

April 8, 2022

The Hon. Steven Bichel, Chair  
Members of Greenville County Planning Commission  
Greenville County Planning Commission  
Ms. Paul G. Gucker  
Ms. Rashida Jeffers-Campbell  
301 University Ridge  
Greenville County Square  
Suite 3800  
Greenville, SC 29601

Re: Proposed Bruce Lake Development – Meeting on April 27, 2022

Dear Chairman Bichel, Members of the Commission, Ms. Gucker, and Ms. Jeffers-Campbell:

On behalf of the Bruce Heights Community, Friends of the Reedy River, Parker Roads Community, Sans Souci Neighborhood Alliance, Upstate Forever, and itself, the Southern Environmental Law Center submits these comments on the proposed development on the shores of Bruce Lake, the waters from which flow into the Reedy River. The proposed development should be rejected because it will generate damaging pollution of Bruce Lake and the Reedy River from the site and thus would undercut years of work by the County, other government agencies, nonprofit organizations, and individuals to improve the water quality in the Reedy River.

In addition, the developer has not resolved Restrictive Covenants which limit the permissible activities on this property and which are contrary to this development plan. As a result, this proposal is premature and should be rejected because the developer has not obtained a definite determination that what is proposed for this site can be built on this property – apart from the requirements that this Commission and the County apply.

### **The Proposal**

The proposed development as designed will pollute Bruce Lake and the Reedy River. In its Development Plan (dated December 21, 2021), the developer expressly states: “The Project will utilize the existing lake for [stormwater] detention.” Answer to Question 3(g) at p. 5.

The proposed development contains 52 units on about 5.4 acres. The units reach down virtually to the water’s edge, separated from the Lake only by a narrow strip that includes the existing sewer easement, labelled a “common area” on the developer’s conceptual plan. The proposed development has three streets and parking areas of impervious surfaces.

This proposed design will produce the maximum stormwater runoff directly into Bruce Lake from the large number of hard surfaces to be built on this small parcel. The design contains no features to slow down, percolate into the ground, detain, or control the stormwater flowing directly into the Lake.

In addition, there is a spring that originates on the property and is one of the tributaries that flows into the Lake. Unfortunately, on its Natural Resources Inventory, the developer has designated this natural waterway only as a “Drainage Area.”

The impact of this runoff pollution will be magnified because Bruce Lake is a relatively confined body of water, with limited discharge to the downstream waterway.

### **Bruce Lake**

The developer states in its Development Plan that “Bruce Lake has been a vital storm-water control device for the surrounding area for some time.” Section 3 (g) at p. 5. In fact, the waters of Bruce Lake are waters of the State and the United States which are part of the natural waterflow of the Reedy River watershed. And contrary to the developer’s mistaken impression, in fact this Commission and others have taken specific precautions to ensure that Bruce Lake, the streams that flow into it, and the downstream waters that flow into the Reedy are not impacted by stormwater flows and pollution.

Bruce Lake is a 15-acre lake and wetland formed by the damming of a tributary of Langston Creek, which flows into the Reedy River. The Lake is visible from Poinsett Highway (Highway 276) south of Furman University below the intersection with Old Buncombe Road.

The Lake has no dense development on its banks. There are no hard surfaces near the water’s edge, and much of the land around the Lake is wooded. The proposed development parcel is a wooded lot that buffers and protects the Lake and its water quality from pollutants such as sediments, nutrients, and chemicals applied to lawns.

As shown on the attached map, there are two streams that flow into Bruce Lake, in addition to the spring that flows from the development site into the Lake.

The western tributary appears to be the principal one. It is a stream that arises and originates uphill from Bruce Lake from a group of groundwater seeps that emerge in the middle of the apartment complex on Old Buncombe Road at its intersection with Poinsett Highway. Care has been taken to prevent stormwater from impacting that stream; as a result, the stormwater flow from the surrounding landscape into the Lake has been limited.

That stream contains populations of Bunched Arrowhead (*Sagittaria fasciculata*), a federally protected endangered species.

When the Planning Commission approved the plans for the apartment development, it required a natural area be set aside in the development that would buffer and protect the stream from the impacts of surrounding development. There is a wooded buffer along that stream, on both sides. The boundaries of that natural area are marked in red on the attached map. In addition, the apartment complex contains large stormwater detention facilities.

