



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: July 15, 2022  
Comment Deadline: August 15, 2022  
Corps Action ID Number: SAW-2018-01250

The Wilmington District, Corps of Engineers (Corps) received an application from Matthew Brubaker, Greenfield Serenity, LLC seeking Department of the Army authorization to discharge dredged or fill material into waters of the U.S., associated with a proposed 1,190 lot single-family residential development known as Serenity Subdivision, west of US-401, between Rollins Road and Piney-Grove Rawls Road, and north of Rawls Church Road, south of the Town of Fuquay Varina, in Harnett 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:** Matthew Brubaker  
Greenfield Serenity, LLC  
8601 Six Forks Road  
Raleigh, North Carolina 27615

**AGENT (if applicable):** Philip May  
Carolina Ecosystems, Inc.  
Clayton, North Carolina 27520

## 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:

Project Area (acres): ~580-acres                      Nearest Town: Fuquay Varina  
Nearest Waterway: Hector Creek                      River Basin: 03030004 Cape Fear  
Latitude and Longitude: 35.546573 N, -78.822049 W

## Existing Site Conditions

The project is located in the Cape Fear River Basin, and lies within Hydrologic Unit 03030004, and within the Piedmont ecoregion. The project site consists of areas of pine, mixed hardwood forest and clear-cut land. Typical species present on the site include Chinese privet (*Ligustrum sinense*), giant cane (*Arundinaria gigantea*), greenbrier (*Smilax rotundifolia*), Japanese grass (*Microstegium vimineum*), Japanese honeysuckle (*Lonicera japonica*), loblolly pine (*Pinus taeda*), red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*), tulip poplar (*Liriodendron tulipifera*), and white oak (*Quercus alba*). The site, including all phases, has 52.57 acres of wetlands, 22,517 linear feet of perennial streams, 1,878 linear feet of intermittent streams, and 4.80 acres of ponds. The wetland and stream complexes on the site are all associated with Hector Creek and its surrounding tributaries. The wetlands are primarily headwater forests and bottomland hardwood forest.

Permit history: A Nationwide Permit 29 was issued June 8, 2020, which authorized the permanent loss of 0.44-acre of riparian wetland and 293 linear feet of perennial stream, the permanent conversion of 0.45-acre of forested wetland, and temporary impacts to 0.26-acre of riparian wetland and 343 linear feet of stream for the purpose of constructing roads and installing utilities associated with the initial phases of the development. Compensatory mitigation was required for the permanent loss of 0.45-acre of riparian wetland and 293 linear feet of perennial stream at a 2:1 ratio and at a 1:1 ratio for the permanent conversion of 0.44-acre of forested wetland. Construction activities in these phases are complete.

## Applicant's Stated Purpose

The purpose of the project is to provide a diversely structured community with an array of home options to help to meet the high demand for housing within Fuquay Varina and the surrounding area, to include senior-targeted ranch homes as well as two-story and ranch style, single family homes.

## Project Description

The development is intended to provide housing capacity in a rural setting but in proximity to Fuquay-Varina and major thoroughfares. The project is optimally located within a ten-minute drive of Fuquay Varina municipal limits in a relatively rural

atmosphere while maintaining economic viability. The project is located close to US-401 and NC-42, which provide quick access to Fuquay Varina and the future I-540 beltline.

The project proposes to impact resources under the jurisdiction of the Clean Water Act Section 404 for the construction of road and utility infrastructure, amenities, and some lot grading.

Permanent proposed wetland impacts total 0.84-acre (0.73-acre permanent fill and 0.1-acre permanent conversion). Permanent proposed stream impacts total 695 linear feet of stream channel filled for stream crossings (culvert installation and inlet/outlet protection). Temporary impacts to streams and wetlands would be 80 linear feet and 0.06-acre, respectively.

### **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

- The streams and wetlands along the drainage features on site (Hector Creek and its tributaries) have been avoided except for required road and utility crossings.
- Road crossings have been reduced to the least practicable number while complying with local requirements for fire safety and access.
- Road crossings have been designed to be perpendicular to the stream channel and are located in areas with minimal wetlands.
- Wetlands and streams remaining on the project after construction will be preserved by their location in open space and stream conservation buffers shown on the attached plans.
- Nature trails throughout the open space areas have been designed to avoid wetlands and cross streams with spanned footbridges (no proposed impacts) and are designed with pervious natural materials.
- Retaining walls have been used in multiple locations to limit loss of stream bed at road crossings and eliminate fill encroaching into wetlands.
- Cumulative permanent loss of resources (including prior permitted AID SAW-2018-01250) are 803 linear feet of stream and 1.17 acres of wetland. This is 3.3% and 2.2%, respectively, of the total resources present on the site.
- Stormwater control measures including wet ponds, energy dissipaters, and level spreaders have been designed to control and treat runoff from the proposed development in accordance with Town and State regulations.
- No proposed lots contain wetlands with the exception of Impact Site G (W24) as discussed above.

### **Compensatory Mitigation**

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

The applicant states that they will acquire the compensatory mitigation for these unavoidable impacts from the North Carolina Department of Environmental Quality (NCDEQ)-Division of Mitigation Services (DMS) for the project. An acceptance letter from the NC DMS was provided with the application. The applicant proposes to offset unavoidable impacts to Waters of the U.S. with compensatory mitigation provided by the NCDEQ DMS at a ratio of 2:1 for wetland and perennial stream impacts (permanent loss), and a 1:1 ratio for permanent conversion of wetlands and intermittent stream impacts.

### **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:

- Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).

- 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.

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 would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- 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 Corps will consult under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
  - The Corps has initiated consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. Consultation has been completed for this type of activity and the effects of the proposed activity have been evaluated and/or authorized by the National Marine Fisheries Service (NMFS) in the South Atlantic Regional Biological Opinion or its associated documents, including 7(a)(2) & 7(d) analyses and Critical Habitat assessments. A copy of this public notice will be sent to the NMFS.
- The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will

make a final determination on the effects of the proposed project upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

### **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 applicant did not provide or satisfy all the elements required for a complete 401 certification request. Therefore, the 401 Certification process has not started. 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 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. 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 August 5, 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):**

- 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 will request, upon receipt, 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 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, August 13, 2022. Comments should be submitted to Liz Hair, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4049, by email at [sarah.e.hair@usace.army.mil](mailto:sarah.e.hair@usace.army.mil). Comments may also be submitted to [WilmingtonNCREG@usace.army.mil](mailto:WilmingtonNCREG@usace.army.mil)