



**Planning, Development, &
Transportation Department**

Planning Division
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810

910 254-0900
910 341-3264 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

December 9, 2020

Daniel J. Fisk, PE
Paramounte Engineering, Inc.
122 Cinema Drive
Wilmington, NC 28403

RE: The East & Mason Project, located at 7424 & 7500 Masonboro Sound Rd.

I have attached a copy of the release for grading for The East & Mason Project, located at 7424 & 7500 Masonboro Sound Rd. dated sealed on plans as of 12/9/20. **Please make note of the conditions for the release as they appear on the attached release letter.** These conditions must be followed and met in order for the construction to be approved. ***Prior to beginning grading on the site, you must have a pre-construction meeting between City staff and the project's representatives. Any violation of this condition will result in an immediate stop work order and other civil penalties.***

All grading on the site must be in accordance with New Hanover County erosion control standards and the erosion control plan approved by New Hanover County and the City of Wilmington. Any trees and areas designated to be saved or protected must be properly barricaded and/or marked throughout construction. In addition please be aware that no construction of buildings, structures, walls, etc. may begin until the City of Wilmington's Technical Review Committee has approved the final plans and final construction release is granted.

Please contact our office at 254-0900 if you have any questions or concerns regarding this information and to schedule a pre-construction meeting with City staff. The City thanks you for your investment in our community and looks forward to working with you towards construction of a quality development project.

Sincerely,

A handwritten signature in blue ink that reads "Patrick O'Mahony".

Patrick O'Mahony
Associate Planner



**Planning, Development, &
Transportation Department**

Planning Division
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810

910 254-0900
910 341-3264 fax
wilmingtonnc.gov
Dial 711 TTY/Voice

TRANSMITTAL LETTER

TO: Chris Hatcher, Zoning Enforcement Inspector
DATE: December 9, 2020
SUBJECT: East & Mason (2020021)
Release for Grading Purposes Only
Plans Sealed as of 12/9/20

The following items are being sent to you via this package.

QUAN.	DWG./NO.	DESCRIPTION
1	Dated 12/9/20	East & Mason (GRADING Only)
1	Dated 12/1/20	Approved Tree Preservation Permit (TPP-20-193)
1	Dated 12/6/20	NHC Erosion Control # GP 18-20
1	Dated 5/13/20	US Army Corps Wetland Jurisdictional Determination No. SAW-2019-02086
1	Dated 8/18/20	US Army Corps Wetland Nationwide Permit No. SAW-2019-02086
1	Dated 11/19/02	Policy on the Release of Projects for the Purpose of Clearing and Grading

REMARKS: The Solstice Lofts Project, located at 7424 & 7500 Masonboro Sound Road, is hereby conditionally released for **Clearing and Grading Purposes Only**. The following conditions must be satisfied as part of this release:

- 1. A PRE-CONSTRUCTION MEETING MUST BE HELD BETWEEN THE SITE CONTRACTOR AND CITY STAFF PRIOR TO ANY GRADING BEGINNING ON THE SITE. FAILURE TO COMPLY WILL RESULT IN IMMEDIATE CIVIL PENALTIES.**
- 2. NO CONSTRUCTION OF ANY BUILDING, STRUCTURE, WALL, UTILITIES, INFRASTRUCTURE ETC. OF ANY KIND, INCLUDING FOOTINGS AND BUILDING SLABS, WILL BE PERMITTED UNTIL THE TECHNICAL REVIEW COMMITTEE HAS APPROVED THE FINAL CONSTRUCTION RELEASE.**
- 3. ANY TREES AND/OR AREA DESIGNATED TO BE SAVED MUST BE PROPERLY BARRICADED OR MARKED WITH FENCING AND PROTECTED THROUGHOUT CONSTRUCTION TO INSURE THAT NO CLEARING AND GRADING WILL OCCUR IN THOSE AREAS.**
- 4. THIS GRADING RELEASE IS GIVEN IN ACCORDANCE WITH THE EROSION CONTROL PLAN APPROVED BY NEW HANOVER COUNTY.**

5. IF THE CONDITIONS LISTED ABOVE ARE VIOLATED; A STOP WORK ORDER WILL BE ISSUED.
6. THE DEVELOPER ASSUMES ALL RISKS AND PENALTIES WITH ANY DELAY OR STOP WORK ORDER ASSOCIATED WITH THE VIOLATION OF THIS RELEASE. BY SIGNING THIS, THE DEVELOPER ACKNOWLEDGES THE CONDITIONS OF THIS RELEASE AND ASSUMES ALL RESPONSIBILITIES AND RISKS ASSOCIATED WITH IT. THE CITY OF WILMINGTON WILL NOT BE HELD LIABLE FOR ANY COSTS ASSOCIATED WITH THE CLEARING AND GRADING RELEASE.

Signature:  _____
 Patrick O'Mahony, Associate Planner

Signature: _____
 Applicant/Agent for Applicant

Copy: Daniel J. Fisk	Applicant (email only)
Bret Russell	Construction Manager (paper)
Rob Gordon	Engineering (email only)
Jim Quinn	Stormwater Specialist (email only)
Aaron Reese	Urban Forestry (email only)
Rich Christensen	Engineering (email only)
Eric Seidel	Engineering (email only)
Trent Butler	Engineering (email only)
Chris Elrod	Wilmington Fire Department (e-mail only)
Chris Walker	Wilmington Fire Department (e-mail only)
Brian Blackmon	Surveyor (e-mail only)
Jim Sahlie	GIS Addressing (e-mail only)
Bill McDow	Traffic Engineering (e-mail only)
Mitesh Baxi	Traffic Engineering (e-mail only)
Don Bennett	Traffic Engineering (e-mail only)
Bernice Johnson	CFPUA (e-mail letter only)
Beth Easley Wetherill	NHC Erosion Control (e-mail only)
Michelle Hutchinson	GIS Engineer (e-mail only)
Amy Beatty	Community Services (e-mail only)
Ryan O'Reilly	Community Services (e-mail only)
Joan Mancuso	City Zoning (email only)
Catherine Meyer	City Zoning (email only)
Debra Hornbuckle	City Zoning (email only)
Shawn Evans	City Attorney's Office (email only)
Courtney Salgado	City Attorney's Office (email only)



Department of Planning, Development and Transportation
 Planning Division
 305 Chestnut Street
 PO Box 1810
 Wilmington, NC 28402-1810

910 254-0900
 910 341-3264 fax
 www.wilmingtonnc.gov
 Dial 711 TTY/Voice

APPROVED: DENIED:

PERMIT #: TPP-20-193

Application for Tree Removal Permit

Name of Applicant: Raleigh Wilmington Investors, LLC Phone: (919) 876-9200 Date: _____

Name of Property Owner: MacDonald, Elizabeth ETAL Phone: _____

Property Owner Address: 11312 US 15-501 N Suite 107-169, Chapel Hill, NC 27517

Email address for permit to be sent: sbishop@robuckhomes.com | dfisk@paramounte-eng.com

Address of Proposed Tree Removal: 7424 & 7500 Masonboro Sound Road

Description and location of tree(s) to be removed & reason for removal: (provide attachment if necessary and tag tree(s) on site)

1. See attached plans
2. _____
3. _____

Description of replacement trees: _____

I, Raleigh Wilmington Investors, LLC, certify that the property owner has given me permission to apply for this permit on his/her behalf.

Applicant Signature: *Sam R Bishop* Date: 5/8/20

*****FOR OFFICIAL USE ONLY*****

Reviewed by: *Pat O'Leary* Date: 12/1/20

Remarks: Tree mitigation payment of \$102,900 required based on significant tree removal
Paid 11/19/20

ALL WORK MUST BE IN COMPLIANCE WITH THE CITY LAND DEVELOPMENT CODE, ARTICLE 8, LANDSCAPING AND TREE PRESERVATION

NEW CONSTRUCTION: EXPANSION: OTHER: PAID: \$150.00 6/4/20

Tree preservation permit fees

Less than 1 acre	\$25.00
1-5 acres	\$50.00
5-10 acres	\$100.00
Greater than 10 acres	\$150.00

****IF MITIGATION IS REQUIRED, CONTACT THE ZONING DEPARTMENT AT (910)254-0900 TO DISCUSS A PLANTING SCHEDULE****

Application can be mailed, emailed to: zoning@wilmingtonnc.gov or dropped off at our office.



NEW HANOVER COUNTY

ENGINEERING

230 Government Center Drive, Suite 160, Wilmington, NC 28403

P: (910) 798-7139 | F: (910) 798-7051 | NHCgov.com

Jim Iannucci, PE, CFM, County Engineer

December 6, 2020

Raleigh-Wilmington Investors, LLC
6131 Falls of Neuse Road,
Raleigh, North Carolina 27609

RE: Grading Permit #18-20, East & Mason Subdivision

Dear Mr. Shelly Bishop:

This office has reviewed the erosion and sedimentation control plan. We find the plan to be acceptable with modifications and hereby issue this land-disturbing permit. **Please read the permit conditions carefully, return the signed blue original to our office and keep the copy for your records.** A copy of the enclosed land-disturbing permit must be posted at the job site. This letter gives the notice required by GS 113A-61.1(a) and Chapter 23 Article VI Section 23-250 (a) and Article VIII Section 8.21 of our right of periodic inspection to insure compliance with the approved plan.

As of April 1, 2019, all new construction activities are required to complete and submit an electronic Notice of Intent (eNOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction General Permit. The COC **must** be obtained **prior** to the commencement of any land-disturbing activity on the above named project, according to State Stormwater requirements. The NOI form may be accessed at deq.nc.gov/NCG01. Please direct questions about the NOI form to Annette Lucas at Annette.lucas@ncdenr.gov or Paul Clark at Paul.clark@ncddenr.gov. After you submit a complete and correct NOI Form, you will receive a link with payment instructions for the \$100 annual permit fee. After the fee is received, you will receive the COC via email. The \$100 fee will be charged annually until the project receives a final land-disturbance inspection. Once the project is stabilized and receives the final land-disturbance inspection, you should file a Notice of Termination (NOT) with the State to final out the project.

A copy of the enclosed land-disturbing permit, a copy of the approved erosion and sedimentation control plan as well as any approved deviations, the NCG01 permit, a copy of the Certificate of Compliance (COC), records of inspections made during the previous 12 months and a rain gauge must be posted at the job site as required by 15A NCAC 4B .0118(a), the NCG01 permit, Chapter 23 Article VI Section 23-248(o) and Article VIII Section 8.19(o).

The Land disturbing fee of \$14,730 is due to be paid to New Hanover County Engineering, to my attention, prior to Plat Recordation.

Page 2 of 2

A preconstruction meeting is optional prior to land-disturbing activity on this project. Please contact me at (910) 798-7139 if you would like to schedule this meeting in our office. If you choose not to have a preconstruction meeting, you must contact us with the date the land-disturbing activity will take place onsite and again once the initial erosion control measures are installed.

New Hanover County's Erosion and Sedimentation Control Program is performance-oriented, requiring protection of existing natural resources and adjoining properties. If, following the commencement of this project, it is determined that the erosion and sedimentation control plan is inadequate to meet the requirements of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes 113A-51 through 66), and the New Hanover County Erosion and Sedimentation Control Ordinance, Chapter 23 Article VI Section 23-248 (f) and Article VIII Section 8.19 (f), this office may require revisions to the plan and its implementation of the revisions to ensure compliance with the Act and ordinance.

This land-disturbing permit will expire within 1 year following the date of approval, if no land-disturbing activity has been undertaken, as required by Chapter 23 Article VI Section 23-247(d) and Article VIII Section 8.18 (d). If no activity takes place within one year after work has begun onsite, the permit will expire. Please contact this office to reactivate a permit that has expired.

Acceptance and approval of this erosion control plan is conditioned upon your compliance with Federal and State water quality laws, regulations and rules and local city or county ordinances or rules. This land-disturbing permit approval does not supersede any other permits or approvals. It is the owner's responsibility to have all the permits and approvals that are required, prior to beginning construction.

Please note this approval is based in part on the accuracy of the information provided in the Financially Responsibility Form, which you provided. You are requested to file an amended form if there is any change in the information included on the form.

Your cooperation is appreciated,



Beth Easley Wetherill
NHC Soil Erosion Specialist

Enclosures: Land-Disturbing Permit
NPDES NCG01 Fact Sheet and Monitoring Form

cc: Branch Smith PE, Paramounte Engineering, Inc.
Patrick O'Mahony, City of Wilmington Planning
Elizabeth MacDonald



Permit **GP #18-20**
LNDP 20-00045

Permit for a Land-Disturbing Activity

New Hanover County
Department of Engineering
230 Government Center Drive - Suite 160
Wilmington, North Carolina 28403
(910) 798-7139

As authorized by the New Hanover County Erosion and Sedimentation Control Ordinance

This permit issued to **Raleigh-Wilmington Investors, LLC** authorizes the development of **49.1 acres** of land at **7420 & 7500 Masonboro Sound Road for East & Mason** in New Hanover County with modifications. This permit issued on **December 6, 2020** is subject to compliance with the application and site drawings, all applicable regulations and special conditions and notes set forth below. **Any plan modifications must be approved by this office prior to field changes.**

It is understood by the applicant that a representative of New Hanover County's Engineering Department may inspect the site at any time following the issuance of this Permit. A copy of the approved Soil Erosion Control Plan as well as any approved deviations, this permit, a rain gauge, a copy of the NCG01 permit, a copy of the Certificate of Coverage (COC) from the State and copies of the Combined Self-Monitoring and Self-Inspection Reports must be available at all times at the site.

Failure to execute the provisions of this permit and the approved Soil Erosion Plan, or any other provisions of the New Hanover County Soil Erosion and Sedimentation Control Ordinance, may result in immediate legal action by the County to the limits prescribed by the Ordinance. If the measures outlined on the approved Soil Erosion Control Plan and this Permit prove insufficient, additional Erosion Control measures can and will be required which in turn will be considered provisions of this Permit. This Permit does not preclude any other permits or approvals necessary for beginning or completing this development. Approval of an erosion control plan is conditioned on the applicant's compliance with Federal and State laws, regulations and rules. It is the Permittee's responsibility to obtain all necessary permits and approvals.

SPECIAL CONDITIONS

(THESE CONDITIONS MUST BE FOLLOWED IN ADDITION TO THE PLANS AND SPECIFICATIONS)

*All the soil erosion control measures will be installed as the site is cleared and maintained throughout construction. This project will be built in 2 Phases. Phase I erosion control includes 2 construction entrances, silt fences, silt fence outlets, inlet and outlet protection, 12 inch wattles across all the lined pond outlet swales, 5 lined diversion ditches with check dams, immediate construction and stabilization of 7 sediment basins their slopes and outlet structures with Faircloth skimmers and 2 sediment basins will have coir baffles, concrete washouts and all NCG01 regulations. All culvert crossings will be installed using pump around systems. Flocculants will be required if turbidity occurs in excess of 25 NTU's. ALL pond outlet swales will be immediately seeded and lined and 12 inch wattles installed across the end of the swales. Silt fences will be installed over the fill on top of all pond outlet pipes to stop sediment from washing into the swales. **NOTE: ALL LOTS WILL REQUIRE INDIVIDUAL LOT EROSION CONTROL PER THE LOT DETAIL ON THE PLANS.**

*Tree Removal Permits and/or Approvals are required from the City of Wilmington and/or New Hanover County prior to issuance of the land disturbing-permit and clearing of the site.