The stream flows into a wetland and beaver dam complex just above Nora Drive before its waters enter Bruce Lake. Those wetlands absorb and slow the flows of water before they enter Bruce Lake below Nora Drive. Consequently, the Lake has been protected from stormwater runoff that might flow into that stream and into Bruce Lake. That natural area, including the wetlands above Nora Drive, has recently been conveyed to Naturaland Trust for protection of the endangered species.

A second stream on the east flows into Bruce Lake. It appears to be smaller than the western stream. It originates when it exits the dam of another lake uphill from Bruce Lake. The stream is largely wooded. There is one development near the stream, and that development has a large stormwater detention facility designed to protect the stream from stormwater pollution and impacts. That stream also flows into the wetland complex owned by Naturaland Trust above Nora Drive, so that the flows of that stream are also slowed and absorbed before they enter Bruce Lake.

Again, the developer has misperceived Bruce Lake when the developer has thought that Bruce Lake has been a “storm-water control device.” Instead, great pains and expense have been taken by this Commission, the County, other developments, and now Naturaland Trust to protect the waters of the streams that flow into the Lake and the Lake itself from storm water pollution and impacts.

### **Pollution**

Unfortunately, the proponent of this development has made no plans of any kind to protect the waters that flow into and constitute Bruce Lake and that flow ultimately into the Reedy River. Instead, the developer expressly intends to use Bruce Lake as the place where pollutants from the development are discharged. In an interview with the Greenville News, the developer’s engineer dismissed any attempt to control stormwater pollution from the site, stating that he had “zero concerns” about using Bruce Lake as a place to discharge stormwater pollution.<sup>1</sup>

In fact, it is well known that “[n]onpoint source pollution, such as stormwater runoff, . . . is one of the greatest threats to water quality in the U.S.”<sup>2</sup> Greenville County recognizes this well-established and universally-accepted fact when discussing stormwater and “water pollution control measures”: “Control of water quality is essential to full realization of the potential benefits to be derived from watercourses and floodplains. Pollution control measures, which deal both with point and nonpoint discharges, are an integral part of a drainage and flood control program. The 1977 Clean Water Act mandates identification of open space and recreation opportunities that can be expected to result from improved water quality.”<sup>3</sup>

---

<sup>1</sup>Greenville Neighbors Fight Townhouse Development on Lake, Fear It Could Harm Environment, Greenville News (March 11, 2022).

<sup>2</sup> Municipal Association of South Carolina, [Cities battle water pollution \(masc.sc\)](#).

<sup>3</sup> [County of Greenville, SC \(greenvillecounty.org\)](#).

And as Greenville County advises, “preventive measures are less costly”: “Use of preventive measures usually results in less cost to taxpayers than implementation of corrective measures.”

Greenville County’s Storm Water Ordinance makes it clear that this design cannot be approved. The proposed Bruce Lake development has no stormwater controls. The Ordinance contains this straightforward finding: “Uncontrolled storm water runoff may have adverse impacts on the health, safety, and general welfare of Greenville County and the quality of life of its citizens by transporting pollutants into receiving waters and by causing erosion and flooding.” Section 8-63 (a). Further, the County must “impose controls to reduce the flow of pollutants in storm water to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are determined to be appropriate for the control of such pollutants.” Section 8-63 (b)

And under the County’s Stormwater Management Design Manual, the Reedy River watershed – a historically degraded river system -- is protected by special pollution abatements. Chapter 2.3. Those protections “ensure that effective best management practices are used and maintained to control water quality for these waterbodies.” And the County has put in place special protections to remove pollutants, including phosphorus, from stormwater from developments in the Reedy River watershed. Chapter 9 Water Quality.

This proposed development is designed in a way that it cannot possibly comply with any of these requirements. It develops virtually every possible portion of the property with hard impervious surfaces and extends the development units almost down to the water’s edge, just short of the sewer easement on the bank of the Lake – without any stormwater protections or controls.

### **Community Efforts to Protect the Reedy**

For decades, Greenville County, other government agencies, community groups, and individuals have been working to restore the Reedy River watershed and particularly to protect it from the effects of stormwater runoff. Stormwater runoff carries pollutants into the historically heavily polluted Reedy River (including nutrients, nitrogen and phosphorus, *e coli*, and heavy metals) and also creates the flash flooding which has distorted the natural functioning of the River and scoured its banks.

