



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: 3/27/2023  
Comment Deadline: 4/27/2023  
Corps Action ID Number: SAW-2022-00968

The Wilmington District, Corps of Engineers (Corps) received an application on March 15, 2023 from Greenfield Communities seeking Department of the Army authorization to discharge fill material into 3.361 acres of wetland, 0.178 acre of stream resulting in permanent loss; 0.04 acre of stream is proposed to be permanently impacted with no functional loss and 0.49 acre of wetland proposed for conversion from forested to maintained utility easement, for the construction of a proposed multi-use development, known as Capeton, located north of Lillington between the Cape Fear River and Highway US-421, 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:** Greenfield Communities  
Mr. Matthew Brubaker  
8601 Six Forks Road  
Raleigh, NC 27615

**AGENT (if applicable):** Carolina Ecosystems, Inc.  
Attn: Philip May  
3040 NC-42 W  
Clayton, NC 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: The project area is located south of US-421 and northwest of the Cape Fear River. The main entry is off US- 421 approximately 1.0 mile east of the intersection with US-401. Parcel ID numbers: 0660-32-0284.000, 0660-61-9572.000, 0660-03-9253.000, 0660-02-4375.000, 0660-12-9649.000, 0660-21-8598.000, 0660-42-7059.000, 0660-72-1109.000, 0650-92-6093.000.

Project Area (acres): 824 acres                      Nearest Town: Lillington  
Nearest Waterway: Dry Creek / Cape Fear River      River Basin: Cape Fear River  
Latitude and Longitude: 35.407186 N, -78.791708 W

## Existing Site Conditions

The site consists of a mix of active farmland, silviculture, and forest, including approximately 84.4 acres of wetlands, 24,635 linear feet of perennial streams, 8,381 linear feet of intermittent streams, 0.57 acre of ponds. Additionally, the project site includes approximately 11,300 linear feet of Cape Fear River frontage with 191.8 acres of FEMA regulated 100-year floodplain. There are a few existing farm roads with culverted crossings and an existing natural gas pipeline and maintained easement owned by Colonial Pipeline.

A wetland delineation concurrence and No Permit Required Determination was issued on January 31, 2023, to include construction of two (2) bottomless culverts.

## Applicant's Stated Purpose

The purpose of Capeton is to provide a mixed-use development with commercial access (US 421) and river frontage within the proximity of the Town of Lillington for future pedestrian access. Lillington is situated on the Cape Fear River, within minutes of Campbell University, and a short drive from the Triangle and Fayetteville NC. According to the NC Office of State Budget and Management, Harnett County is likely to experience a 36% growth in population between 2020 and 2040 (133,784 to 181,670). Harnett was the 12th fastest growing county in North Carolina between 2010 and 2020. Capeton is intended to help meet this demand and provide a comprehensive living experience with multiple residential, commercial, civic (school), and recreational opportunities.

## Project Description

Capeton is a mixed use, master planned development consisting of single and multi-family housing, assisted living residences, commercial retail and office space, and civic and community areas. A portion of the site will be dedicated as a Town park along with an easement granted for a Town greenway with river access. The site plan includes approximately 2,250 residential units including single family homes, townhomes, cottages, multi-family units, and assisted living residences. The applicant states, a

grocery store and commercial area, office park, and retail area are designed at a location to provide services within walking distance from downtown Lillington and Campbell University. Planned infrastructure will include roads, utilities (water, sewer, and electric), connections to the proposed Town/County greenway, amenities centers, parks, and stormwater facilities. Some wetland areas and most of the areas within the 100-year floodplain along the Cape Fear River and Dry Creek, will be open space or donated to the Town.

According to the applicant, proposed construction of the project will involve clearing of forested areas within the limits of disturbance and construction of road and utility infrastructure, including those proposed impacts to jurisdictional waters. Lot grading would follow to prepare for construction of the residences and other buildings. Construction will be performed with standard equipment. Initial activity would involve land clearing and grubbing, along with the installation of erosion control measures, including silt fencing, check dams, and silt basins approved by the NC Division of Energy, Mineral, and Land Resources (NCDEMLR). This plan will include appropriate sediment and erosion controls, a draw down and release schedule for dewatering, sediment removal and disposal, and a grading and stabilization plan for the pond areas. Clean fill will be placed in the permanent wetland impact areas, graded and stabilized. Stream crossings will be accomplished via culverts as shown in the attached plans and will be constructed in the dry using pump-around or diversions.

Proposed site development would occur in multiple phases estimated through 2031.

### **Avoidance and Minimization**

According to the applicant, efforts have been made to avoid and minimize impacts to Waters of the US. The applicant evaluated several different options for road and utility crossings. The applicant citing that locating crossings up or downstream resulted in increased impacts due to deeper stream incision requiring more fill, stream meanders, and increased wetland areas, and these considerations lead to the final submitted design. The below summarizes some of the applicant's considerations to avoid and minimize impacts:

- Proposed road crossings utilized existing crossings in several locations. Where possible, road and utility crossings have been co-located. Crossings were designed to be perpendicular to stream channels and located in areas with less wetland impact where practicable.
- No impacts are proposed within floodplain areas and pedestrian trails will be designed to avoid wetlands and utilize footbridges if needed for stream crossings.
- Retaining walls will be used to avoid impacts in areas where grading would occur in close proximity to jurisdictional features.