*Silt fence stakes must be steel and will be placed **six feet apart without wire reinforcement** or **eight feet apart with wire reinforcement**. Silt fence is not allowed as inlet protection.

*This permit does not preclude any permits or approvals which may be necessary such as City of Wilmington or New Hanover County, NCDEMLR, C.A.M.A., and/or the US Army Corps. of Engineers, DEM Solid Waste or any other agencies.

*No sediment shall leave the site in suspension of water.

*If plan revisions are necessary you must submit a copy to this office for approval prior to any field changes.

*If soil is brought onto this site or removed from this site, it must come from or be taken to an approved or permitted site, to be identified to this office prior to being brought onsite or removal from the site.

*All City and/or County and State drainage and stormwater requirements will be adhered to.

*If these measures fail to adequately control erosion, more restrictive measures will be required.

*If any phase of grading ceases for more than 90 calendar days, the site will be temporarily stabilized.

*All slopes must be stabilized within 21 calendar days of any phase of activity.

The approval of an erosion control plan is conditioned on the applicant's compliance with Federal and State Water Quality laws, regulations and rules.

*Note the required rates for seed, lime, fertilizer and mulch in your seeding specifications.

*Enclosed is a **Combined Self-Monitoring and Self-Inspection Form** that meets the requirements of both the NPDES Stormwater Permit for Construction Activities, NCG 010000 reporting and the Land Resources Self-Inspection Program that satisfies the requirements of the Sedimentation Pollution Control Act. These are mentioned below with specific requirements for each program. These reports are the responsibility of the property owner. They require a rain gauge onsite, inspections and reporting every 7 calendar days and within 24 hours of every 1.0-inch rain per 24-hour period and at specific phases of construction. Additional copies of this Combined Construction Inspection Report can be found at <http://portal.ncdenr.org/web/lr/erosion>. **Reports must be available onsite at all times.** If you have questions, please contact New Hanover County Engineering (910) 798-7139 or the Land Quality Section at the NCDEMLR Regional office at (910) 796-7215.

*Note the NPDES information from the State for sites disturbing 1 acre or more and the reporting requirements. All **NEW** projects permitted after August 3, 2011 must include the following surface water withdrawal locations and stabilization requirement designations on the plan in order to qualify for coverage under the most recent NPDES Construction General Permit. All settling basins must have outlet structures that withdraw water from the surface, with the exception of basins or traps that have a drainage area of less than 1 acre. The NPDES permit also requires ground cover within 15 calendar days on disturbed flat areas and ground cover within 7 calendar days on all areas within HQW Zones, perimeter dikes, swales, ditches, perimeter slopes and all slopes steeper than 3:1. Exceptions include slopes that are 10 feet or less in length and not steeper than 2:1 which must be stabilized within 14 calendar days and slopes greater than 50 feet which must be stabilized within 7 calendar days. It requires inspections of all erosion control measures and reporting every 7 days and within 24 hours of every 1.0-inch rain event in a 24-hour period. This permit also includes other new requirements which are listed in the text of the NPDES Stormwater Discharge Permit for Construction Activities, which is included with the original copy of each land-disturbing permit.

***Note the Land Resources Self Inspection Program Requirements. This program is separate from the NPDES reporting and requires inspection and documentation after each phase of construction. These phases include: Installation of perimeter erosion control measures, Clearing and Grubbing of existing ground cover, Completion of any phase of grading of slopes or fills, Installation of storm drainage facilities, Completion of construction or development, Establishment of permanent ground cover sufficient to restrain erosion and any Deviation from the approved plan.**

***Pre-construction meetings are optional. Contact Beth E. Wetherill at (910) 798-7139 to set up a meeting prior to land-disturbing activity onsite. If you do not choose to have a preconstruction meeting prior to starting work on site, you should contact us when activity begins and again when the initial measures have been installed.**

This Permit will expire one year from date of issue if no construction activity begins on site. This permit may not be amended or transferred to another party without approval of this office.

Acknowledgment of receipt of Permit

Owner

By (please print)

Signature

Beth Easley Wetherill

Beth E. Wetherill, C.P.E.S.C.
Soil Erosion Specialist/New Hanover County

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. SAW-2019-02086 County: New Hanover U.S.G.S. Quad: NC- Wrightsville Beach

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Applicant:	<u>Raleigh Wilmington Investors, LLC</u> <u>Jim Caravello</u> <u>1015 Ashes Drive</u> <u>Suite 202</u> <u>Wilmington, NC 28405</u>	Agent:	<u>Land Management Group</u> <u>Wes Fryar</u> <u>3805 Wrightsville Ave</u> <u>Suite 15</u> <u>Wrightsville, NC 28403</u>
Size (acres)	<u>74.5</u>	Nearest Town	<u>Wilmington</u>
Nearest Waterway	<u>Masonboro Inlet</u>	River Basin	<u>Onslow Bay</u>
USGS HUC	<u>03020302</u>	Coordinates	Latitude: <u>34.178858</u> Longitude: <u>-77.855172</u>

Location description: Property is located between Masonboro Loop Road and Masonboro Sound Road north of the Windward Oaks Subdivision approximately 0.10 miles southwest of the intersection Orchard Trace and Masonboro Sound Road in Wilmington, New Hanover County, North Carolina.

Indicate Which of the Following Apply:

A. Preliminary Determination

- There appear to be **waters, including wetlands** on the above described project area/property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). The **waters, including wetlands** have been delineated, and the delineation has been verified by the Corps to be sufficiently accurate and reliable. The approximate boundaries of these waters are shown on the enclosed delineation map dated DATE. Therefore this preliminary jurisdiction determination may be used in the permit evaluation process, including determining compensatory mitigation. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). However, you may request an approved JD, which is an appealable action, by contacting the Corps district for further instruction.
- There appear to be **waters, including wetlands** on the above described project area/property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). However, since the **waters, including wetlands** have not been properly delineated, this preliminary jurisdiction determination may not be used in the permit evaluation process. Without a verified wetland delineation, this preliminary determination is merely an effective presumption of CWA/RHA jurisdiction over all of the **waters, including wetlands** at the project area, which is not sufficiently accurate and reliable to support an enforceable permit decision. We recommend that you have the **waters, including wetlands** on your project area/property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

B. Approved Determination

- There are Navigable Waters of the United States within the above described project area/property subject to the permit requirements of Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403) and Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are **waters, including wetlands** on the above described project area/property subject to the permit requirements of Section 404 of the Clean Water Act (CWA) (33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- We recommend you have the **waters, including wetlands** on your project area/property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.
- The **waters, including wetlands** on your project area/property have been delineated and the delineation has been verified by the Corps. The approximate boundaries of these waters are shown on the enclosed delineation map dated 10/18/2019. We strongly

SAW-2019-02086

suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.

- The **waters, including wetlands** have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on **DATE**. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are no waters of the U.S., to include wetlands, present on the above described project area/property which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in **in Wilmington, NC, at (910) 796-7215** to determine their requirements.

Placement of dredged or fill material within waters of the US, including wetlands, without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). Placement of dredged or fill material, construction or placement of structures, or work within navigable waters of the United States without a Department of the Army permit may constitute a violation of Sections 9 and/or 10 of the Rivers and Harbors Act (33 USC § 401 and/or 403). If you have any questions regarding this determination and/or the Corps regulatory program, please contact **Rachel Capito at (910)-251-4487 or Rachel.A.Capito@usace.army.mil**.

C. Basis For Determination: Basis For Determination: See the approved jurisdictional determination form dated 5/13/2020.

D. Remarks: None.

E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

F. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B. above)

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers
South Atlantic Division
Attn: Phillip Shannin, Review Officer
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **7/13/2020**.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.

Corps Regulatory Official: _____

Date of JD: **5/13/2020** Expiration Date of JD: **5/12/2025**

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: **Raleigh Wilmington Investors, LLC, Jim Caravello**

File Number: **SAW-2019-02086**

Date: **5/13/2020**

Attached is:

See Section below

<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx> or the Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

**District Engineer, Wilmington Regulatory Division
Attn: Rachel Capito
Wilmington Regulatory Office
U.S Army Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403**

If you only have questions regarding the appeal process you may also contact:

**Mr. Phillip Shannin, Administrative Appeal Review Officer
CESAD-PDO
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street, Room 10M15
Atlanta, Georgia 30303-8801
Phone: (404) 562-5137**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

For appeals on Initial Proffered Permits send this form to:

District Engineer, Wilmington Regulatory Division, Attn: Rachel Capito, 69 Darlington Avenue, Wilmington, North Carolina 28403

For Permit denials, Proffered Permits and Approved Jurisdictional Determinations send this form to:

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Phillip Shannin, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801
Phone: (404) 562-5137**

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/13/2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Wilmington District, 7500 Masonboro Loop, SAW-2019-02086

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Property is located between Masonboro Loop Road and Masonboro Sound Road north of the Windward Oaks Subdivision approximately 0.10 miles southwest of the intersection Orchard Trace and Masonboro Sound Road in Wilmington, New Hanover County, North Carolina.

State: NC County/parish/borough: New Hanover City: Wilmington

Center coordinates of site (lat/long in degree decimal format): Lat. 34.178858 , Long. -77.855172

Universal Transverse Mercator:

Name of nearest waterbody: Masonboro Inlet

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC): 03020302

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form:

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): 1/22/2020

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are not "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet, wide, and/or acres.

Wetlands: 0.47 acres isolated 1, 0.25 acres isolated W2.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetland features Isolated 1 and Isolated 2 shown on the attached map are considered to be isolated features by the Corps. Both features are depressional features surrounded wholly by uplands with no connections to the nearby RPW. The features do not show up on LiDAR maps as being low spots, but they did meet the 1987 Corps Wetland Delineation Manual. These areas are low spots that are rainwater driven and have no outlets. They are wholly contained within the depressional features. Isolated 1 is located approximately 160 linear feet from the start of an offsite ditch and Isolated 2 is located approximately 250 linear feet from the same offsite ditch feature.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Choose an item.**

Drainage area: **Choose an item.**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Choose an item.** tributaries before entering TNW.

Project waters are **Choose an item.** river miles from TNW.

Project waters are **Choose an item.** river miles from RPW.

⁴Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are **Choose an item.** aerial (straight) miles from TNW.
Project waters are **Choose an item.** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Choose an item..**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Choose an item.**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Choose an item.**
Estimate average number of flow events in review area/year: **Choose an item.**
Describe flow regime:
Other information on duration and volume:

Surface flow is: **Choose an item..** Characteristics:

Subsurface flow: **Choose an item..** Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶(check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

⁵Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Choose an item.** Explain:

Surface flow is: **Choose an item.**

Characteristics:

Subsurface flow: **Choose an item..** Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Choose an item.** river miles from TNW.

Project waters are **Choose an item.** aerial (straight) miles from TNW.

Flow is from: **Choose an item..**

Estimate approximate location of wetland as within the **Choose an item.** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Choose an item.**
 Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
------------------------------	------------------------	------------------------------	------------------------

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet, wide, Or acres.
- Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet wide.
 - Other non-wetland waters: acres.
- Identify type(s) of waters:

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet, wide.
 - Other non-wetland waters: acres.
- Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet, wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: 0.62 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

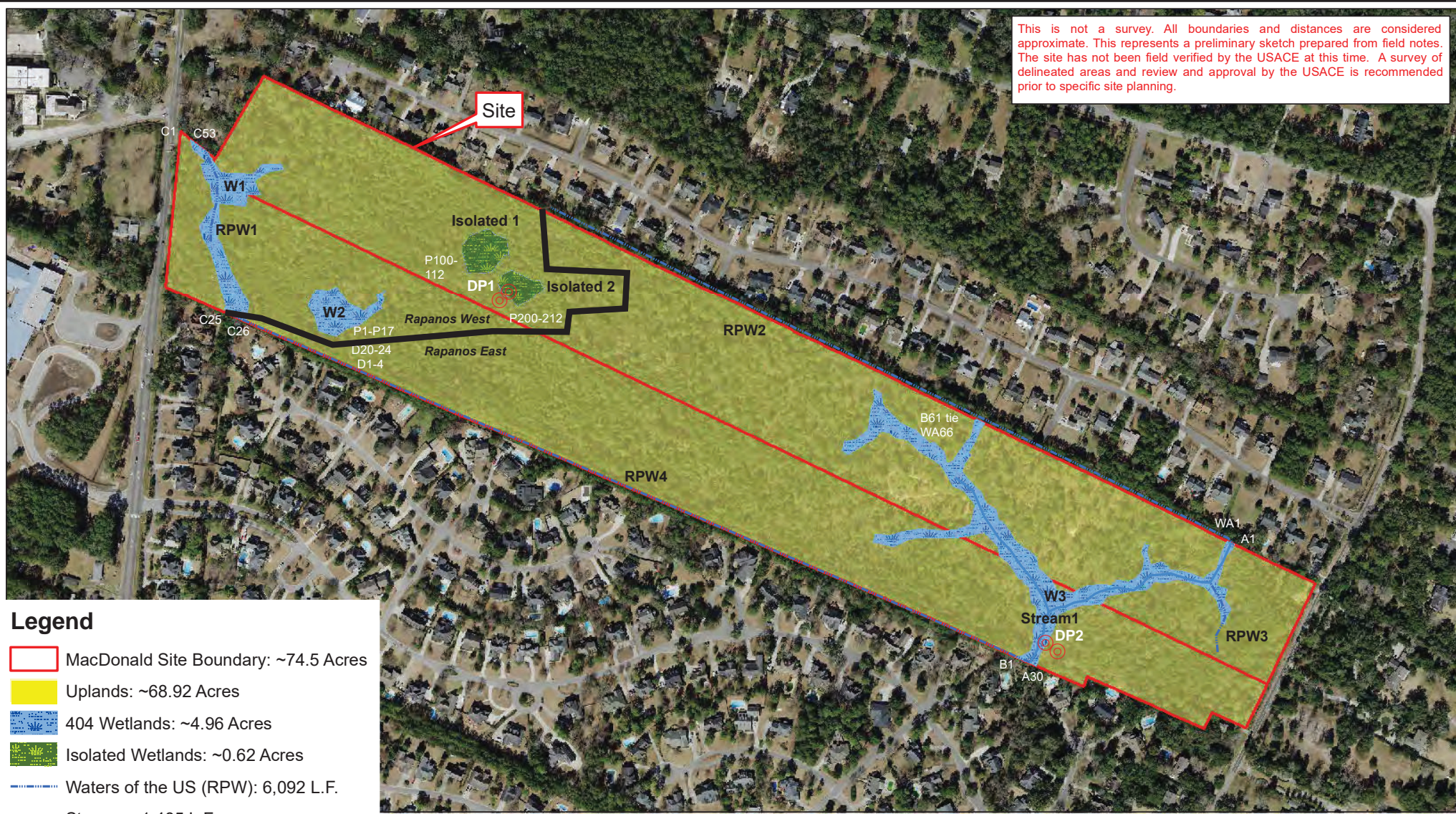
- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:600; Wrightsville Beach**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **USDA Soil Survey New Hanover County**
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **NAPP 1998 Infrared; 2016 NC OneMap**
Or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): **LiDAR**

B. ADDITIONAL COMMENTS TO SUPPORT JD:

This is not a survey. All boundaries and distances are considered approximate. This represents a preliminary sketch prepared from field notes. The site has not been field verified by the USACE at this time. A survey of delineated areas and review and approval by the USACE is recommended prior to specific site planning.