For example, and as set out above, in the immediate vicinity of Bruce Lake, this Commission set out the protected area that prevents stormwater damage or inflow to the stream that flows into Bruce Lake. Nearby, the Buxton Community secured a natural area behind the

Lowe's on Poinsett Highway to protect another Reedy River tributary from pollution and stormwater.

Along the Reedy, First Baptist Church of Greenville has installed a large rain garden landscape feature to receive and absorb stormwater along the Reedy. The City of Greenville is spending millions of dollars to design the new Unity Park to control stormwater and is restoring the River's banks at several locations where stormwater has eroded them. As set out above, Greenville County has adopted special provisions to protect the Reedy from pollution and flooding due to stormwater. Upstate Forever has installed rain gardens along the Reedy to absorb stormwater and its pollutants. The Friends of the Reedy was established in the 1990s with control of pollution, flooding, and stormwater at the heart of its mission; and recently that organization helped to design the new park at the site of the old horse stables to absorb and control stormwater and its pollutants. A Saluda-Reedy Watershed Consortium attacked these issues for years.<sup>4</sup>

Currently, there is a Reedy River Water Quality Group, of which Greenville County is a lead member, which is working to reduce pollution, flooding, and stormwater impacts on the Reedy River.<sup>5</sup> The Group consists of many organizations throughout the County, and it summarizes its work:

*“The Reedy River Water Quality Group has one mission. We want to protect, preserve, and improve water quality in the Reedy River. To do this, we’ve gathered **local city and county agencies, utilities, homeowners groups, conservation groups, and area citizens to work together toward reducing the amount of nutrients flowing into the river.**”*

There is a little known section of the Clean Water Act known as 5(r). This is the section of the CWA that makes a new process that uses a “bottom-up” approach to clean our rivers and lakes. Instead of the Government creating a regulatory plan, this process encourages local involvement and citizen action to reduce pollutants in water. This approach, sometimes also called 5(alt), means that pollution reduction in the Reedy River watershed is not being driven by a State-created plan. Just the opposite – the watershed stakeholders are creating the water quality improvement plan for the watershed. For the Reedy River, *the primary aim is to reduce nutrient levels like nitrogen and phosphorus.*

---

<sup>4</sup> [Saluda-Reedy Watershed Consortium Project Partners \(saludareedy.org\)](http://saludareedy.org)

<sup>5</sup> [Reedy River Water Quality Group \(cleanreedy.org\)](http://cleanreedy.org)

Following this new process established by EPA and DHEC, the Reedy River Water Quality Group has become a national leader in water quality restoration by working with the public to reduce the amount of pollutants flowing into the river.”

(emphases added).

The developer’s proposed design flies in the face of all this good work done by Greenville County and individuals, agencies, and organizations throughout the County. This plan cannot be approved as designed.

### **The Solution**

There are a handful of straightforward, low-tech changes that would eliminate the pollution from this proposed development:

1. There should be a 100-foot wooded buffer between the Lake and the development. The proposed plan will produce stormwater from concentrated hard surfaces on a small acreage located on a downhill grade directly on the Lake’s banks. A meaningful wooded buffer can help absorb and filter out pollutants.
2. However, a buffer alone will not prevent the creation of stormwater channels across its surface into this Lake when strong rains flow off concentrated hard surfaces downhill toward the Lake. There needs to be a natural berm between the development and the buffer that would intercept and slow down the stormwater flow, allowing it to percolate into the soil and any excess to flow more slowly and in lesser quantities into the wooded buffer.
3. The spring on the edge of the property (designated as a “Drainage Area”) should be protected from impacts and buffered, to ensure an unpolluted flow of water from this tributary into the Lake. In other words, this plan should accomplish the same result that the Commission required for the apartment development to protect the other tributary of the Lake that originates on the apartment complex property site and that also flows into Bruce Lake.

If the Commission decides to take up the merits of this proposed development, it should be rejected for its failure not to control the stormwater pollution into Bruce Lake and for failure to include these essential elements of protection for the Reedy River watershed and the Lake.

