

PUBLIC NOTICE

US Army Corps Of Engineers Wilmington District

> Issue Date: February 12, 2024 Comment Deadline: March 12, 2024 Corps Action ID Number: SAW-2007-02076

The Wilmington District, Corps of Engineers (Corps) received an application on January 31, 2024, from Balsam Mountain Preserve seeking Department of the Army authorization to discharge fill material into open waters and an unnamed tributary to the South Fork of Sugarloaf Creek associated with the installation of pickleball courts and dam rehabilitation/repair, respectively. The proposed project is located within the Balsam Mountain Preserve near the Town of Sylva in Jackson County, North Carolina.

Specific plans and location information are described below. This Public Notice is also available on the Wilmington District Web Site at: https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Public-Notices/

Applicant:	Gerard "Chip" Schuppert, Jr. Balsam Mountain Preserve 81 Preserve Drive Sylva, North Carolina 28779
Agent:	Eric Romaniszyn ClearWater, an EnviroScience Company 145 7th Avenue West, Suite B 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

Location Description: The proposed project consists of two activity locations: (1) the installation of pickleball courts and (2) a failing dam replacement. Both proposed projects are located within the Balsam Mountain Preserve (the Preserve) near the physical address of 615 West Clubhouse Road in Sylva, North Carolina. The proposed work associated with the pickleball courts is located at latitude 35.383186 and longitude -83.120622, and the proposed work associated with dam replacement is located at latitude 35.373394 and longitude -83.112897.

Project Area (acres): 4,364 acres Nearest Town: Sylva Nearest Waterway: Sugarloaf Creek River Basin: Little Tennessee River Latitude and Longitude: 35.3800 N, -83.1200 W





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Existing Site Conditions

The entire Preserve community property is comprised of approximately 4,364 acres. The proposed activities would occur within the Preserve's golf course and amenities property, which is encompassed within the community boundaries. According to the Jackson County Assessor's Office online database, the Preserve golf course property is assessed at 222 acres. Roughly 1,938 acres are held as a deeded conservation area, and the remaining acreage is comprised of individual private residential lots, and infrastructure.

The landform within the Preserve property extends southward upslope from an elevation of 2,600 feet above sea level to 5,500 feet at the top of Sugar Loaf and Double Top mountains. The majority of the Preserve property is forested outside of the developed residential home sites, golf course, and associated amenity features. The two sites included in this proposed project are within the developed golf course property.

Applicant's Stated Purpose

The purpose of the project (1) is to reconstruct the dam for the irrigation pond and (2) fill open waters for the purpose of constructing pickle ball courts.

Project Description

As stated previously, the proposed project consists of two activities within waters of the U.S., as follows:

(1) Construction of Pickleball Courts to the West of the Fitness Center: The Applicant is proposing the construction of pickleball courts to service the community's desire for the sport. Several alternative locations were considered, but the Applicant's preferred alternative consists of a location currently occupied with a previously authorized pond. The 0.12-acre pond, originally constructed in 2007 for use for fire suppression, is connected to Sugarloaf Creek through a manually-operated diversion system. The current manually-operated diversion system configuration consists of a stream bypass inlet and an outfall structure. The Applicant stated the use for fire suppression is no longer needed due to a nearby hydrant and its connection to a 30,000-gallon gravity-fed water tank on the Preserve property.

The limits of disturbance (LOD) for the pickleball courts would be approximately 0.3 acres and include three pickleball courts, retaining walls, and infrastructure for a pedestrian pathway. Therefore, the Applicant is proposing to fill the entire 0.12-acre open water feature. Fill for the pond would come from home construction sites on the Preserve property. Access to the proposed work area would be from an existing gravel road at the Fitness Center and from Upper Sugar Loaf Road, south of the pond. The access road from the Fitness Center would be removed and reseeded when construction is complete.

The stream bypass and pond outfall would be removed, and the streambank would be restored to match the upstream and downstream contours. Upon removal and recontouring, the bank would be stabilized with native tree and shrub plantings. Stormwater from the adjacent parking lot would be directed to a new concrete cistern/settlement box near the stream before discharging to the stream.

(2) Hole #13 Pond Dam Repair: The second proposed activity consists of dam structural repair associated with a previously authorized irrigation pond, adjacent to the Hole #13, within the golf course. The installation of the online pond and associated dam within the unnamed tributary to the South Fork of Sugarloaf Creek was previously authorized in 2003. The original footprint impacted approximately 153 linear feet of stream. It was used for irrigation for approximately one year before June 7, 2007, when the pond's dam failed and caused degradation to downstream areas. The Corps issued a permit, including compensatory mitigation for the stream loss, for the rehabilitation of this dam in 2009, which was renewed in 2011, but has since expired. The rehabilitation of the dam was never completed after the 2009 and 2011 permits due to funding constraints.

