



**US Army Corps  
Of Engineers**  
Wilmington District

# PUBLIC NOTICE

Issue Date: May 21, 2014  
Comment Deadline: June 20, 2014  
Corps Action ID Number: SAW-2014-00219

The Wilmington District, Corps of Engineers (Corps) received an application from Richard Herman, South Market, LLC seeking Department of the Army authorization to impact 0.683 acres of wetland and 0.11 acres of open water, associated with proposed retail store infrastructure along NC-25S (Greenville Highway) in Henderson 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 <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

**Applicant:** Richard Herman  
South Market, LLC  
112 South Main Street  
Hendersonville, North Carolina 28792

**AGENT (if applicable):** Clear Water Environmental Consultants, Inc.  
R. Clement Riddle, P.W.S  
224 South Grove Street, Suite F  
Hendersonville, North Carolina 28792

## 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

Directions to Site: The project site is located in Hendersonville, Henderson County, North Carolina. To access the site from Asheville, take I-26 East to Exit 49B (US-64W/ Four Seasons Boulevard). Turn right onto Four Seasons Boulevard and travel approximately 2 miles, then turn left onto North Church Street. From North Church Street, continue straight onto South Main

Street and continue straight onto NC-25S (Greenville Highway). Travel approximately 0.3 miles and the project site is on the right. In general, the site is bordered to the north and west by the Johnsons Drainage Ditch, to the east by Greenville Highway, and to the south by the Residences at Chadwick Square.

Project Area (acres):	9	Nearest Town:	Hendersonville
Nearest Waterway:	Mud Creek	River Basin:	Upper French Broad
Latitude and Longitude:	35.302908N, -82.457571W		

### **Existing Site Conditions**

Currently, the proposed project site is entirely cleared and upland areas have been graded. There is a large berm along the western boundary of the property; it is causing water to back up along the tributary that flows east to west within the property boundary. There are two previously existing retaining walls on the property. Ditches are present along the southeastern, south, and western property boundary. There is an existing (pre-1994) 145-linear foot culvert pipe located at the site. Other previous impacts to aquatic resources on the property include: 0.043 acres of wetland and 10 LF of stream channel (Action ID SAW-2007-3028-345 – NWP 39).

### **Applicant's Stated Purpose**

The basic project purpose of the proposed development at the project site is to provide commercial/retail services. More specifically, the overall project purpose of the proposed development is to construct a retail store that can compete with existing stores in the downtown Hendersonville and Flat Rock markets.

### **Project Description**

The proposed project calls for the development of the approximately 9-acre site. The project will consist of a 49,210-square foot commercial retail store, a 4,125-square foot retail store, approximately 300 parking spaces, and associated infrastructure.

The project will include the installation of culverts and placement of fill for a total cumulative impact of approximately 0.683 acre of wetlands and 0.11 acre of open water

### **Avoidance and Minimization**

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: The proposed project is the redevelopment of a previously developed site. The project as proposed avoids 1,409 linear feet of new stream impact by utilizing existing culverts at the site.

### **Compensatory Mitigation**

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: Unavoidable wetland impacts will be mitigated for at

a compensatory mitigation ratio of 1:1. The applicant proposes 0.73 acre of on-site wetland restoration. Upon conditional approval, the applicant's wetland restoration consultant will prepare final wetland designs and plans. These final plans will be submitted to the Corps and DWR to be approved prior to any proposed impacts occurring. Implementation of the mitigation plan will begin immediately upon issuance of a DWR and Corps approvals. Wetland mitigation will be protected in perpetuity under restrictive covenants.

The objective of the proposed mitigation is to offset impacts to on-site wetlands by replacing lost functions and values with equal or higher functions and values. The restoration of wetlands will compensate for the storm water storage, filtration, and habitat functions that will be impacted by the proposed project and provide functional uplift through biological, physical, and chemical transformation.

The ultimate goal of the restoration project is to restore the site to its natural/historic function which is a bottomland hardwood forest. This bottomland hardwood forest will serve to store floodwaters from Johnson's Drainage Ditch and improve water quality by filtering and flushing toxicants and reducing sediment.

### **Essential Fish Habitat**

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial 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. 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 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 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. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. 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 June 20, 2014 to:

NCDWR Central Office  
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit  
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650

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.

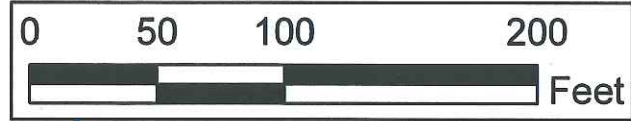
### **Commenting Information**

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 shall 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, June 20, 2014. Comments should be submitted to Mr. William Elliott, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, at (828) 271-7980, extension 224.