Legend

- MacDonald Site Boundary: ~74.5 Acres
- Uplands: ~68.92 Acres
- 404 Wetlands: ~4.96 Acres
- Isolated Wetlands: ~0.62 Acres
- Waters of the US (RPW): 6,092 L.F.
- Stream: ~1,485 L.F.
- Data Point Locations

L:\WETLANDS\2019 WETLANDS FILES\LMG19.355 --- MacDonald Tract, Jim Caravello\Maps
 Boundaries are approximate and not meant to be absolute.
 Map Source: 2016 NC OneMap Aerial Photography

MacDonald Tract
 New Hanover County, NC
 Map Date: 10-23-19
 LMG19.355

LMG
 LAND MANAGEMENT GROUP
 a DAVEY company
 3805 Wrightsville Avenue
 Wilmington, NC 28403
 (910) 452-0001

Rapanos Reference Map

Scale applies to 11X17" print.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/13/2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Wilmington District, 7500 Masonboro Loop, SAW-2019-02086

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Property is located between Masonboro Loop Road and Masonboro Sound Road north of the Windward Oaks Subdivision approximately 0.10 miles southwest of the intersection Orchard Trace and Masonboro Sound Road in Wilmington, New Hanover County, North Carolina.

State: NC County/parish/borough: New Hanover City: Wilmington

Center coordinates of site (lat/long in degree decimal format): Lat. 34.178858 , Long. -77.855172

Universal Transverse Mercator:

Name of nearest waterbody: Masonboro Inlet

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC): 03020302

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form:

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): 1-22-20

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: **6,092 RPW 1-4** linear feet, wide, and/or acres.

Wetlands: **2.23** acres. Wetlands 1 +2

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **70** square miles

Drainage area: **0.16** square miles

Average annual rainfall: 58 inches

Average annual snowfall: 1 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 1 (or less) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: Unnamed RPW 1 (Trib)- Unnamed Trib 2- Hewletts Creek

Unnamed RPW 2, 3, &4 (Trib)- Unnamed Trib 2- Intracoastal Waterway

Tributary stream order, if known:

⁴Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural RPW 1 & 3 are natural crenulations and the headwaters of the RPW features
 Artificial (man-made). Explain: RPW 2 & 4 are property line ditches
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

RPW 2 & 4 Average width: 3 feet
Average depth: 3 feet
Average side slopes: **2:1**.

RPW 1 & 3 Average width: 1-2 feet
Average depth: 1-2 feet
Average side slopes: 3:1

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 0-2 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: 11-20

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics:

Subsurface flow: Unknown. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM⁶(check all indicators that apply):

<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input checked="" type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input checked="" type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	

Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water Color is clear

Identify specific pollutants, if known:none

(iv) Biological Characteristics. Channel supports (check all that apply):

Riparian corridor. Characteristics (type, average width):

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Channel can support reptiles and amphibians

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.51 acres W2

Wetland type. Explain: Pocosin

Wetland quality. Explain: Provides habitat for wildlife and shares an ecological connection to the TNW via the tributary network

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Seasonal Flow** Explain: During site visit water was observed flowing in all features, however the agent provided information to show that RPW 1-4 are seasonal

Surface flow is: **Discrete and confined**

Characteristics:

Subsurface flow: No. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetland (W2) is within 70 linear feet of RPW, and discretely flows via overland sheet flow and following the topography of the property

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 1 (or less) river miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the 500 year or greater floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water is clear

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Channel can support reptiles and amphibians

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **4**

Approximately 3.7 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
W1 (Y)	1		
W2 (N)	0.51		
W3 (Y)	3.45		
Isolated W1 (N)	0.47		
Isolated W2 (N)	0.25		

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The RPW channels on and off site and adjacent wetlands (W2) are providing important biological, chemical, and physical functions within a watershed comprised primarily of residential land use. The biological functions being performed include providing breeding grounds and shelter for aquatic animals and diversifying the plant life within the watershed. As a result, the waters of the US in the drainage area supply food sources for a variety of water dependent species, such as invertebrates, amphibians, reptiles, and mammals. This tributary is essential in providing organic carbons in the form of their collective primary productivity to downstream waters, resulting in the nourishment of the downstream foodweb. The chemical functions being performed consist of the removal of excess pollutants, which are contributed by runoff from the surrounding uplands, to the downstream TNW. This reduces nitrogen and phosphorus loading downstream and effectively prevents oxygen depletion that can result from eutrophication. Physically, the tributary and adjacent wetlands help reduce stormwater flow. Not only does this prevent the accumulation of sediment downstream, which can smother fish and other aquatic wildlife, but it also reduces the amount of pollutants downstream because these pollutant are usually transported by sediment particles. This helps to maintain seasonal flow volumes. Based on the collective functions describes above and their importance to the biological, chemical, and physical integrity of the traditional navigable waters of Hewletts Cree, it has been determined that there is a significant nexus between the relevant reach of Hewletts Cree and it's adjacent wetlands.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

- TNWs: linear feet, wide, Or acres.
- Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Based on field notes, topographic maps, and LiDAR imagery, RPWs 1-4 are seasonal

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 6,092 linear feet wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet, wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: W1 is contiguous with RPW 1

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 4.45 acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet, wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

SECTION IV: DATA SOURCES.

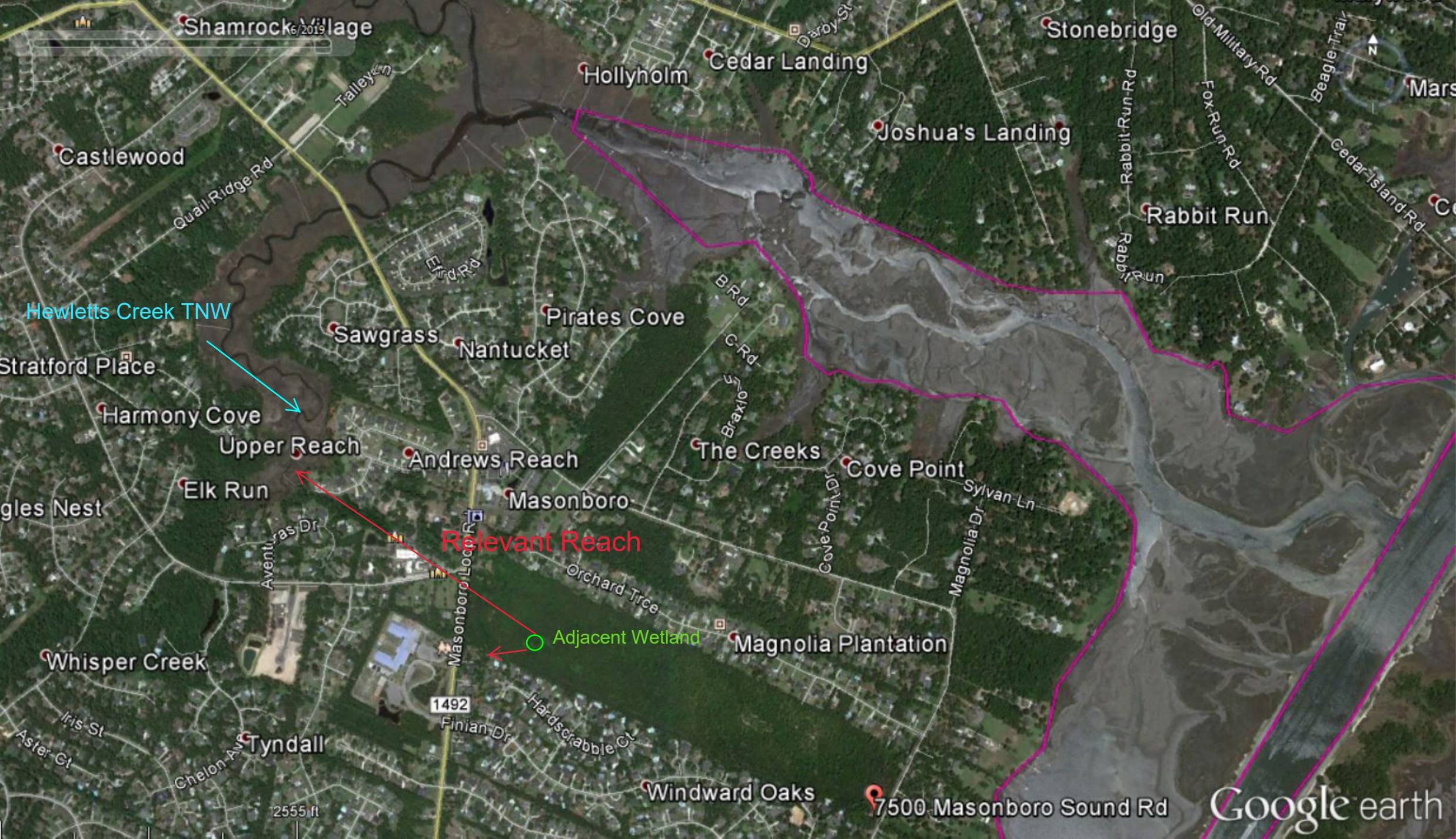
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters’ study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- U.S. Geological Survey map(s). Cite scale & quad name: **1:600; Wrightsville Beach Quad**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **USDA Soil Survey New Hanover County**
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **NAPP 1998 Infrared; 2016 NC OneMap**
Or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): **LiDAR**

B. ADDITIONAL COMMENTS TO SUPPORT JD:



Shamrock Village

Stonebridge

Hollyholm

Cedar Landing

Joshua's Landing

Rabbit Run

Castlewood

Quail Ridge Rd

Talley Ln

Darcy St

Rabbit Run Rd

Fox Run Rd

Old Military Rd

Beagle Trail

Mars

Hewletts Creek TNW

Sawgrass

Pirates Cove

Nantucket

Stratford Place

Harmony Cove

Upper Reach

Andrews Reach

The Creeks

Cove Point

gles Nest

Elk Run

Masonboro

Relevant Reach

Adjacent Wetland

Magnolia Plantation

Aventuras Dr

Masonboro Loco Rd

Orchard Tree

Cove Point Dr

Magnolia Dr

Sylvan Ln

Whisper Creek

Iris St

Aster Ct

Tyndall

1492

Finian Dr

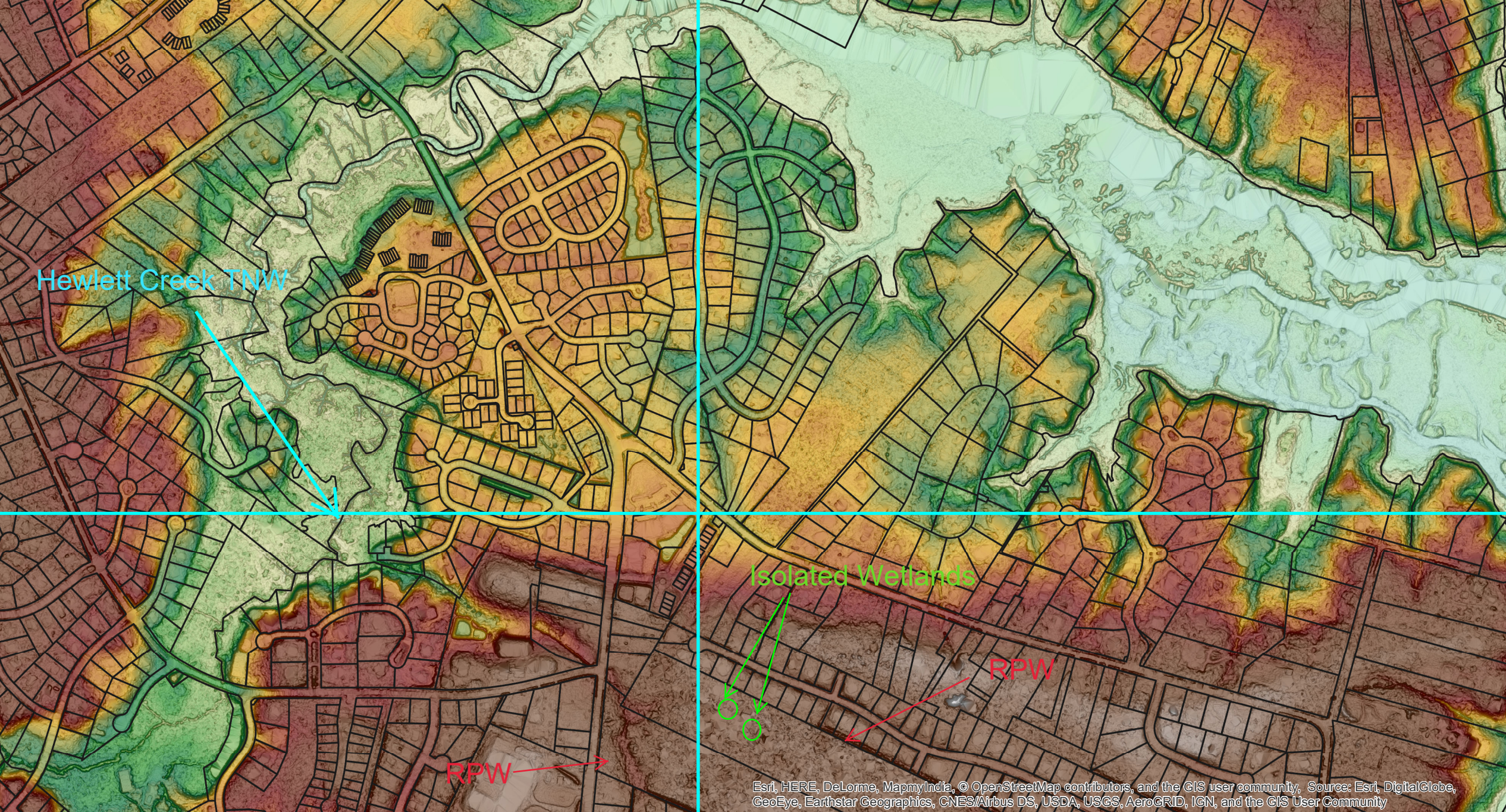
Hardscrabble Ct

Windward Oaks

7500 Masonboro Sound Rd

2555 ft

Google earth



Hewlett Creek TNW

RPW

Isolated Wetlands

RPW

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/4/2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Wilmington District, 7500 Masonboro Loop, SAW-2019-02086

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Property is located between Masonboro Loop Road and Masonboro Sound Road north of the Windward Oaks Subdivision approximately 0.10 miles southwest of the intersection Orchard Trace and Masonboro Sound Road in Wilmington, New Hanover County, North Carolina.

