



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: October 31, 2022
Comment Deadline: November 30, 2022
Corps Action ID Number: SAW-2010-01907

The Wilmington District, Corps of Engineers (Corps) received an application on October 19, 2022, from RXR Len Apex Owner LLC, seeking Department of the Army authorization to discharge fill and dredged material, associated with the Veridea mixed use commercial-residential development in Apex, in Wake 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:

<https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/>

Applicant: RXR Len Apex Owner LLC.
Attn: Todd Rechler
625 RXR Plaza
Uniondale, New York 11553

AGENT (if applicable): Soil & Environmental Consultants, PA.
Deborah E. Shirley
8414 Falls of Neuse Road, Suite 104
Raleigh, North Carolina 27615

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 (33 U.S.C. 1413)

Location

Location Description: The proposed project (Project) is located on the west side of NC Highway 55, and primarily between US Highway 1 and NC Highway 540, in Apex, in Wake County, North Carolina.

Project Area (acres): 1,092

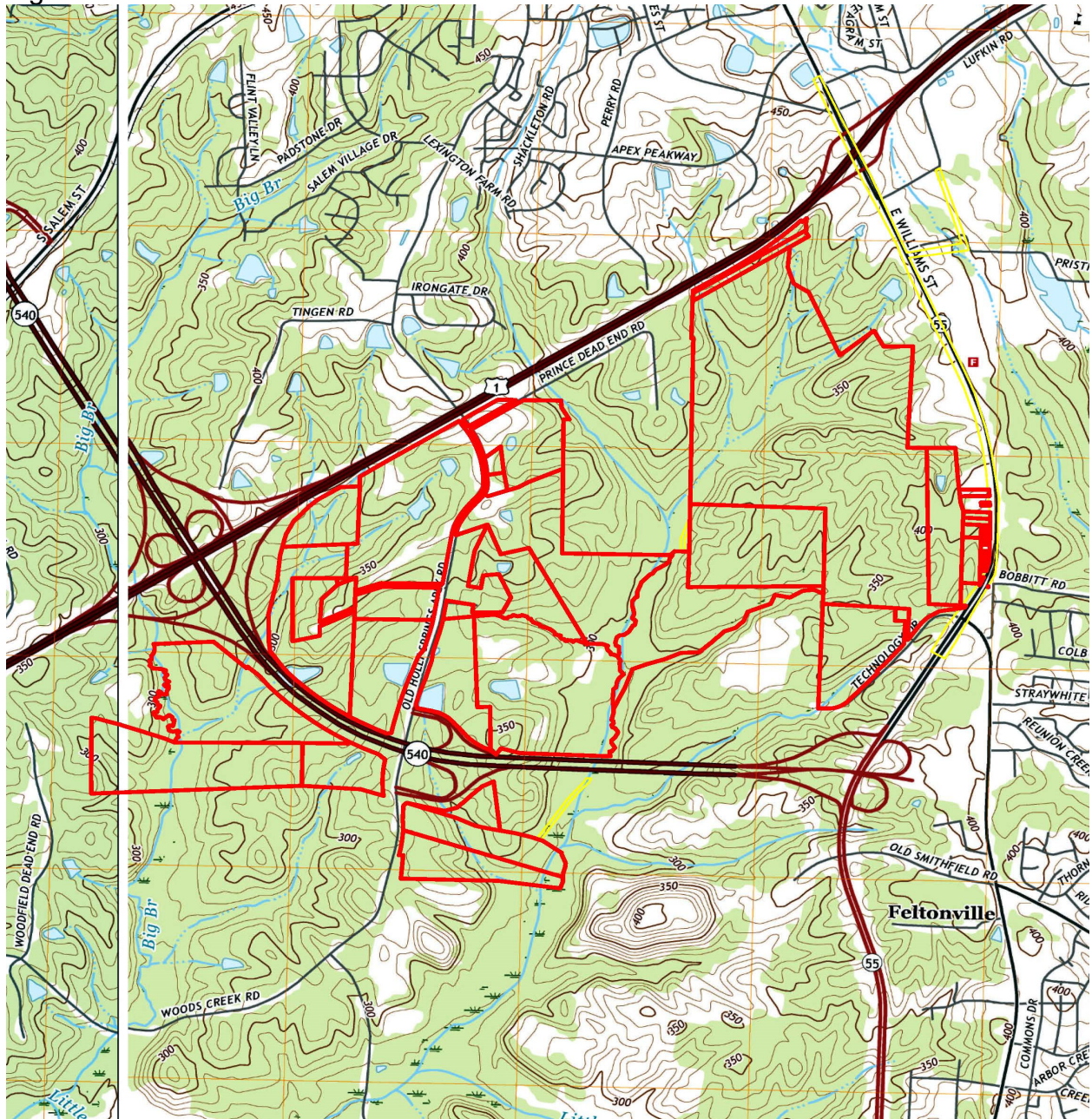
Nearest Town: Apex

Nearest Waterway: Big Branch

River Basin: Cape Fear

Latitude and Longitude: 35.697756N, -78.849608W

Figure 1.