# South Market Village (+/- 9 AC) - DRAFT



**PROJECT DATA**

TOTAL PROJECT AREA	+/- 9 ac
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**JURISDICTIONAL WATERS OF THE US**

Streams	1,409 lf
Wetlands	0.68 ac
Open Water	0.12 ac

**JURISDICTIONAL IMPACTS**

<b>Proposed</b>	
Streams	0 lf
Wetlands	0.68 ac
Open Water	0.11 ac
<b>Total</b>	<b>0.68 ac and 0.11 ac</b>
<b>Permitted Impacts (Action ID 2007-3028-345)</b>	
Streams	10 lf
Wetlands	0.07 ac
Open Water	0 ac
<b>Total</b>	<b>10 lf and 0.07 ac</b>
<b>IMPACT GRAND TOTAL</b>	
Stream	10 lf
Wetland	0.75 ac
Open Water	0.11 ac

**AVOIDANCE/MINIMIZATION**

Streams	1,409 lf
Wetlands	0 ac
Open Water	0.01 ac

**MITIGATION**

Wetlands -Restoration	Approx. 0.73 ac
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**Legend**

- Existing Road
- Proposed Roads and Parking
- Authorized Wetland Impact - Action ID No. 2007-3028-345
- Proposed Building
- Existing Contours
- Existing Stream
- Existing Culvert
- Proposed Open Water Impact
- Proposed Wetland Restoration
- Existing Open Water
- Proposed Wetland Impact
- Existing Wetland
- Existing Linear Wetland
- Project Boundary

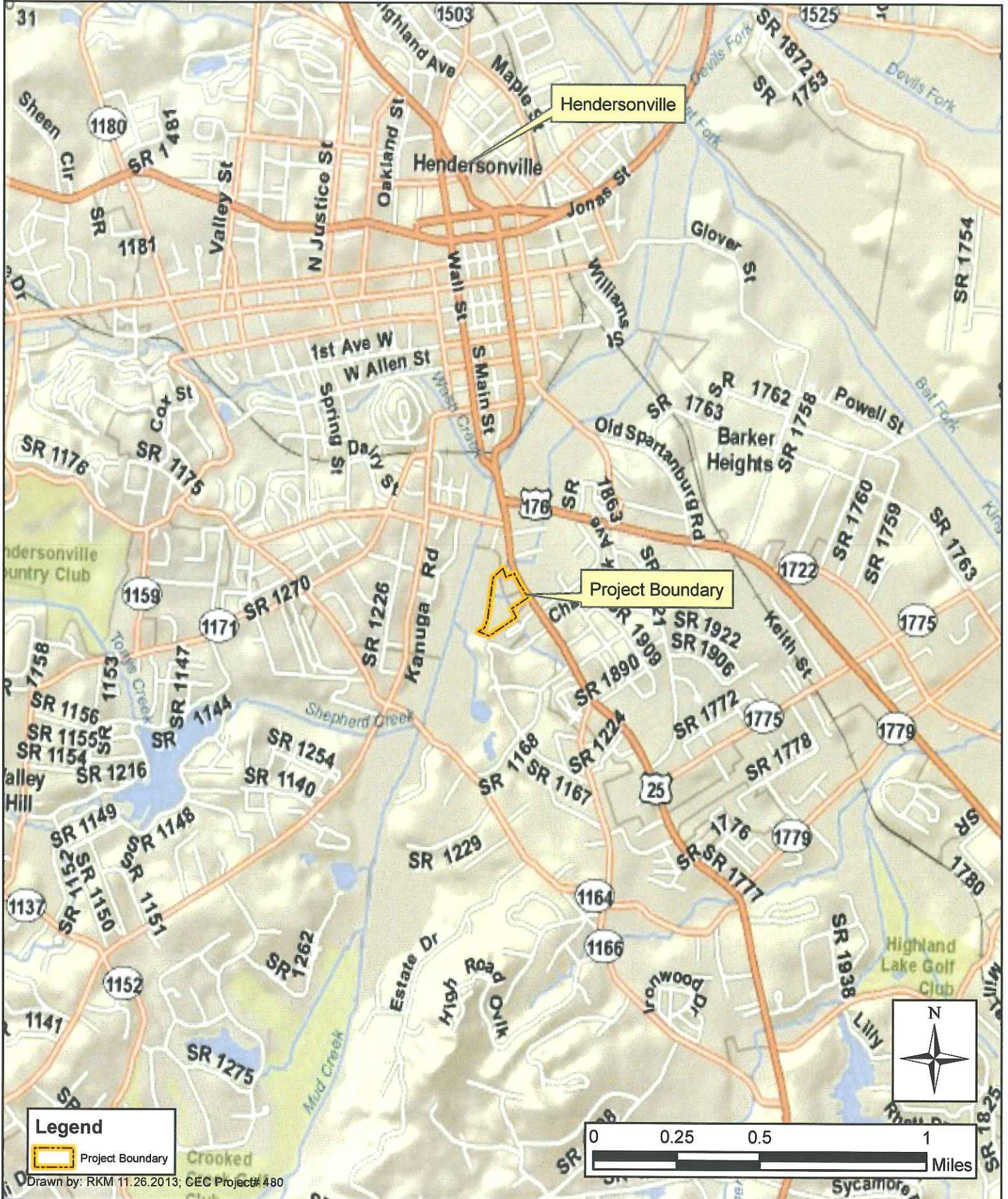
Drawn by: RLN 03.11.14; CEC Project# 731  
Data source: WGLA

Henderson County,  
North Carolina

**ClearWater**  
224 South Grove Street, Suite F  
Hendersonville, North Carolina 28792

Impact Map  
Figure 3

# South Market Village (+/- 9 AC)



Henderson County,  
North Carolina

ClearWater

Site Vicinity  
Figure 1

224 South Grove Street, Suite F  
Hendersonville, North Carolina 28792