State: NC County/parish/borough: New Hanover City: Wilmington

Center coordinates of site (lat/long in degree decimal format): Lat. 34.178858 , Long. -77.855172

Universal Transverse Mercator:

Name of nearest waterbody: Masonboro Inlet

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC): 03020302

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form:

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

Field Determination. Date(s): 1-22-20

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1,484 linear feet (Stream 1) linear feet, wide, and/or acres.

Wetlands: 2.83 W3 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Choose an item.**

Drainage area: **Choose an item.**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Choose an item.** tributaries before entering TNW.

Project waters are **Choose an item.** river miles from TNW.

Project waters are **Choose an item.** river miles from RPW.

Project waters are **Choose an item.** aerial (straight) miles from TNW.

Project waters are **Choose an item.** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

⁴Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Choose an item..**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Choose an item.**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Choose an item.**

Estimate average number of flow events in review area/year: **Choose an item.**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Choose an item..** Characteristics:

Subsurface flow: **Choose an item..** Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM⁶(check all indicators that apply):

<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input checked="" type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	

Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:

oil or scum line along shore objects survey to available datum;

fine shell or debris deposits (foreshore) physical markings;

⁵Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

- physical markings/characteristics
- tidal gauges
- other (list):
- vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
 Explain:
 Identify specific pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:
 Wetland size: acres
 Wetland type. Explain:
 Wetland quality. Explain:
 Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Choose an item.** Explain:

 Surface flow is: **Choose an item.**
 Characteristics:

 Subsurface flow: **Choose an item..** Explain findings:
 Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain:
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Choose an item.** river miles from TNW.
 Project waters are **Choose an item.** aerial (straight) miles from TNW.
 Flow is from: **Choose an item..**
 Estimate approximate location of wetland as within the **Choose an item.** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
 Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:

- Federally Listed species. Explain findings:
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Choose an item.**
 Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
------------------------------	------------------------	------------------------------	------------------------

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: linear feet, wide, Or acres.
 - Wetlands adjacent to TNWs: acres.
- 2. RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Onsite stream has perennial flow based on field notes, topographic maps and LiDAR imagery
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet wide.

Other non-wetland waters: acres.

Identify type(s) of waters:

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: linear feet, wide.

Other non-wetland waters: acres.

Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: W3 is contiguous with Stream 1

- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain:
- Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet, wide.
- Other non-wetland waters: acres.
Identify type(s) of waters:
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, wide.
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

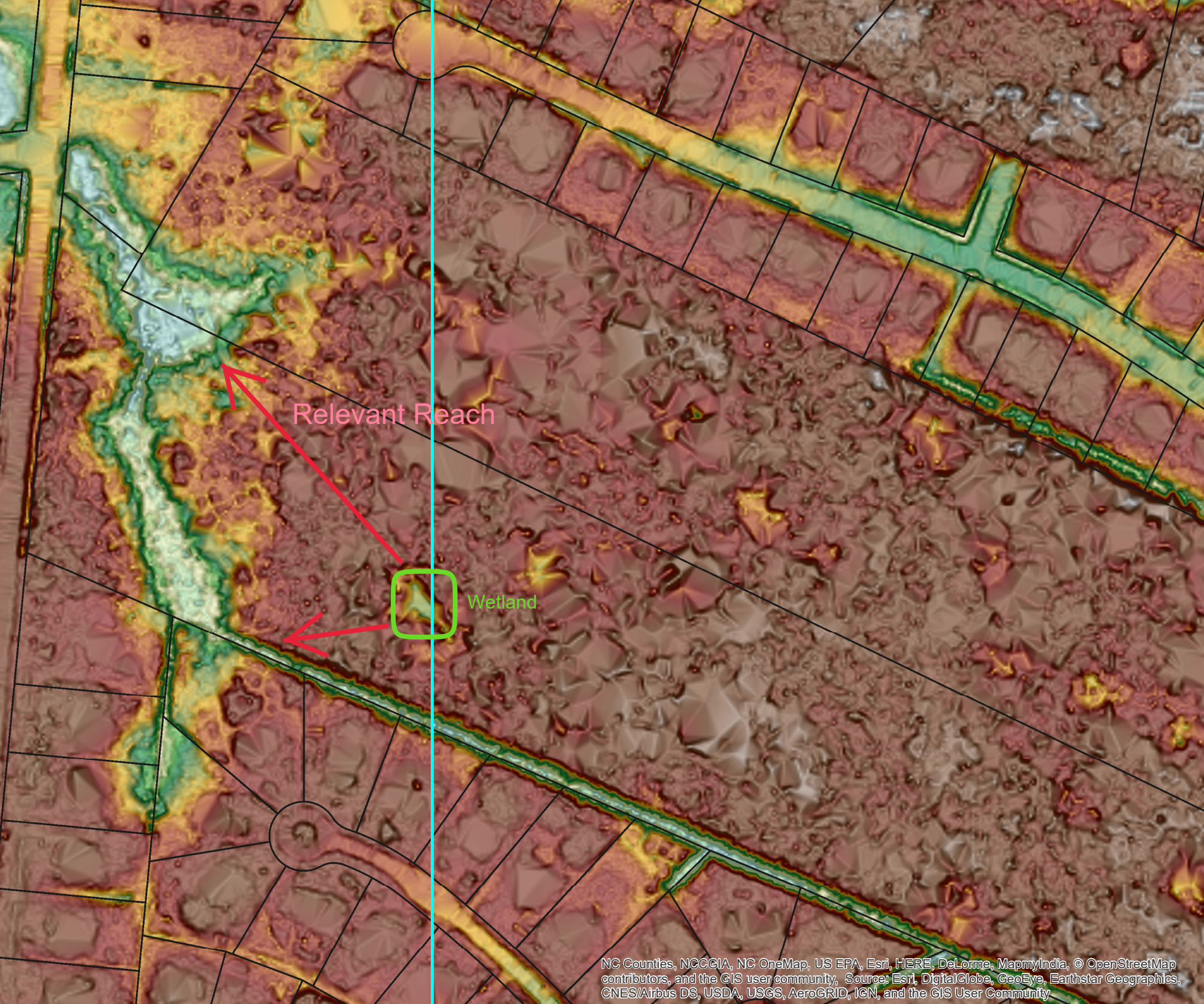
SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:600; Wrightsville Beach Quad**

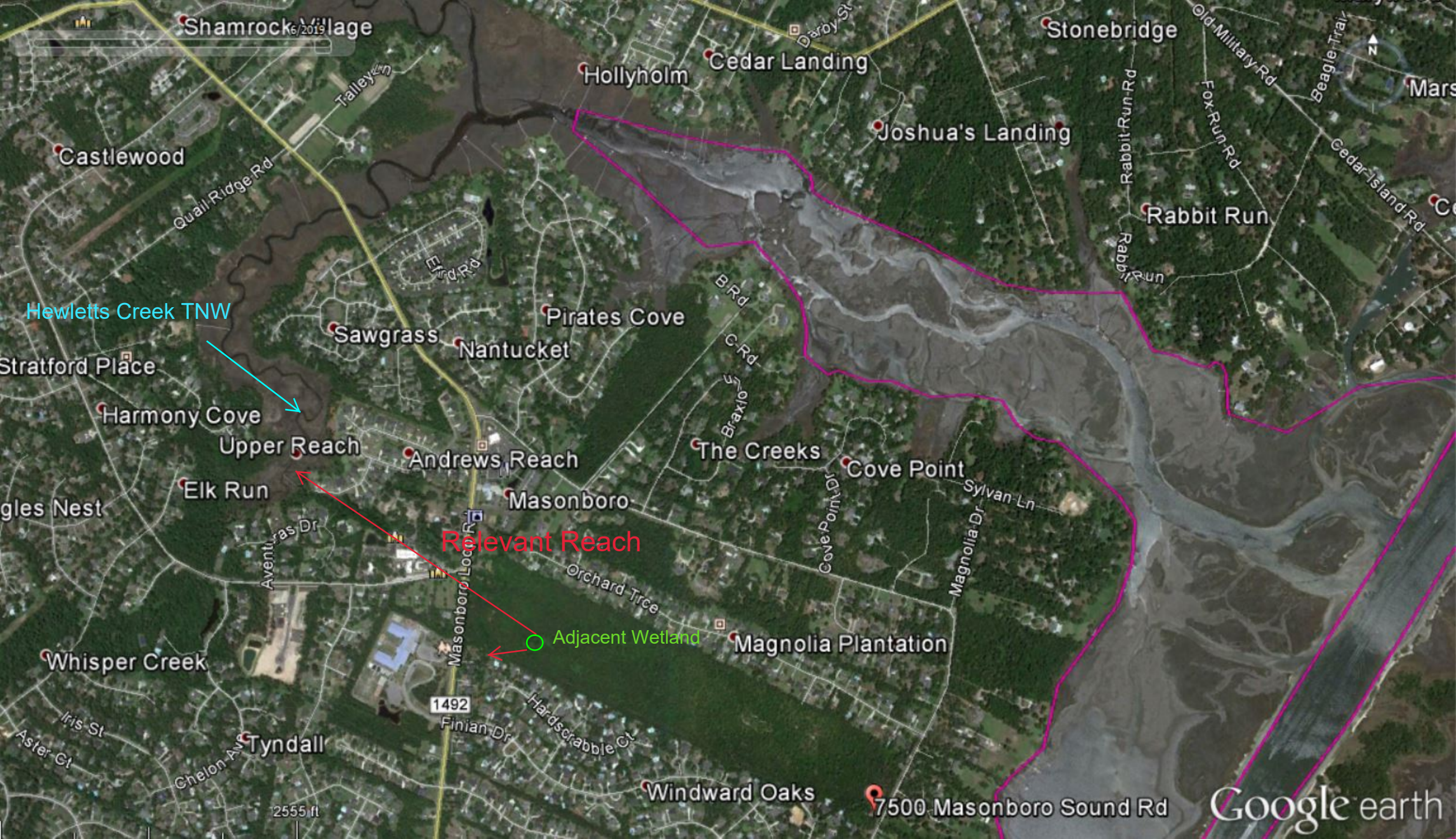
- USDA Natural Resources Conservation Service Soil Survey. Citation: **USDA Soil Survey New Hanover County**
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **NAPP 1998 Infrared, 2016 NC OneMap**
Or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): **LiDAR**

B. ADDITIONAL COMMENTS TO SUPPORT JD:



Relevant Reach

Wetland



Shamrock Village

Stonebridge

Hollyholm

Cedar Landing

Joshua's Landing

Castlewood

Rabbit Run

Hewletts Creek TNW

Sawgrass

Pirates Cove

Nantucket

Harmony Cove

Upper Reach

Andrews Reach

The Creeks

Cove Point

Elk Run

Masonboro

Relevant Reach

Adjacent Wetland

Magnolia Plantation

gles Nest

Whisper Creek

Tyndall

Windward Oaks

7500 Masonboro Sound Rd

Google earth

2555 ft

1492



**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action Id. SAW-2019-02086 County: New Hanover U.S.G.S. Quad: NC-Wrightsville Beach

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Permittee:	<u>Raleigh Wilmington Investors, LLC</u> <u>Jessica Head</u> <u>6131 Falls of Neuse Road</u> <u>Suite 200</u> <u>Raleigh, NC 27609</u>	Agent:	<u>Land Management Group</u> <u>3805 Wrightsville Ave</u> <u>Suite 15</u> <u>Wrightsville, NC 28403</u>
Size (acres)	<u>64.2</u>	Nearest Town	<u>Wilmington</u>
Nearest Waterway	<u>Masonboro Inlet</u>	River Basin	<u>Onslow Bay</u>
USGS HUC	<u>03020302</u>	Coordinates	Latitude: <u>34.178858</u> Longitude: <u>-77.855172</u>

Location description: Property is located between Masonboro Loop Road and Masonboro Sound Road north of the Windward Oaks Subdivision approximately 0.10 miles southwest of the intersection Orchard Trace and Masonboro Sound Road in Wilmington, New Hanover County, North Carolina.

Description of projects area and activity: This verification authorizes the discharge of fill material into 0.445 acre of wetlands, 165 linear feet of stream impact and 0.01 acre open water impacts for the construction of a residential subdivision and associated infrastructure. An additional 0.137 acre of wetlands and 60 linear feet of streams will be temporarily impacted during construction.

Applicable Law(s): Section 404 (Clean Water Act, 33 USC 1344)
 Section 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: **NWP 29. Residential Developments**

SEE ATTACHED NWP GENERAL, REGIONAL, AND/OR SPECIAL CONDITIONS

Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the enclosed Conditions, your application signed and dated 11/20/2019, and the enclosed plans Overall Impact Map dated 11/18/2019. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order, a Class I administrative penalty, and/or appropriate legal action.