The Hole #13 pond currently being used is in a compromised condition as the dam has been stabilized with sandbags that are determined as unsafe and not suitable to meet the maximum water storage capacity. The proposed dam would be 10 feet high on the upstream side, 15 feet high on the downstream side, 80 feet wide and 115 ft long, including the emergency spillway plunge pool. The side slopes of the dam and pond would be graded to a slope of 3:1 and planted with grass. The normal pool elevation along the dam would be lined with a riprap edge to prevent erosion. The dam would include an emergency spillway and overflow riser to manage high water events. The riser would include a screen to prevent trash and debris from clogging the system and a manually operated 12-inch gate valve to regulate water levels when maintenance is needed. The riser would also be connected to a 36-inch diameter RCP or HDPE pipe under the dam to carry water into a riprap-lined, 430 square foot detention basin. The pipe would be set in a concrete cradle for protection and the basin would be protected upstream with a precast concrete headwall. A cool-water release intake pipe would be included in the intake riser. It includes a 7/8-inch diameter low-flow release orifice so the 7Q10 discharge would be passively discharged into the stream.

The pond would be excavated approximately two additional feet to increase storage capacity of the original design. Dredge waste spoils would be directly incorporated into the new dam or disposed of on the Preserve property at a specified soil stockpile location until needed. The material would not be placed near streams and silt fence would be placed around it to prevent erosion and sedimentation. Work in the pond would be constructed in-the-dry using an existing riprap lined diversion channel to divert flow. A 24-inch diameter pipe would be installed to connect the diversion channel with the stream channel downstream of the dam site. Once the pond is complete, the diversion channel and temporary piping would be removed, and surrounding area regraded and seeded with grass.

The LOD for constructing the Hole #13 pond would be 0.92 acres and restricted to the pond area and an approximately 50-foot buffer. Access to deliver dam construction materials would be from the West Gate Entrance off Sugarloaf Road. Existing paved roads would be used up to a gravel access road off East Clubhouse Drive, which leads to the Hole #12 tee boxes. At that point, materials would be transferred to smaller machinery carrying approximately three cubic yards of material that could use the existing cart path and crossings up to the pond area. There are two existing stream crossings along the Hole #12 cart path that cross conservation easements, a 30-ft span near the tee boxes and a larger, 50-ft span near the beginning of the fairway; neither are suitable for heavy machinery. The Preserve is working with a structural engineer to reinforce the crossings to ensure safe passage of smaller machinery (load limit of 12,000 lbs) and avoid impacts to easement areas.



(1) Construction of Pickleball Courts to the West of the Fitness Center

(2) Hole #13 Pond Dam Repair



Avoidance and Minimization

The Applicant provided the following to document efforts to avoid and/or minimize impacts to the aquatic environment:

The previously permitted Hole #13 pond and the proposed pickleball courts are in areas already highly impacted by human modifications. Using these areas would minimize impacts on the natural environment by avoiding more extensive impacts that would occur if constructed in other less impacted areas. This also prevents impacts to wildlife and federally-protected threatened and endangered species.

Compensatory mitigation has already been completed for both ponds. Other permits and water quality protection measures would also be implemented, to include following the Jackson County ordinances for stormwater management and erosion and sediment control, to include silt fencing and stabilizing with seed and straw when construction activities are complete. The Hole #13 pond overflow pipe would be placed in a concrete cradle for structural support. The pipe inlet would be a 36-inch diameter HDPE or RCP culvert located at the bottom of the dam and surrounded by rock filter. The pipe outlet would be protected with a headwall and 23 feet of rip-rap energy dissipator. Access to both sites would be via existing roads. Also, the areas surrounding each site are maintained as mowed grass. Therefore, only minimal grading and no tree clearing are needed, and no new stream or wetland impacts would occur except those directly to the ponds. Hole #13 pond dam construction and dredging would be installed in-the-dry using a rip-rap lined, stream diversion system already in place and a pump system to remove water flowing into the pond from springs and stormwater; these diversions would send water to the stream downstream of the dam. The pump system would draw water from within the water column and not from the pond bottom where it could pick up sediment. For the pickleball courts, if springs are present, the diversion culverts would also be installed in-the-dry using a pump around system.

Hole #13 pond dredge waste material would be incorporated directly into the dam or transported to the CBM storage site; silt fencing would be installed to prevent erosion and sedimentation. If the pond requires future maintenance or dredging, the Applicant would notify the Corps and DWR.

Compensatory Mitigation

Compensatory mitigation is not proposed for this project since both activities would occur within previously authorized areas for which the impacts already been mitigated.

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:

No resources listed in or eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work; however, the permit area has not been formally surveyed for the presence of cultural resources. Additional work may be necessary to identify and assess any cultural resources that may be present. This notice serves as a request to SHPO, THPO, and/or other interested parties to provide any information they may have regarding historic properties.

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:

- For the proposed project, the Corps has made the following determination for federally listed endangered or threatened species or their formally designated critical habitat: May Affect, Not Likely To Adversely Affect
 - ☑ The Corps will document the effects determination to the specific species through the consultation process under Section 7 of the ESA. No permit decision will occur until the consultation process is complete.

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 180 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 should do so in writing, within 30 days of the issue date of the notice by emailing comments to publiccomments@deq.nc.gov with the subject line of "401 Water Quality Certification" or by mail to:

NCDWR Central Office Attention: Stephanie Goss, 401 and Buffer Permitting Branch 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

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,March 12, 2024. Comments should be submitted to Ms. Brooke Davis, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, or via email at brooke.a.davis@usace.army.mil. The Corps Project Manager can be contacted at (828) 271-7980 ext. 4232. Comments may also be submitted to AshevilleNCREG@usace.army.mil.