### **The Restrictive Covenants**

The development property is subject to a set of Restrictive Covenants (attached) that are enforceable by the neighboring property owner. That owner is objecting to the proposed development plan and has not consented to what the developer proposes to do. The Restrictive Covenants contain provisions that call into serious question whether this

design can be built on this property. Until and unless the developer either obtains the neighboring landowner's consent or obtains a judicial ruling that this development is consistent with the Restrictive Covenants, this proposal to the Commission is premature. The developer should be required to demonstrate that the proposed plan can be built on this property under the Restrictive Covenants before taking up the time and energy of this Commission, the County's staff, the surrounding neighborhood, and concerned residents.

There are three key provisions in the Restrictive Covenants.

First, the Restrictive Covenants are written to ensure that these properties are sites of individual residences, not commercial development. The Restrictive Covenants provide:

“The use of the lake and the property to the water's edge for any recreational purpose, but not limited to, fishing and boating, or for any other purpose whatsoever shall be restricted to [the owners of the parcels], it being the intent of the parties that the lake shall remain at all times a private lake with no commercial activity allowed. Lake front use shall be restricted to use by the owner of the lake front.”

Paragraph 1 (a).

The developer is a Charleston LLC which proposes to construct and market a real estate development, sell the units to third parties, and leave the site. The developer of course is not a homeowner proposing to build his or her residence on the site. The Lake is proposed to be a storm water detention facility and an amenity for this commercial development.

The neighboring landowner reads the plain language of this provision as directly contrary to what this out-of-town developer is proposing. The Lake is being used by a commercial entity as a stormwater utility and a marketing tool for a real estate development. According to the developer's business plan, the Lake will be used by all the residents of this 52-unit facility – potentially more than 100 people. This development plan is thus inconsistent with the provisions banning “no commercial activity” and restricting lake front use by the owner of the lake front. Instead of a private, noncommercial neighborhood with a private lake to be used by the homeowners on these two parcels, the developer would convert this property into a dense development to be marketed to 52 buyers, with a heavily used Lake that is also converted into a stormwater utility for the development.

Second, the Restrictive Covenants provide:

“Neither party or subsequent purchase shall do or permit anything to be done which would tend to make the lake a hazard or nuisance or conduct any activity which shall be a nuisance or put or deposit debris, trash, noxious or other objectionable materials into the lake.”

Paragraph 3.

Stormwater flow and the pollutants that go with it are certainly “objectionable materials.” The neighboring landowner also reasonably considers it a nuisance to make the Lake into a stormwater detention facility and to make the Lake available for boating, fishing, and swimming by the 100 or more people who would live in this development.

Finally, the Restrictive Covenants provide:

“[T]he flooding easement shall be limited to the right to flood to the present high water mark of the lake as shown upon the survey to be made of the property.”

Paragraph 1(c).

The proposed development is a substantial change in the land use of the property and the contemplated use in the Restrictive Covenants. The developer proposes to discharge the increased stormwater flow into the Lake, which will change and increase the amount of water in the Lake.

These provisions call into question the entire development plan. They certainly appear to be impediments to financing and title insurance for the plan as designed by the developer. Further the neighboring property owner considers the proposed development to be inconsistent with these Restrictive Covenants and has the right to enforce them. Presumably, the developer and its representatives will have to inform any financial institution or prospective purchasers of these clouds on the development.

It is hard to see how this development plan can proceed without the developer resolving these Restrictive Covenant issues. The developer must reach some agreement with the neighboring landowner, obtain a judicial ruling approving whatever development plan the developer decides to litigate, or significantly change the proposed development plan.

After the Restrictive Covenant issues are resolved, then the developer can present whatever the development plan may be. Only then would the Commission and the County consider all the issues related to stormwater and other aspects of the development apart from the requirements of the Restrictive Covenants, unless they have been resolved through the resolution of the issues presented by the Restrictive Covenants.

In short, the Commission should reject this plan simply because the developer is acting prematurely by presenting it to the County and the Commission without resolving the Restrictive Covenant issues.



## Conclusion

If the Commission were to consider this plan, it should be rejected because it pollutes Bruce Lake and the Reedy River, is contrary to the County's stormwater rules, and undercuts years of work throughout the Greenville County community to restore the Reedy River. But the developer has come to the County and the Commission prematurely, and approval should be denied because the developer has not resolved important and potentially determinative provisions in the Restrictive Covenants.