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Resources (telephone 919-807-6300) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management in **Wilmington, NC, at (910) 796-7215.**

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact **Rachel Capito at (910)-251-4487 or Rachel.A.Capito@usace.army.mil.**

Corps Regulatory Official: 276790 CAPITO.RACHEL.ANN.1536 Digitally signed by CAPITO.RACHEL.ANN.1536276790 Date: 2020.08.18 11:20:46 -04'00' Date: **8/18/2020**
Expiration Date of Verification: **03/18/2022**

SPECIAL CONDITIONS
SAW-2019-02086

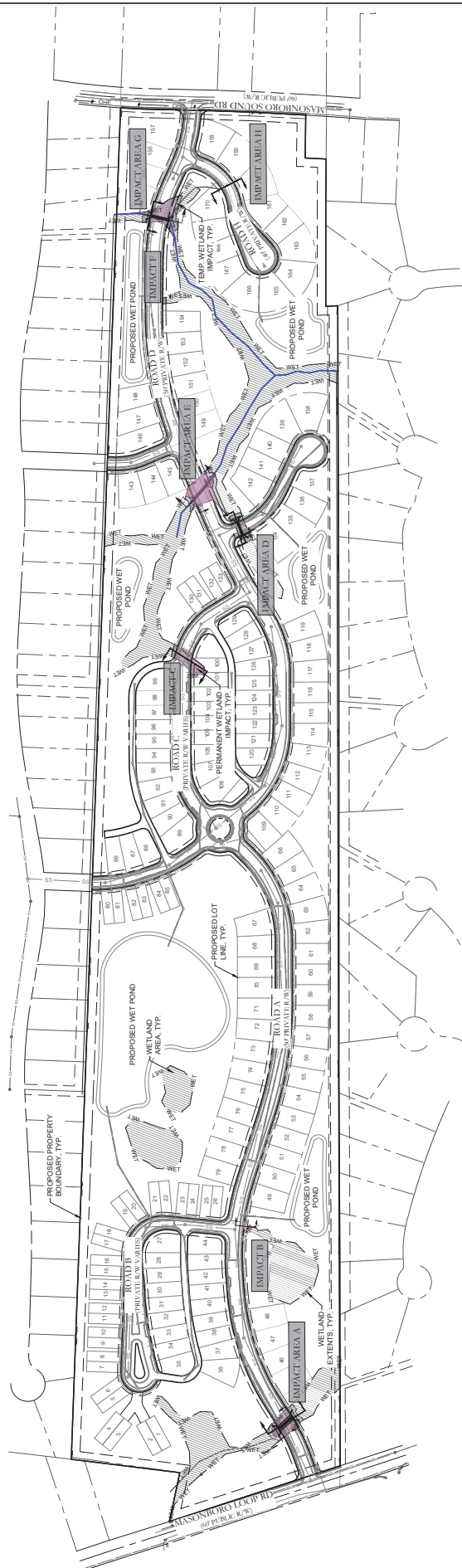
1. In order to compensate for impacts associated with this permit, mitigation shall be provided in accordance with the provisions outlined on the most recent version of the attached Compensatory Mitigation Responsibility Transfer Form. The requirements of this form, including any special conditions listed on this form, are hereby incorporated as special conditions of this permit authorization.

2. In order to comply with Section 106 of the National Historic Preservation Act regarding the Historic Doll House property and the Masonboro Sound Historic District located on a portion of this property, the applicant has agreed to special conditions and covenants provided by the State Historic Preservation Office and the Wilmington Historic Foundation (drafts attached). These special conditions and covenants must be recorded in the New Hanover County Register of deeds within 15 days of issuance of this permit and adhered to in perpetuity.

3. In order for this permit to be valid, you must obtain 401 Water Quality Certification from the North Carolina Division of Water Resources. The permittee shall provide the Corps with a copy of the required certification or waiver of certification from the state prior to proceeding with the work in waters of the U.S. The permittee shall comply with all conditions of the state certification.

4. Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. All authorized temporary wetland impacts will be returned to pre-disturbance grade and contour, and re-vegetated.

5. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).



LEGEND

- JURISDICTIONAL WETLAND IMPACTS
- TEMPORARY WETLAND IMPACT
- STREAM
- R/W
- STREAM IMPACT

SITE DATA

SITE ACREAGE	=	64.28 AC +/-
PERMANENT STREAM IMPACT	=	165 LF (TOTAL)
TEMPORARY STREAM IMPACT	=	60 LF (TOTAL)

WETLAND IMPACTS

IMPACT AREA	PERMANENT IMPACT	TEMPORARY IMPACT
	SF	SF
A	4,042	1,338
B	147	0
C	3,558	0
D	1,903	894
E	5,257	2,063
F	366	0
G	4,224	1,687
H: Open Water	137	0
TOTAL IMPACTS =	19,433	5,972

NOTE: SEE FIGURE 2 THROUGH 4 FOR FURTHER BREAKDOWN OF WETLAND IMPACT AREAS

STREAM IMPACTS

E: 85 LF (Permanent)
E1: 20 LF (Temporary)
E2: 10 LF (Temporary)
G: 80 LF (Permanent)
G1: 20 LF (Temporary)
G2: 10 LF (Temporary)
TOTAL: 165 LF Permanent
60 LF Temporary

Figure-1 Overall Impact Map
East & Mason
 Wilmington, North Carolina
 Date: 11.18.2019

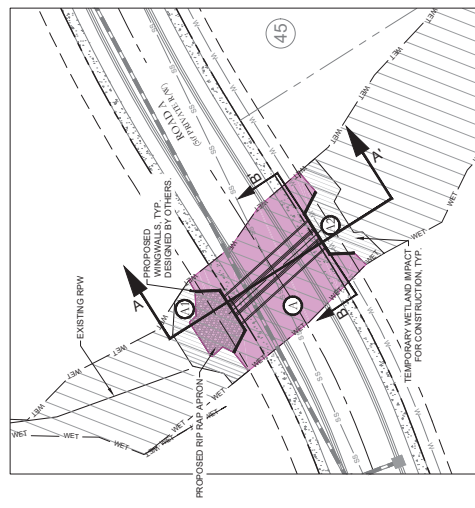
PARAMOUNT ENGINEERING, INC.
 1000 S. Wilmington Blvd., Suite 200
 Wilmington, North Carolina 28403
 NC License # C-2845
 Date: 2/25/2019

Scale: 1" = 150' at 22" x 34" | 1" = 300' at 11" x 17"

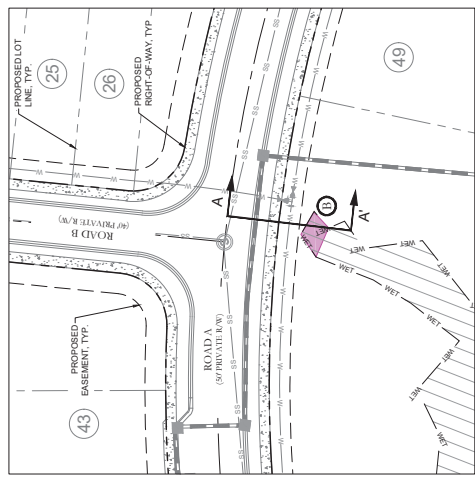
North

0 75 150 300

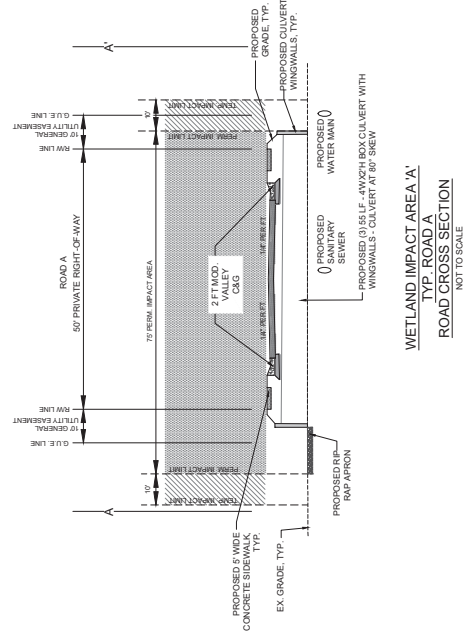
Digitally signed by CAPITO RACHELANNI 153679790
 Date: 2020.08.18 12:23:4400
 627.6790



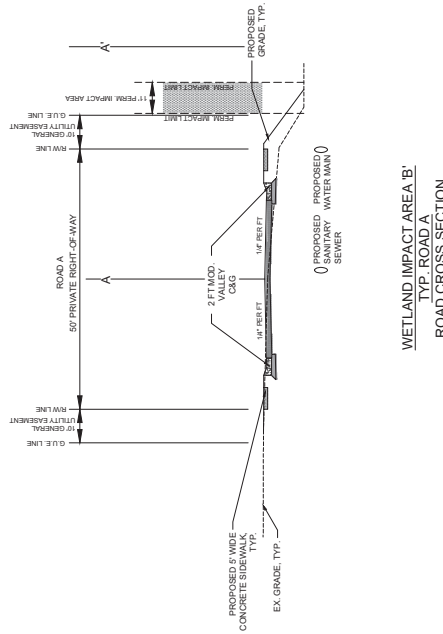
IMPACT AREA A
 SCALE: 1"=60' @ 11"X17"
 A = 6,048 SF (0.003 AC.) - PERMANENT
 A1 = 5,280 SF (0.011 AC.) - PERMANENT
 A2 = 728 SF (0.017 AC.) - TEMPORARY



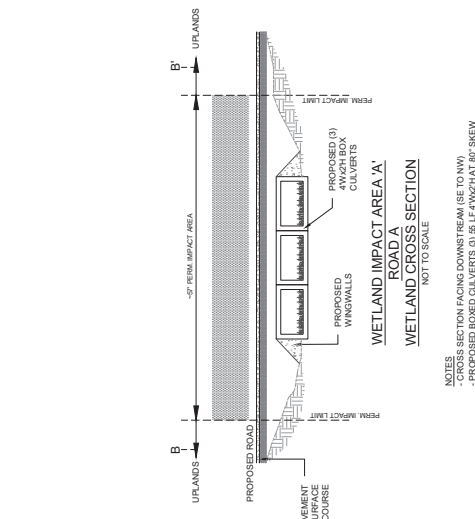
IMPACT B
 SCALE: 1"=60' @ 11"X17"
 B = 147 SF (0.003 AC.) - PERMANENT



WETLAND IMPACT AREA A'
TYP. ROAD A
ROAD CROSS SECTION
 NOT TO SCALE



WETLAND IMPACT AREA B'
TYP. ROAD A
ROAD CROSS SECTION
 NOT TO SCALE



WETLAND IMPACT AREA A'
ROAD A
WETLAND CROSS SECTION
 NOT TO SCALE

NOTES
 - CROSS SECTION FACING DOWNSTREAM (86 TO NW)
 - PROPOSED BOXED CULVERTS (3) 36" LF 4' W/2' AT 86' SKEW

LEGEND

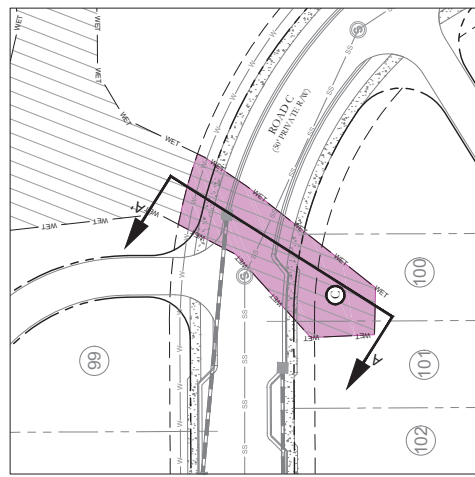
[Hatched Box]	JURISDICTIONAL WETLAND IMPACTS	[Blue Dashed Line]	STREAM
[Pink Box]	PERMANENT WETLAND IMPACT AREA	[Blue Solid Line]	RPW
[Hatched Box]	TEMPORARY WETLAND IMPACT AREA	[Blue Dashed Line]	STREAM IMPACT
[Hatched Box]	TEMPORARY WETLAND IMPACT AREA	[Blue Dashed Line]	STREAM IMPACT

Figure-2 Wetland Impacts
East & Mason
 Wilmington, North Carolina

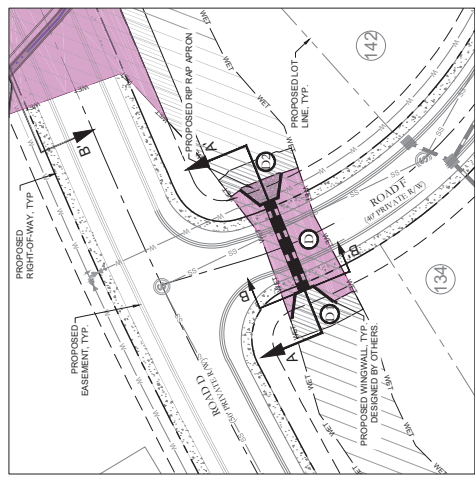
Date: 11.18.2019

PARAMOUNT ENGINEERING, INC.
 28403 Wilmington, North Carolina
 (910) 791-6707 (F) (910) 791-6760 (O)
 N.C. License # E-22845
 D-28232 (S-2012)

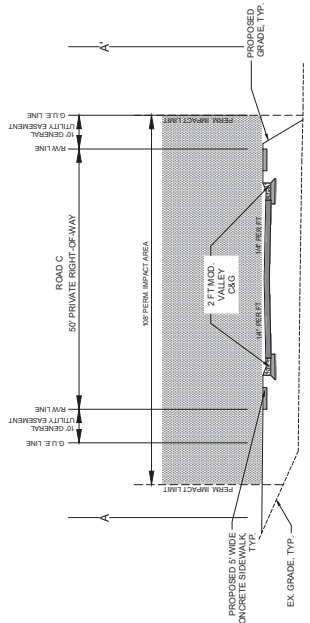




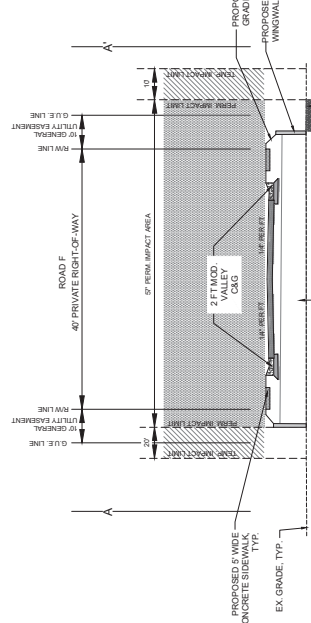
IMPACT C
SCALE: 1"=60' @ 11"x17"
C = 3,658 SF (0.082 AC) - PERMANENT



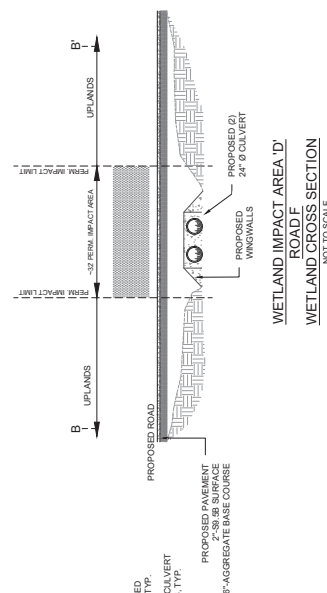
IMPACT D
SCALE: 1"=60' @ 11"x17"
D = 142 SF (0.003 AC) - PERMANENT
D = 3,375 SF (0.077 AC) - TEMPORARY
D2 = 375 SF (0.009 AC) - TEMPORARY



WETLAND IMPACT AREA C'
TYP. ROAD C
ROAD CROSS SECTION
NOT TO SCALE



WETLAND IMPACT AREA D'
TYP. ROAD F
ROAD CROSS SECTION
NOT TO SCALE

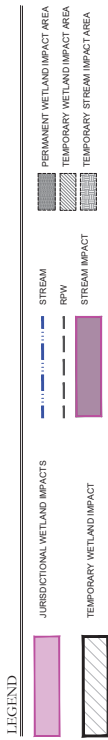


WETLAND IMPACT AREA D'
ROAD F
ROAD CROSS SECTION
NOT TO SCALE

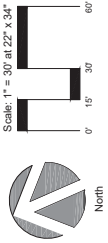
NOTES
- CROSS SECTION FACING DOWNSTREAM (NE TO SW)
- CROSS SECTION 24" Ø CULVERT (2) 48 LF AT 1% SKEW
- PROPOSED 24" Ø CULVERT (2) 48 LF AT 1% SKEW