Existing Site Conditions

The project area (Site) consists primarily of undeveloped woodlands, maintained agricultural fields, and residential homesteads. The site is bound to the north by US Highway 1, to the east by NC Highway 55, and to the west and south by NC Highway 540, with the exception of a few parcels. Surrounding land use north and west of the Site primarily consists of undeveloped woodlands. Commercial land use is present east of the Site adjacent to East Williams Street, and the South Wake Landfill is located to the southeast near the intersection of East Williams Street and NC Highway 540.

The Site was delineated to determine the lateral limits of potential waters of the U.S. (WOUS) in September 2010; the Corps issued an Approved Jurisdictional Determination on December 7, 2011, which expired December 7, 2016. The Site was re-delineated in February 2016; the Corps issued a Preliminary Jurisdictional Determination on May 26, 2017. An additional delineation was performed in 2022 for the proposed off-site utility areas. A Jurisdictional Determination for the Site was not requested with this application.

Based on the most recent delineation, the Site contains approximately 58,390 linear feet (lf) of potentially jurisdictional non-wetland waters (stream), 6.07 acres (ac) of potentially jurisdictional non-wetland waters (open water), and 6.72 ac of potentially jurisdictional wetland waters (wetlands). Additionally, there are three non-wetland waters (open water) determined to be non-jurisdictional in the AJD dated December 7, 2011.

Based on information obtained from the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey for Wake County, the soils within the Site are composed of 12 soil series summarized in Table 1 below.

Table 1

Map Unit Symbol	Map Unit Name
AaA	Altavista fine sandy loam, 0 to 4 percent slopes, rarely flooded
CaB	Carbonton-Brickhaven complex, 2 to 6 percent slopes
CaC	Carbonton-Brickhaven complex, 6 to 10 percent slopes
CaD	Carbonton-Brickhaven complex, 10 to 15 percent slopes
ChA	Chewacla and Wehadkee soils, 0 to 2 percent slopes, frequently flooded
CrB	Creedmoor-Green Level complex, 2 to 6 percent slopes
CrC	Creedmoor-Green Level complex, 6 to 10 percent slopes
CrD	Creedmoor-Green Level complex, 10 to 15 percent slopes
PkD	Pinoka gravelly fine sandy loam, 4 to 15 percent slopes
PkF	Pinoka gravelly fine sandy loam, 15 to 30 percent slopes
Ur	Urban land
W	Water

Applicant's Stated Purpose

The applicant's stated purpose for the Project is to create a community of safe, healthy, resource efficient and transit oriented mixed-use projects which create sustainable economic growth in the Raleigh-Durham sub-market, where there is both current and continually growing demand for commercial and life science spaces and residential housing. Impacts to potential WOUS associated with the development include roads, utilities, and lot fill.

Project Description

The applicant provided the following project description:

The Project is a large, mixed-use neighborhood that preserves large swathes of environmentally sensitive areas while providing housing, employment, retail, and other services within 1,092 ac. The zoning approval allows for a total of 8,000 dwelling units, 3.5 million square feet (sf) of retail and commercial uses, and 12 million sf of office and industrial uses. The zoning requires that a minimum of 100 ac be dedicated as part of the Town of Apex's Resource Conservation Area, and a minimum of 150 ac of recreation and open space. There are four sub-communities that would provide a complete range of residential dwelling options including single-family homes, duplexes, townhomes, and apartments. One sub-community is planned as a mix of single-family, townhomes, condos, and multi-family apartments. Table 2 lists the types and number of units planned for each proposed sub-community.

