7</sup> provides that in-kind mitigation is generally preferable to out-of-kind mitigation.

b. The applicant’s proposed preservation of the 404 jurisdictional wetlands on the preservation tract are not likely subject to development in the future, meaning the preservation of the land does not compensate for the losses the proposal would cause.

c. There may be more meaningful mitigation opportunities elsewhere, e.g. habitat or hydrologic restoration elsewhere in the White Oak watershed to help offset impacts of the proposal.

6. The provisions for appropriate stormwater management are vague, leading to question of sufficiency.

a. On Page 5 of the “Public Notice” document, the applicant states intent “to minimize impacts to wetlands and other waters, MMM will use stormwater management and erosion control techniques that preserve downstream water quality.” This does not specify methods of stormwater management, nor indicate if stormwater provisions have been developed or proposed by appropriate, unbiased engineers and/or field experts.

7. Finally, we emphasize the importance of careful and diligent review and consultation of other sections listed in “Public Notice” regarding essential fish habitats, cultural resources, and endangered species.

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<sup>4</sup> LII / Legal Information Institute. 2022. *40 CFR § 230.93 - General compensatory mitigation requirements*. <https://www.law.cornell.edu/cfr/text/40/230.93>

<sup>5</sup> See 40 CFR § 230.93

<sup>6</sup> See 40 CFR § 230.93

<sup>7</sup> See 40 CFR § 230.93

For these reasons, we respectfully request that the Us Army Corps of Engineers not issue permit for the work proposed by the applicant. Moving forward, we request a careful assessment of the above considerations and a thorough evaluation of potential impacts.

Respectfully,



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