Figure-3 Wetland Impacts
East & Mason
Wilmington, North Carolina

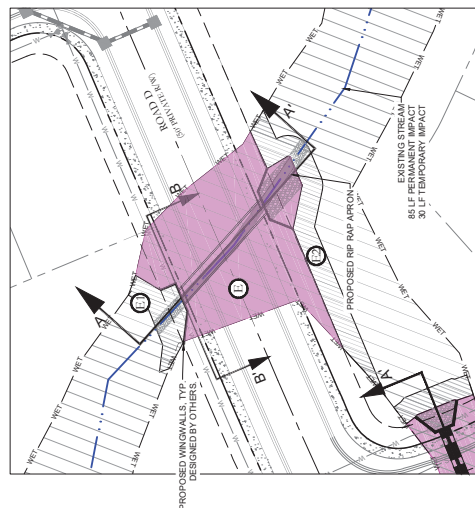
Date: 11.18.2019



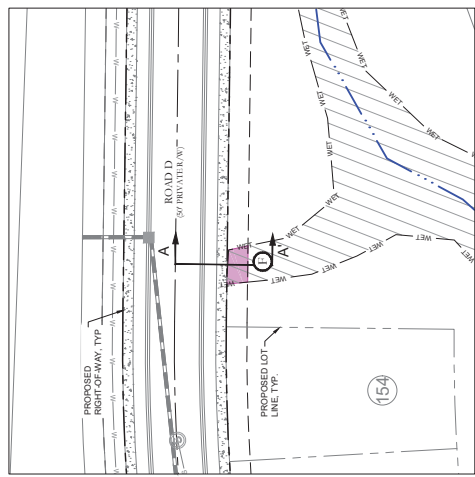
PARAMOUNTE
ENGINEERING, INC.
Wilmington, North Carolina 28403
(910) 791-6207 (F) (910) 791-6266 (T)
NC License # C-2845
Dated: 25.10.2018



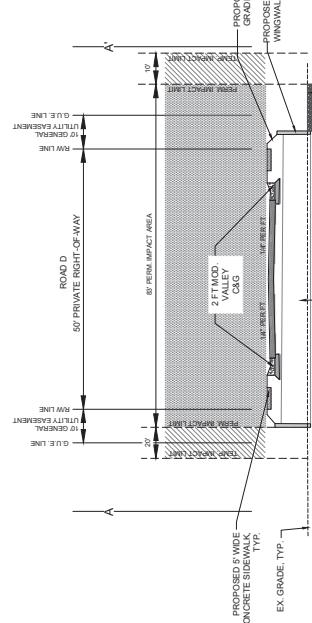
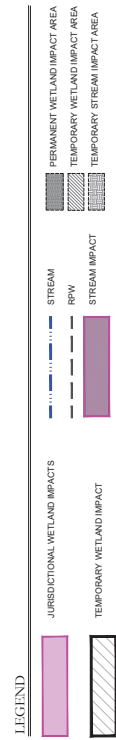
Scale: 1" = 30' @ 22" x 34" | 1" = 60' @ 11" x 17"



IMPACT AREA E
 E = 4,257 SF (0.04 AC.) - PERMANENT
 E1 = 604 SF (0.014 AC.) - TEMPORARY
 E2 = 1,462 SF (0.034 AC.) - TEMPORARY



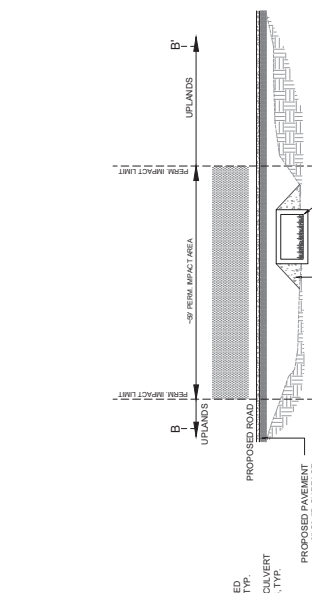
IMPACT AREA F
 SCALE: 1"=50' @ 11" x 17"
 F = 166 SF (0.004 AC.) - PERMANENT



WETLAND IMPACT AREA E
 ROAD D
 TYP. ROAD D
 NOT TO SCALE

WETLAND IMPACT AREA E
 ROAD D
 TYP. ROAD D
 NOT TO SCALE

NOTES
 - CROSS SECTION FACING DOWNSTREAM (NW TO SE)
 - PROPOSED BOXED CULVERT (1) 10' LF @ 6" WITH AT 65° SKEW



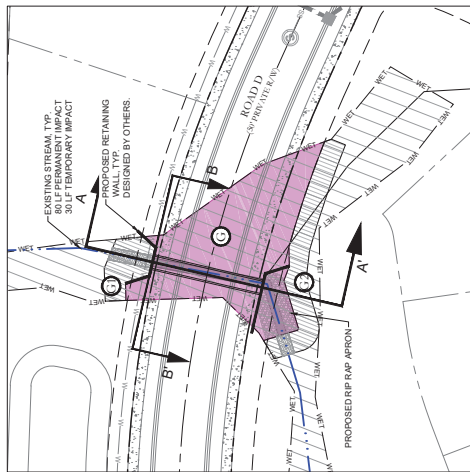
WETLAND IMPACT AREA F
 ROAD D
 TYP. ROAD D
 NOT TO SCALE

WETLAND IMPACT AREA F
 ROAD D
 TYP. ROAD D
 NOT TO SCALE

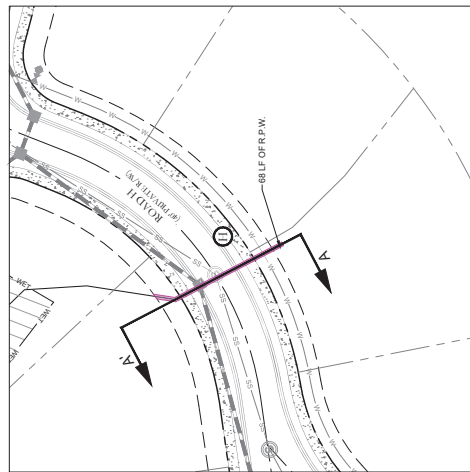
Figure-4 Wetland Impacts
East & Mason
 Wilmington, North Carolina

PARAMOUNTE
 ENGINEERING, INC.
 Wilmington, North Carolina 28403
 (910) 791-6207 | (910) 791-6260 (F)
 NC License # C-2845
 Dated: 25-09-2019

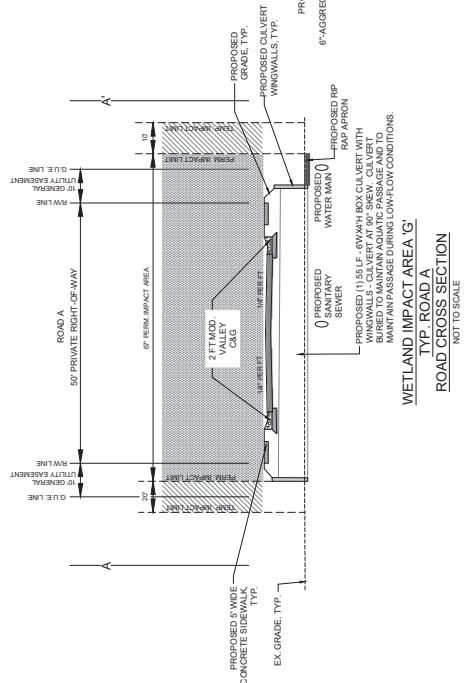
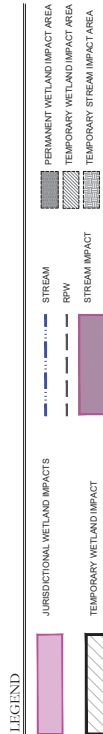




IMPACT AREA G
 SCALE: 1"=60' @ 11"X17"
 G1 = 452 SF (0.0122 AC.) - PERMANENT
 G2 = 1,166 SF (0.027 AC.) - TEMPORARY

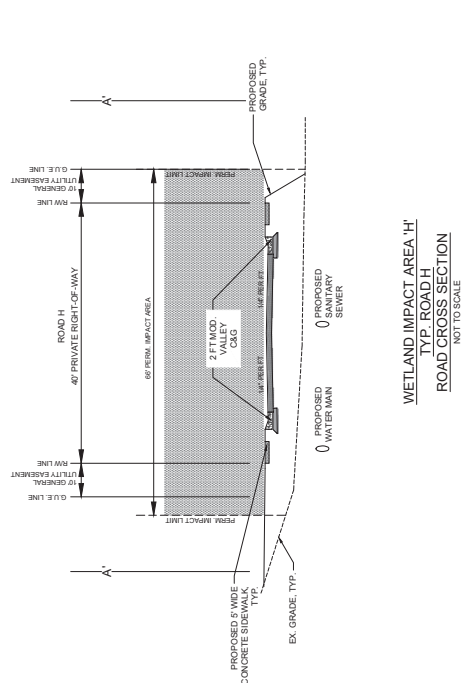


IMPACT AREA H
 SCALE: 1"=60' @ 11"X17"
 H1 = 137 SF (0.003 AC.) - PERMANENT

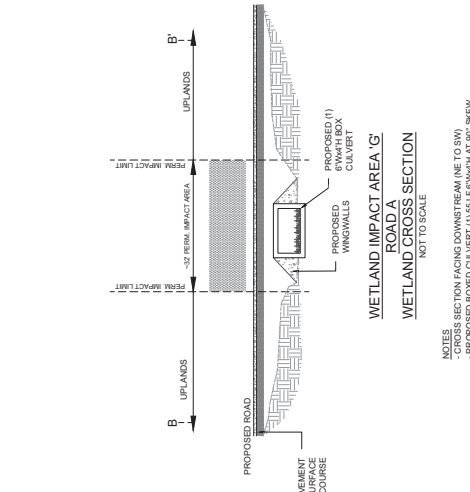


WETLAND IMPACT AREA 'G'
 ROAD A
 TYP. ROAD A
 NOT TO SCALE

NOTES
 - CROSS SECTION FACING DOWNSTREAM (NE TO SW)
 - PROPOSED BOXED CULVERT (1) 54" LF @ 90° SKEW



WETLAND IMPACT AREA 'H'
 ROAD H
 TYP. ROAD H
 NOT TO SCALE

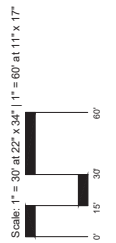


WETLAND IMPACT AREA 'G'
 ROAD A
 TYP. ROAD A
 NOT TO SCALE

NOTES
 - CROSS SECTION FACING DOWNSTREAM (NE TO SW)
 - PROPOSED BOXED CULVERT (1) 54" LF @ 90° SKEW

Figure-5 Wetland Impacts
East & Mason
 Wilmington, North Carolina

PARAMOUNTE
 ENGINEERING, INC.
 Wilmington, North Carolina 28403
 (910) 791-4207 (F) (910) 791-4766 (O)
 NC License # C-2845
 Dated: 25/09/2018



Compensatory Mitigation Responsibility Transfer Form

Permittee: Raleigh Wilmington Investors, LLC, Jessica Head
Project Name: East & Mason

Action ID: SAW-2019-02086
County: New Hanover

Instructions to Permittee: The Permittee must provide a copy of this form to the Mitigation Sponsor, either an approved Mitigation Bank or the North Carolina Division of Mitigation Services (NCDMS), who will then sign the form to verify the transfer of the mitigation responsibility. Once the Sponsor has signed this form, it is the Permittee’s responsibility to ensure that to the U.S. Army Corps of Engineers (USACE) Project Manager identified on page two is in receipt of a signed copy of this form before conducting authorized impacts, unless otherwise specified below. If more than one mitigation Sponsor will be used to provide the mitigation associated with the permit, or if the impacts and/or the mitigation will occur in more than one 8-digit Hydrologic Unit Code (HUC), multiple forms will be attached to the permit, and the separate forms for each Sponsor and/or HUC must be provided to the appropriate mitigation Sponsors.

Instructions to Sponsor: The Sponsor must verify that the mitigation requirements (credits) shown below are available at the identified site. By signing below, the Sponsor is accepting full responsibility for the identified mitigation, regardless of whether or not they have received payment from the Permittee. Once the form is signed, the Sponsor must update the bank ledger and provide a copy of the signed form and the updated bank ledger to the Permittee, the USACE Project Manager, and the Wilmington District Mitigation Office (see contact information on page 2). The Sponsor must also comply with all reporting requirements established in their authorizing instrument.

Permitted Impacts and Compensatory Mitigation Requirements:

Permitted Impacts Requiring Mitigation*			8-digit HUC and Basin: 03030001, White Oak River Basin			
Stream Impacts (linear feet)			Wetland Impacts (acres)			
Warm	Cool	Cold	Riparian Riverine	Riparian Non-Riverine	Non-Riparian	Coastal
				0.2	0.2	

*If more than one mitigation sponsor will be used for the permit, only include impacts to be mitigated by this sponsor.

Compensatory Mitigation Requirements:

8-digit HUC and Basin: 03030001, White Oak River Basin

Stream Mitigation (credits)			Wetland Mitigation (credits)			
Warm	Cool	Cold	Riparian Riverine	Riparian Non-Riverine	Non-Riparian	Coastal
				0.4	0.4	

Mitigation Site Debited: Lower Cape Fear Umbrella Mitigation Bank

(List the name of the bank to be debited. For umbrella banks, also list the specific site. For NCDMS, list NCDMS. If the NCDMS acceptance letter identifies a specific site, also list the specific site to be debited).

Section to be completed by the Mitigation Sponsor

Statement of Mitigation Liability Acceptance: I, the undersigned, verify that I am authorized to approve mitigation transactions for the Mitigation Sponsor shown below, and I certify that the Sponsor agrees to accept full responsibility for providing the mitigation identified in this document (see the table above), associated with the USACE Permittee and Action ID number shown. I also verify that released credits (and/or advance credits for NCDMS), as approved by the USACE, are currently available at the mitigation site identified above. Further, I understand that if the Sponsor fails to provide the required compensatory mitigation, the USACE Wilmington District Engineer may pursue measures against the Sponsor to ensure compliance associated with the mitigation requirements.