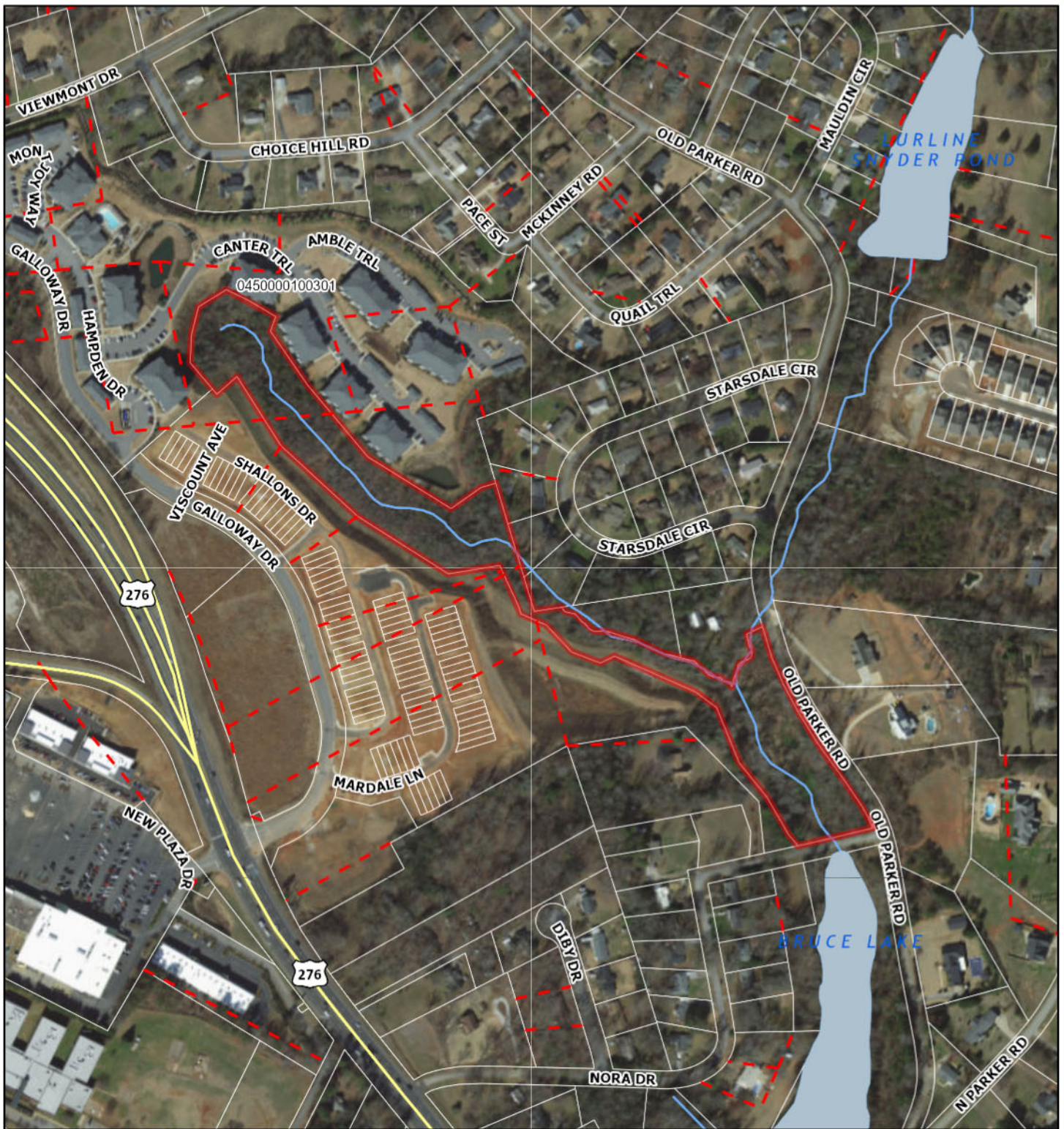
Sincerely,

A handwritten signature in blue ink that reads "Frank S. Holleman III". The signature is written in a cursive style with a large initial "F" and "H".

Frank S. Holleman III  
Senior Attorney

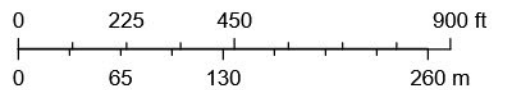
Attachments

# Greenville County, SC



January 14, 2022

1:4,800



Greenville County GIS Division, Greenville, South Carolina., Greenville County GIS Division, Greenville, South Carolina, Greenville County, South Carolina GIS Division