Table 2

Master Plan		
Sub-community	Development Pod - Type	Units
East Village	1 – Mixed Use	320 single-family homes, 520 townhomes, 150 condos, 1,100 multifamily apartments, and 200,000 sf of institutional (approximately)
West Village	1 – Mixed Use	80 single-family homes, 240 townhomes, 800 multifamily apartments, 850,000 sf of mixed-use, 80,000 sf of commercial / retail, 200,000 sf of hotel, 150,000 sf of life and sciences, 60,000 sf for conference center, and 50,000 sf of community recreation (approximately)
South Village West	2 – Non-residential	880,000 sf of industrial space, 6,000 sf of mixed-use (approximately)
South Village East	2 – Non-residential	130,000 sf commercial/retail, 150,000 sf of hotel, 50,000 sf of office (approximately)

The Project would require the permanent discharge of fill material within 1.092 ac (4,798 lf) of stream channel (0.853 ac [3,961 lf] of which are considered a permanent loss of waters), 0.820 ac of wetlands, and 0.343 ac of open water. The Project would temporarily discharge fill or dredged material within 0.318 ac (1,182 lf) of stream channel and 0.025 ac of wetlands. The installation of utility infrastructure and establishment of permanently maintained utility corridors would result in the temporary discharge of dredged material within, and permanent conversion of, 0.02 ac of forested wetlands to herbaceous wetlands.

The proposed discharges are to accomplish forty-three (43) road crossings, seventeen (17) utility (sanitary sewer/force main) crossings and seven (7) areas of lot fill. The proposed impact areas would cross at twenty-one (21) perennial stream locations, thirty (30) intermittent stream locations, eleven (11) forested wetlands, and three (3) open waters. Note that four (4) crossings have a combination of stream, wetland and/or open water impacts.

The forty-three (43) permanent road crossings proposed at the Site would be constructed with reinforced concrete pipes (RCP) with gravity retaining walls or cast in place headwalls and riprap dissipator pads. The RCP's are proposed to be buried to achieve aquatic life passage and the riprap dissipator pads are proposed to be constructed such that the top elevation of the riprap would not exceed the pre-construction elevation of the stream bed. The proposed road crossings would be necessary to access uplands for the development.

The seventeen (17) temporary utility crossings proposed at the Site that would require open-cut construction methods to bury pipe to provide a collection system to treat wastewater from the development throughout the Project and connect to the Town's Middle Creek Water Reclamation Facility and a proposed regional pump station. The seven (7) permanent lot fill areas proposed at the Site would facilitate mass grading for structures and parking.

The Project design and proposed impacts are depicted in the attached Wetland and Stream Impact Maps, located in the appendix of this document.

Avoidance and Minimization

The applicant provided information in support of efforts to avoid and/or minimize impacts to the aquatic environment detailed in the attached appendix to this document in Block 23.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment:

The applicant proposes to compensate for the permanent loss of stream channel and wetlands by purchasing credits within hydrologic unit code (HUC) 03030004, through payment into the North Carolina Department of Mitigation Services (NCDMS) in-lieu fee program and Middle Cape Fear Umbrella Mitigation Bank, Daniels Creek Mitigation Site sponsored by Wildlands Holdings IV, LLC. Specifically, the applicant proposed mitigation at a 2:1 ratio for proposed permanent stream and wetland loss and proposes mitigation at a 1:1 ratio for proposed permanent – no permanent loss (conversion) wetland impacts. Included with the application were mitigation acceptance letters from NCDMS and Wildlands Engineering, Inc., dated October 7, and October 5, 2022, respectively, indicating that they are willing to provide compensatory mitigation credits for the Project impacts.

Amount of stream mitigation requested (linear feet): 7,922 lf

Amount of Riparian wetland mitigation requested (acres): 1.66 ac

Table 3.

Table 3:

Phase Number	Impact Areas	Mitigation Required		Construction/Mitigation Payment Deadline
Phase 1				
		Stream Credits	Wetland Credits	
Master Infrastructure A	2.21A, 2.19A, 2.19B, 2.22, 2.17, 2.24, 1.23	2,090	N/A	12/31/2027
Master Infrastructure B	2.1A-1, 2.1A-2, 4.1, 4.2	N/A	0.49	12/31/2027
RXR A	2.16, 2.18, 2.20	944	N/A	12/31/2027
LEN A	2.14	258	N/A	12/31/2027
LEN B	2.9, 2.10, 2.5, 2.4, 2.1B, 2.2A, 2.2B, 2.2C	1,964	0.01	12/31/2027
SVE	3.5, 3.6	138	N/A	12/30/2030
SVW	3.1, 3.2, 3.3, 3.4A, 3.4B	500	N/A	12/30/2030
Phase 2				
		Stream Credits	Wetland Credits	
West Village - A	1.19, 1.16, 1.18, 1.17, 1.21	650	0.20	12/31/2035
West Village - B	1.1, 1.13, 1.14, 1.15	590	0.64	12/31/2040
West Village - C	1.2A, 1.2B, 1.4, 1.5, 1.6, 1.7, 1.8	660	0.18	12/31/2045
West Village - D	1.9, 1.10, 1.11A, 1.11B	128	0.14	12/31/2050
	Total	7,922	1.66	