Mitigation Sponsor Name: _____

Name of Sponsor’s Authorized Representative: _____

Signature of Sponsor’s Authorized Representative

Date of Signature

Conditions for Transfer of Compensatory Mitigation Credit:

- Once this document has been signed by the Mitigation Sponsor and the USACE is in receipt of the signed form, the Permittee is no longer responsible for providing the mitigation identified in this form, though the Permittee remains responsible for any other mitigation requirements stated in the permit conditions.
- Construction within jurisdictional areas authorized by the permit identified on page one of this form can begin only after the USACE is in receipt of a copy of this document signed by the Sponsor, confirming that the Sponsor has accepted responsibility for providing the mitigation requirements listed herein. For authorized impacts conducted by the North Carolina Department of Transportation (NCDOT), construction within jurisdictional areas may proceed upon permit issuance; however, a copy of this form signed by the Sponsor must be provided to the USACE within 30 days of permit issuance. NCDOT remains fully responsible for the mitigation until the USACE has received this form, confirming that the Sponsor has accepted responsibility for providing the mitigation requirements listed herein.
- Signed copies of this document must be retained by the Permittee, Mitigation Sponsor, and in the USACE administrative records for both the permit and the Bank/ILF Instrument. It is the Permittee's responsibility to ensure that the USACE Project Manager (address below) is provided with a signed copy of this form.
- If changes are proposed to the type, amount, or location of mitigation after this form has been signed and returned to the USACE, the Sponsor must obtain case-by-case approval from the USACE Project Manager and/or North Carolina Interagency Review Team (NCIRT). If approved, higher mitigation ratios may be applied, as per current District guidance and a new version of this form must be completed and included in the USACE administrative records for both the permit and the Bank/ILF Instrument.

Comments/Additional Conditions: A letter from **Mitigation Sponsor**, confirming they are willing and able to accept the applicant's compensatory mitigation responsibility, dated **Acceptance Letter Date** was included with the preconstruction notification.

This form is not valid unless signed below by the USACE Project Manager and by the Mitigation Sponsor on Page 1. **Once signed, the Sponsor should provide copies of this form along with an updated bank ledger to: 1) the Permittee, 2) the USACE Project Manager at the address below, and 3) the Wilmington District Mitigation Office, Attn: Todd Tugwell, 11405 Falls of Neuse Road, Wake Forest, NC 27587 (email: todd.tugwell@usace.army.mil).** Questions regarding this form or any of the permit conditions may be directed to the USACE Project Manager below.

USACE Project Manager: Rachel Capito
USACE Field Office: Wilmington Regulatory Office
US Army Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403
Email: Rachel.A.Capito@usace.army.mil

CAPITO.RACHEL.  Digitally signed by
CAPITO.RACHEL.ANN.1536276790
ANN.1536276790 Date: 2020.08.18 11:25:29 -04'00'

8/18/2020

USACE Project Manager Signature

Date of Signature

Current Wilmington District mitigation guidance, including information on mitigation ratios, functional assessments, and mitigation bank location and availability, and credit classifications (including stream temperature and wetland groupings) is available at <http://ribits.usace.army.mil>

Action ID Number: SAW-2019-02086 County: New Hanover

Permittee: Raleigh Wilmington Investors, LLC, Jessica Head

Project Name: East & Mason

Date Verification Issued: 8/18/2020

Project Manager: Rachel Capito

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
Attn: Rachel Capito
Wilmington Regulatory Office
U.S Army Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403
or
Rachel.A.Capito@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. Failure to comply with any terms or conditions of this authorization may result in the Corps suspending, modifying or revoking the authorization and/or issuing a Class I administrative penalty, or initiating other appropriate legal action.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Prepared by and return to:
Weatherspoon & Voltz LLP
3700 Glenwood Avenue, Suite 250
Raleigh, NC 27612

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

**HISTORIC PRESERVATION AGREEMENT,
DECLARATION OF RESTRICTIONS, COVENANTS
AND GRANT OF EASEMENT**

THIS AGREEMENT, DECLARATION OF RESTRICTIONS, COVENANTS AND GRANT OF EASEMENT, made this the ____ day of _____, 2020 by and between ELIZABETH HARRISS MACDONALD and spouse, _____, THOMAS M. HARRISS and spouse, _____, ROBERT C. HARRISS, JR. and spouse _____, and MARY HARRISS and spouse, _____, hereinafter referred to collectively as the "Grantor", whether one or more, corporate or individual, and "Grantor" including for all purposes herein the Grantor and the Grantor's heirs, successors, and assigns, including but not limited to all grantees, personal representatives, donees, and devisees of the Grantor), and HISTORIC WILMINGTON FOUNDATION, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office in Wilmington, North Carolina, and its successors and assigns (hereinafter referred to as the "Foundation");

W I T N E S S E T H:

WHEREAS, the Grantor owns certain real property (hereinafter referred to as the "Subject Property") a description of which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Subject Property currently has certain permanent improvements consisting of houses/buildings (hereinafter referred to, whether one or more, as "the Historic Structures"); and

WHEREAS, the Historic Structures are buildings of recognized historical and architectural significance; and

WHEREAS, the Foundation and Grantor both desire that the Historic Structures be preserved and protected for the benefit of present and future generations, retaining their historically and architecturally significant features; and

WHEREAS, the Grantor desires to donate a preservation easement and restrictions on the Historic Structures and Subject Property to a charitable organization qualified to receive easement donations pursuant to Section 170 of the Internal Revenue Code of 1954;

and

WHEREAS, the Foundation is a charitable organization which accepts preservation easements and restrictions on buildings and property having historical or architectural importance; to ensure that such buildings and property are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Conservation and Historic Preservation Agreements Act (North Carolina General Statutes § 121-34 et. seq.) validating preservation agreements, in the form of restrictions, easements, covenants, conditions, and otherwise, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations.

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and its support for the Foundation and its purposes, and for and in consideration of the sum of Ten Dollars, and other valuable consideration, the receipt and sufficiency of which are hereby confessed by the Grantor, the Grantor, for itself, its heirs, successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "covenants"), and hereby subjects the Subject Property described in **Exhibit A** to the restrictions, and covenants expressed herein, said covenants to be restrictions of record to attach to the Subject Property described in **Exhibit A**, and hereby gives, grants, bargains, sells, and conveys unto the Foundation an indefeasible easement in and to the Subject Property described in **Exhibit A**, for the preservation and conservation of the Historic Structures described above in accordance with said covenants.

1. These covenants and this easement shall be administered solely by Historic Wilmington Foundation, Inc., its successors in interest or assigns; and in all subsequent conveyances of the Subject Property, the Foundation, its successor in interest or assigns shall be the sole party entitled to administer these covenants and this easement. In the event that the Foundation, or its successors in interest cease to exist, then in such event the Foundation shall assign all of its right and interest in these easements, covenants, and conditions and in this easement, subject to such duties and obligations which it assumes hereby, to a responsible nonprofit corporation which exists for substantially the same reasons as the Foundation itself (as described hereinabove); if no such corporation is available for such assignment, then under such circumstances such assignment shall be made to the State of North Carolina, which shall be the sole party entitled to administer these covenants.

2. No alteration and no physical or structural change shall be made to the exterior of the Historic Structures without the prior written approval of the President or Executive Director of the Foundation. In assessing the suitability of any proposed changes, the Foundation shall be guided by the Secretary Of The Interior's Standards For Rehabilitation, a copy of which is attached as **Exhibit B** and incorporated herein.

3. The Subject Property shall not be subdivided without the prior written approval of the President or Executive Director of the Foundation.

4. No addition shall be constructed to the Historic Structures nor additional structure built upon the Subject Property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the President or Executive Director of the Foundation. In reviewing the plans and designs for any addition or additional structure the Foundation shall consider the following criteria: Exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structure; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural materials, and such design is compatible with the size, color, material and character of the property and its environment.

5. Neither the Historic Structures nor any part thereof may be removed or demolished without the prior written approval of the President or Executive Director of the Foundation.

6. Representatives of the Foundation shall have the right to enter the premises at reasonable times, after giving reasonable notice, for the purpose of inspecting the building and grounds to determine if there is compliance by the Grantor with the terms of these covenants.

7. The Grantor covenants to carry out the duties specified herein, and these restrictions and covenants and this easement shall run with the land, and be binding upon Grantor's heirs, successors and assigns who in the future may own the Subject Property. The Grantor, its heirs, successors and assigns, covenant and agree, that in the event the Subject Property is sold and otherwise disposed of, these restrictions and covenants and this easement will be incorporated into the deed or other instrument conveying or disposing of the Subject Property, but shall remain effective notwithstanding any failure to do so. Grantor and Grantor's heirs, successors and assigns agree that these restrictions, covenants and this easement shall be made a condition of any contract of sale of the Subject Property to which they may be a party.

8. In the event of a violation of these easements, covenants, and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Foundation, and the Foundation shall recover of the Grantor its reasonable attorneys' fees incurred in the enforcement of same. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in the event of a subsequent breach or default.

9. Unless otherwise provided, the covenants and restrictions and easement set forth herein shall run with the land and shall be binding on the Grantor, and its heirs, successors, assigns and personal representatives, donees and devisees in perpetuity, provided

however that same shall terminate and be of no further force or effect only in the event that the Historic Structures are damaged beyond restoration as a result of fire or other catastrophe not intentionally caused by the Grantor. Damage beyond restoration is defined as damage to an extent exceeding seventy-five percent (75%) of the insurable value of the Historic Structures.

10. In the event that any one or more of the conditions, restrictions, limitations or other provision set out herein (or any part thereof), are held to be invalid by a court of proper jurisdiction, such judicial determination shall not invalidate the remaining conditions, restrictions and limitations set out herein.

11. Notwithstanding anything to the contrary set out herein, the conditions, restrictions and limitations hereinabove set forth may be altered, modified, changed, or rescinded, in whole or in part, by written instrument duly executed between Historic Wilmington Foundation, Inc., its successors or assigns, and the then record title owner, or owners, of the lands and premises herein described and conveyed, provided, however, such instrument shall be first duly recorded in the office of the Register of Deeds of New Hanover County.

TO HAVE TO HOLD said easement unto the Foundation, its successors and assigns, forever.

Grantor acknowledges that it has been advised by the Foundation to obtain independent advice of a qualified accountant or tax attorney regarding the tax advantages, if any, of the donation made herein, and Grantor has not relied upon any representations, oral or written, made by the Foundation regarding the tax consequences of this conveyance and agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal, the day and year first above written, and Historic Wilmington Foundation, Inc., has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by the authority of its Board of Directors.

GRANTOR:

Elizabeth Harriss MacDonald

MacDonald

Thomas M. Harriss

Harriss

Robert C. Harriss, Jr.

Harriss

Mary Harriss

Harriss

FOUNDATION:

HISTORIC WILMINGTON FOUNDATION, INC.,
a North Carolina non-profit corporation

By: _____
_____ President

ATTEST:

_____ Secretary

(Corporate Seal)

State of North Carolina
County of _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Elizabeth Harriss MacDonald and spouse,_____.

Date: _____

Notary Public

Printed Name

[official seal]

My commission expires: _____

State of North Carolina
County of _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Thomas M. Harriss and spouse,_____.

Date: _____

Notary Public

Printed Name

[official seal]

My commission expires: _____

State of North Carolina
County of _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Robert C. Harriss, Jr. and spouse,_____.

Date: _____

Notary Public

Printed Name

[official seal]

My commission expires: _____

State of North Carolina
County of _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Mary Harriss and spouse,_____.

Date: _____

Notary Public

Printed Name

[official seal]

My commission expires: _____

State of North Carolina
County of New Hanover

I, _____, a Notary Public in and for the State and County aforesaid, do certify that _____ personally came before me this day and acknowledged that he/she is _____ Secretary of Historic Wilmington Foundation, Inc., a North Carolina non-profit corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal, and attested by himself/herself as its _____ Secretary.

WITNESS my hand and notarial stamp or seal, this the ____ day of _____, 2020.

Notary Public

Printed Name

[official seal]

My commission expires: _____

EXHIBIT A

That certain parcel or tract of land, lying and being in the City of Wilmington, County of New Hanover and State of North Carolina and described as follows:

BEING that certain structure known as the "Doll House" located on Masonboro Sound Road and described as future Lot 168, East & Mason Subdivision, as shown below and on the approved site plan for East & Mason Subdivision, SRB-2-1219:

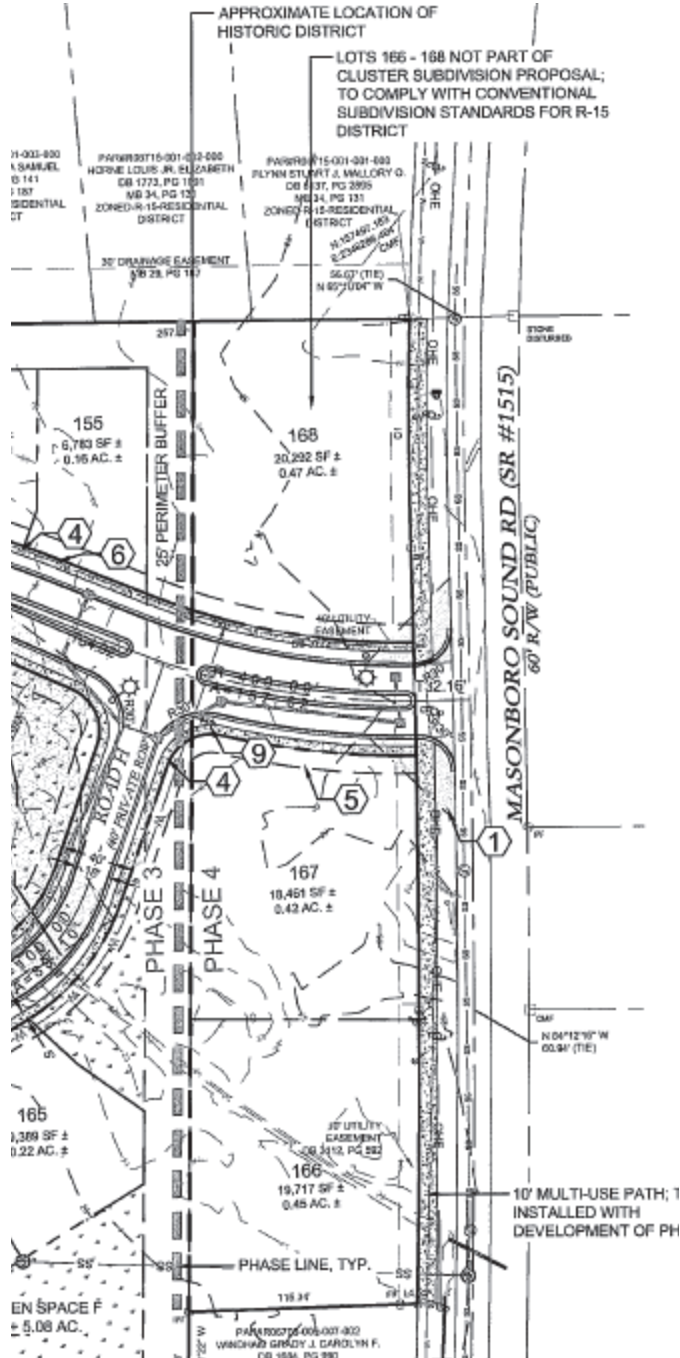


EXHIBIT B

The Secretary of the Interior's Standards for Rehabilitation

The Secretary of the Interior is responsible for establishing standards for all national preservation programs under Departmental authority and for advising Federal agencies on the preservation of historic properties listed or eligible for listing in the National Register of Historic Places.