- Where possible, sanitary sewer crossings were co-located with the gas line crossings. The existing gravity line along Dry Creek to the pump station set the grade at which the new infrastructure must tie into; thereby reducing layout options for new sewer line in order to maintain the fall required.

## Compensatory Mitigation

Compensatory mitigation for 3.361 acres of permanent wetland loss and 0.49 acre permanent wetland conversion is proposed via a combination of the Daniels Creek Mitigation Bank for all riparian wetland credits and the Barra Farms II Mitigation Bank for 1.52 acres of non-riparian wetland credits.

Compensatory wetland mitigation proposed by the applicant totals 5.70 acres based on a 2:1 ratio for wetland fill areas and a 1:1 ratio for the conversion of forested wetland along maintained utility corridors. A 1:1 ratio is proposed for one 1.515 acre non-riparian wetland, WAP (Impact H), due to its NC WAM rating as Low.

Compensatory mitigation for 1,028 linear feet of stream channel loss is proposed via the Daniels Creek Mitigation Bank. This mitigation (1,669 linear feet) is based on a 2:1 ratio for permanent loss of perennial stream with NC SAM ratings of High, and 1:1 ratio for permanent loss of intermittent stream with NC SAM ratings of Low.

All of the compensatory mitigation detailed above is proposed to be paid in “mitigation groups” associated with the construction phases.

## 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.

According to the permit application, the permit area was subject to Phase I and Phase II archaeological investigations. The findings of those investigations will be reviewed by the USACE Regulatory Archaeologist as part of the Section 106 review process.

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, not likely to adversely affect federally listed endangered or threatened species or their formally designated critical habitat.

Based on information supplied by the applicant and information available to this office, the following table includes the determinations made by this office on the Federally Listed Species that may occur in the project area.

### Federally Listed Species

Common Name	Scientific Name	Federal Status	Habitat Present?	Survey Dates	Biological Conclusion
Tricolored bat	<i>Perimyotis subflavus</i>	PE	Yes	N/A	MANLAA
Red-cockaded woodpecker	<i>Picoides borealis</i>	E	No	N/A	No Effect
American alligator	<i>Alligator mississippiensis</i>	SAT	No	N/A	N/A
Cape Fear shiner	<i>Notropis mekistocholas</i>	E	Yes	July/Aug 2022	MANLAA
Atlantic pigtoe	<i>Fusconia masoni</i>	T	Yes	July/Aug 2022	MANLAA
Monarch butterfly	<i>Danaus plexippus</i>	C	Possible	N/A	N/A
Rough-leaved loosestrife	<i>Lysimachia asperulaefolia</i>	E	Yes	July 2022	MANLAA

PE = Proposed Endangered; E = Endangered; SAT = Threatened due to Similarity of Appearance; T = Threatened; C = Candidate; MANLAA = May Affect, Not Likely to Adversely Affect

**Tricolored bat:** Warm season roosting habitat may be present on the site within the forested areas. This species is listed as ‘Proposed Endangered’ and has been included in our ESA review of species. The USACE will coordinate with US FWS on recommendations to minimize adverse effects within the Action Area.

**Red-cockaded woodpecker:** No habitat is present on the site for RCW. Pines are limited to young stands (under 30 years) and no mature pine-dominated forest areas are present. The site is not within a RCW consultation area based on the map provided in the SLOPES agreement.

**American Alligator:** Suitable habitat is not present on the site for the alligator. Streams are shallow and fast moving and no swamps or other potential habitat are present. The river is fast moving with rock and riffles, and not anticipated to be alligator habitat.

**Cape Fear Shiner:** Cape Fear shiner are known to be present upstream on the Cape Fear River, specifically in Neills Creek to the northwest. The applicant provided; a survey performed by Three Oaks Engineering of major stream crossing locations on the site as well as the Cape Fear River. While they found no CFS, presence of this species cannot be completely eliminated. Their assessment concluded that the project is unlikely to adversely affect the species.

Atlantic pigtoe: The applicant provided surveys performed by Three Oaks for this species due to a historical record in the Cape Fear River adjacent to the site (EO 3997). This species was last observed in 1990 and current surveys did not find individuals in the river. However, the presence of this species cannot be completely eliminated.

Monarch butterfly: Potential habitat cannot be eliminated as milkweed plants may be present in some areas of the site. However, this species is listed as candidate and is not currently proposed for listing in the federal register. Therefore, no surveys or consultation under Section 7 of the ESA is required.

Rough-leaved loosestrife: According to the applicant areas of potential habitat for this species may be present on the site along the gas easement and other regularly maintained corridors. Surveys were conducted by the applicant within the recommended survey window in 2022 for loosestrife, and no individuals were observed. However, the presence of this species cannot be eliminated. .

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 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 July 25, 2023 to:

NCDWR Central Office  
Attention: Ms. Stephanie Goss, 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 (NCDCM):**

- 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, April 27<sup>th</sup>, 2023. Comments should be

submitted to Katharine Elks, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4567. Comments may also be submitted to [WilmingtonNCREG@usace.army.mil](mailto:WilmingtonNCREG@usace.army.mil)