Essential Fish Habitat

The Corps' 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:

- ☒ The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

In a letter dated June 20, 2016, the North Carolina State Historic Preservation Office (SHPO) stated that the Site is considered to have a high probability for archaeological remains, including both precontact Native American sites and historic period sites.

In a letter dated November 22, 2021, SHPO stated that five archeological sites (31WA1500 – 31WA1503 and 31WA1514) and the Baker-Collins Cemetery (31WA1504) are located within the Site. SHPO stated that the five archaeological sites are not eligible for listing in the National Register of Historic Places, but it is likely that additional, unrecorded sites are present in the project area. SHPO recommended that prior to any ground disturbing activities within the project area, a comprehensive archaeological survey of the project area be conducted by an experienced archaeologist. Additionally, SHPO noted that cemeteries and unmarked graves are protected under North Carolina General Statutes Chapter 14-148 and 14-149 and are afforded consideration under NCGS Chapters 65 and 70.

In a letter dated September 14, 2022, SHPO stated that they had received the Historic Structure Report (HSSR), Hunter-Prince House (WA0686), 3009 Veridea Parkway, Apex, Wake County, North Carolina,” and offered comments. SHPO stated that after reviewing the HSSR evaluating the National Register eligibility of the Hunter-Prince House, they concur that the property is not eligible for the reasons listed in the report and they have determined that there would be no historic structures affected by the Project.

In a letter dated October 7, 2022, SHPO stated that the methods described in the draft archaeological survey report submitted August 18, 2022, for delineating cemeteries and assessing historic archaeological site are inconsistent with the scope of work approved

in an email dated November 29, 2021. SHPO recommended that additional fieldwork be performed to ensure that cemeteries are properly delineated and historic sites are properly assessed.

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-identified 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 may affect federally listed endangered or threatened species or their formally designated critical habitat.
- ☒ By copy of this public notice, the Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.

The applicant included the following effect determinations for federally listed species presented in Table 4. below, which were also provided to the U.S. Fish and Wildlife Service (Service) via email on June 8, 2022.

Table 4.

Species / Resource Name	Conclusion	ESA Section 7 / Eagle Act Determination	Notes / Documentation
Red-cockaded Woodpecker (<i>Picoides borealis</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Neuse River Waterdog (<i>Necturus lewisi</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Cape Fear Shiner (<i>Notropis mekistocholas</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Carolina Madtom (<i>Noturus furiosus</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.

Atlantic Pigtoe (<i>Fusconaia masoni</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Dwarf Wedgemussel (<i>Alasmodonta heterodon</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Yellow Lance (<i>Elliptio lanceolata</i>)	No suitable habitat present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Michaux's Sumac (<i>Rhus michauxii</i>)	Suitable habitat present, species not present	No effect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	Unlikely to disturb nesting Bald Eagles	No Eagle Act permit required	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022.
Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	Suitable habitat present, species not present	May affect, not likely to adversely affect	Preliminary habitat survey completed by S&EC staff on May 4 & 5, 2022. Relying upon the findings of the 1/5/2016 Programmatic Biological Opinion for Final 4(d) Rule on the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions to fulfill our project-specific section 7 responsibilities.
Critical Habitat	No critical habitat present	No effect	

The Service provided the applicant with the following statement via email on July 26, 2022: "The Service concurs with the determinations for the Veridea project."

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 at the NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. Unless NCDWR is granted a time review extension, a waiver will be deemed to occur if the NCDWR fails to act on this request for certification within 120 days of the date of this public notice. 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 21, 2022, to:

NCDWR Central Office
Attention: Mr. Paul Wojowski, 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 (NCDWM):

- ☒ 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 will 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, December 3, 2022. Comments should be submitted to George Lyle Phillips III, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105 , Wake Forest, North Carolina 27587, at (919) 588-9200. Comments may also be submitted to RaleighNCREG@usace.army.mil