The Standards for Rehabilitation, a section of the Secretary's Standards for Historic Preservation Projects, address the most prevalent preservation treatment today: rehabilitation. Rehabilitation is defined as the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

The Secretary of the Interior's Standards for Rehabilitation

The Standards that follow were originally published in 1977 and revised in 1990 as part of Department of the Interior regulations (36 CFR Part 67, Historic Preservation Certifications), and subsequently further revised and are current as of July 1, 2012. They pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment as well as attached, adjacent or related new construction.

The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Note: To be eligible for Federal tax incentives, a rehabilitation project must meet all ten Standards. The application of these Standards to rehabilitation projects is to be the same as under the previous version so that a project previously acceptable would continue to be acceptable under these Standards.

The quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repainting techniques; improper exterior masonry cleaning methods; or improper introduction of insulation where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS (National Park Service). "Preservation Briefs" and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the SHPOs and NPS WASO. Owners are responsible for procuring this material as part of property planning for a certified rehabilitation.

Guidelines to help property owners, developers, and Federal managers apply the Secretary of the Interior's Standards for Rehabilitation are available from the National Park Service, State Historic Preservation Offices, or from the Government Printing Office. For more information write: National Park Service, Preservation Assistance Division-424, P.O. Box 37127, Washington, D.C. 20013-7127.



North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary Susi H. Hamilton

Office of Archives and History
Deputy Secretary Kevin Cherry

July 7, 2020

Rachel Capito
U.S. Army Corps of Engineers
Wilmington District
Wilmington Regulatory Field Office
69 Darlington Ave.
Wilmington, NC 28403

Rachel.A.Capito@usace.army.mil

Re: Develop East and Mason Subdivision, 7200 & 7500 Masonboro Sound Road, Wilmington, New Hanover County, ER 19-5333

Dear Ms. Capito:

We appreciate your continued consultation with our staff and Joe Cebina regarding affects to the Doll House and Masonboro Historic District. Upon review of the exhibit provided to us by Mr. Cebina on June 17, 2020, we have determined that the proposed project will have no adverse effect on the historic district based on the following conditions being implemented.

- For preservation purposes and prior to any work performed within the Doll House parcel boundary, the Doll House property will be placed under a preservation easement with restrictions and covenants, to be held by the Historic Wilmington Foundation. The easement agreement should be executed within 30 days of the issuance of permitting. A copy of the executed agreement should be provided to us for our records.
- The development's entry signage should reflect a similar style, massing, height, and material to that of existing drives/entrances within the district. Placement of the signage should avoid the Doll House property. An exhibit dated March 31, 2020 (enclosed) and provided to us and the City's planner for review and comment on April 2, 2020, meets these requirements and has been approved. Any changes to this design or location should to be submitted to us for review and comment prior to installation.
- Vegetative buffers, at least ten (10) feet in width and consisting of native and/or existing species, should remain along the south boundary between the development and the Anderson Cottage, a contributing resource to the district, as well as along the north boundary between existing modern development and the Doll House parcel. Buffers are shown on the enclosed exhibit.
- Landscaping should be compatible in species, character, and placement density, to that of existing vegetation within the district. To lessen the visual impact of new construction and ensure that a compatible streetscape plan is considered, the developer should contact us for consultation prior to removal of existing vegetation situated along Masonboro Sound Road (see enclosed exhibit of June 17th).

- Photographs should be submitted to us for filing once initial construction along Masonboro Sound Road has been completed and at the time of the permit's termination or expiration, whichever comes first.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

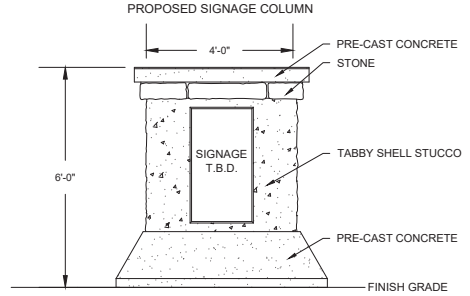
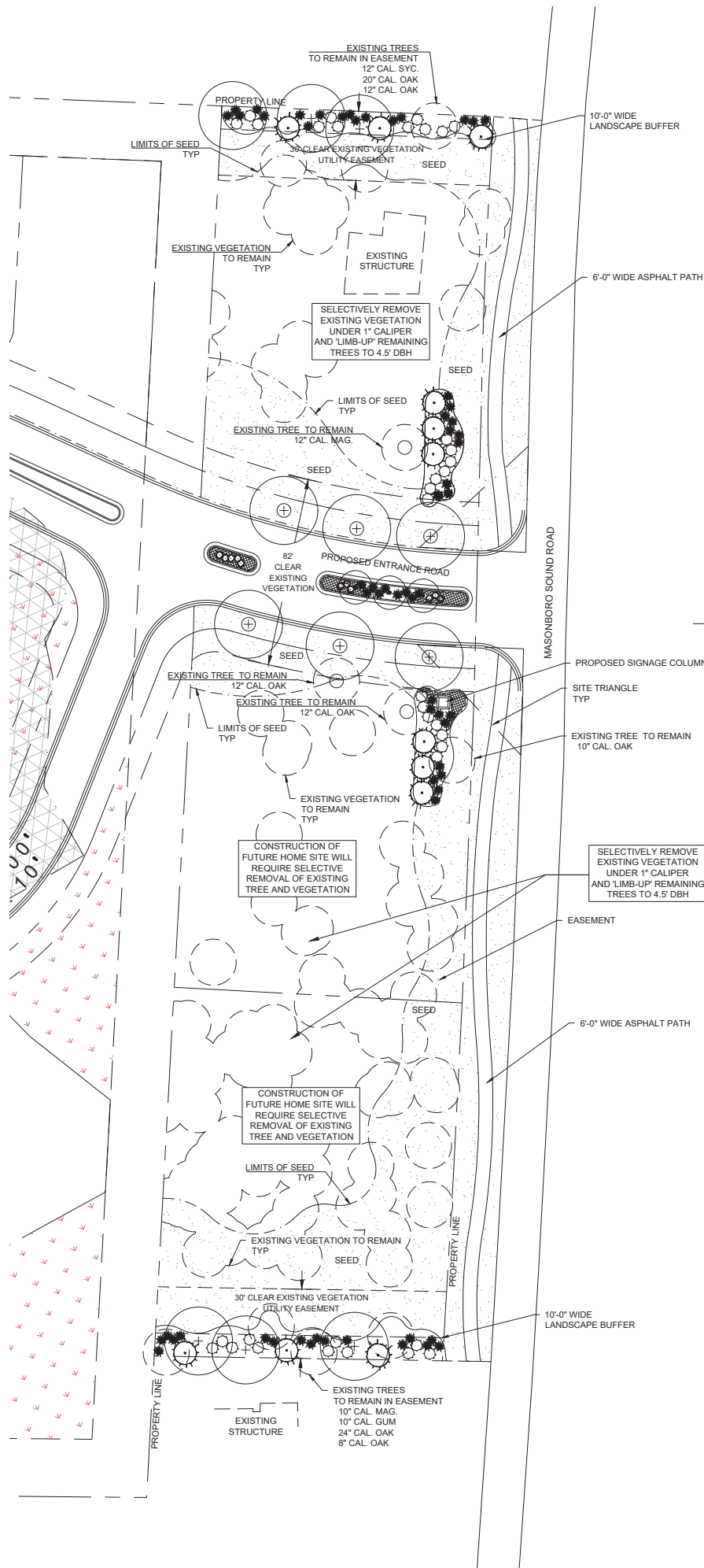
Sincerely,



 Ramona Bartos, Deputy
State Historic Preservation Officer

Enclosed Exhibit 1 – March 31, 2020 Approved signage, buffers, and entry landscaping.
 Exhibit 2 – June 17, 2020 Future consultation area marked in red.

Cc Joe Cebina, Robuck Homes jcebina@robuckhomes.com
 Dawn Snotherly, Historic Preservation Planner dawn.snotherly@wilmingtonnc.gov
 Beth Rutledge, Historic Wilmington Foundation rutledge@historicwilmington.org



- PROPOSED NATIVE PLANT PALETTE**
- LIVE OAK
 - RED MAPLE
 - SHUMARD OAK
 - RIVER BIRCH
 - REDBUD
 - FLOWERING DOGWOOD
 - WAX MYRTLE
 - INKBERRY
 - YAUPON HOLLY
 - AZALEA
 - SWITCHGRASS
 - PINK MUHLY GRASS
 - RIVER OATS
 - PARTRIDGEBERRY
 - CINNAMON FERN
 - SUMMER PHLOX
- NATIVE PLANTS PER NCSU EXTENSION

EXISTING TREES/VEGETATION LOCATIONS
 PER TREE SURVEY, PARAMOUNT
 ENGINEERING DRAWING DATED 10-22-19



March 31, 2020

This plan is a graphic representation and should be utilized for discussion purposes only. The lot plan approximates existing conditions relating to property boundaries. Plan components may change based upon regulatory and municipal regulations and requirements at time of approvals and/or development activity. Not for construction.

EAST 2' MASON EAST ENTRANCE

NCSHPO 07/07/2020
ER 19-5333 Letter
Enclosed Exhibit 2

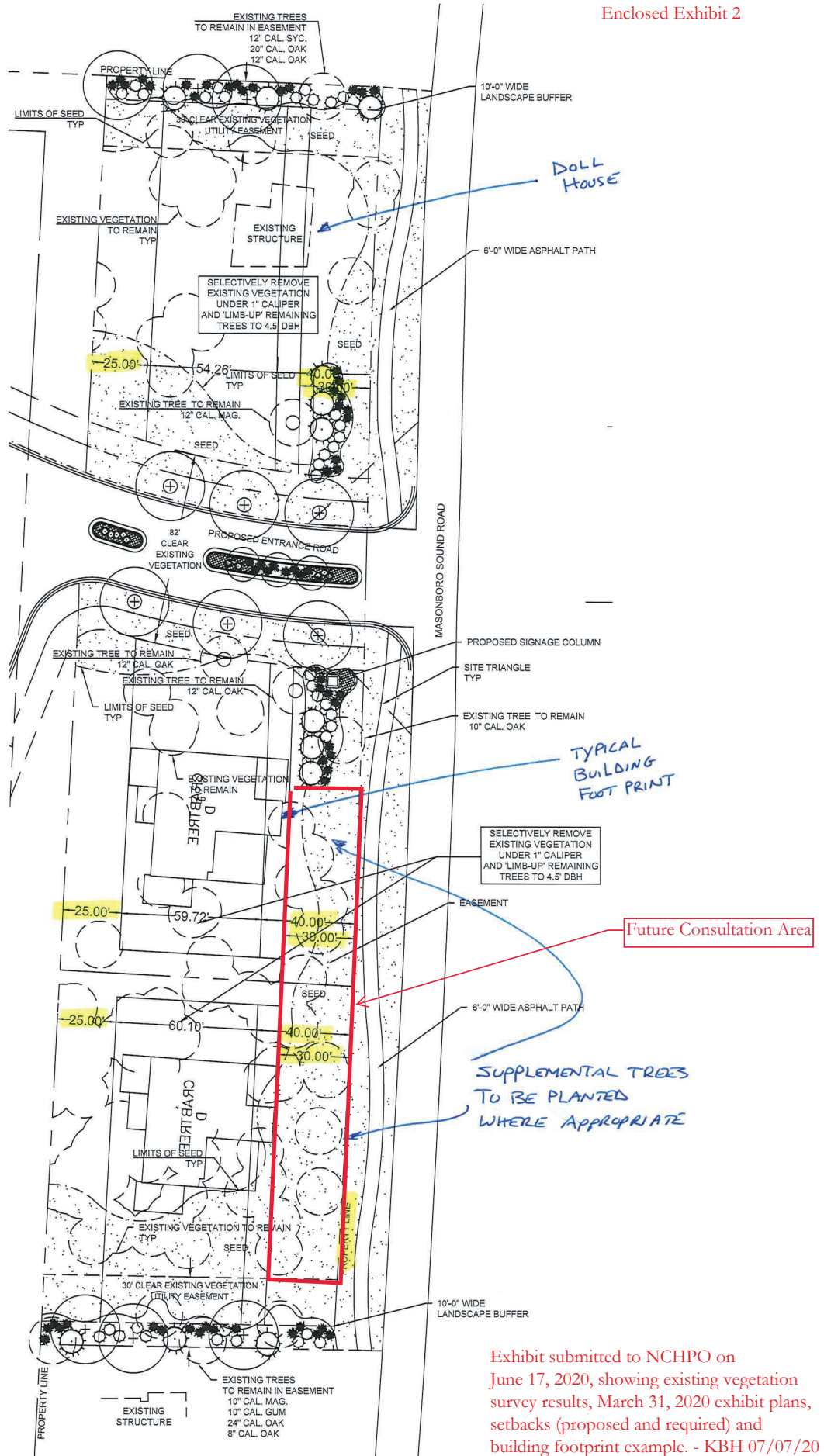


Exhibit submitted to NCHPO on June 17, 2020, showing existing vegetation survey results, March 31, 2020 exhibit plans, setbacks (proposed and required) and building footprint example. - KBH 07/07/20



WILMINGTON

City of
Wilmington
North Carolina

**Development
Services**

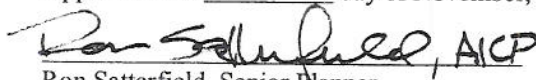
305 Chestnut Street
PO Box 1810
Wilmington, NC 28402-1810
(910) 341-7873 tdd

**POLICY ON THE RELEASE OF PROJECTS FOR THE PURPOSE
OF CLEARING AND GRADING**

No release of projects for the purpose of clearing and grading will be approved except under the following circumstances:

1. Any applications for State permits, including those for driveways, stormwater, water extensions and sewer extensions, CAMA, etc. must have been applied for and received by the applicable State agency. The application must have been submitted to the applicable State agency for a time period exceeding the minimum review time of such applicable agency, indicating a delay by the State agency in the review of the application. Evidence that the applicable State agencies will issue the permit as submitted shall be provided by the applicant or the clearing and grading release will not be issued.
2. If wetlands exist on the site, no clearing and grading release of the project will occur until all reviewing agencies have completed their review, approved the plan and issued the wetland permit. Any and all wetland permits shall be submitted to and received by the City of Wilmington prior to the clearing and grading release of a project.
3. If a project is released for clearing and grading, then the release shall be for clearing and grading only and subject to the limits as authorized by the approved erosion control plan. However, no walls, utilities, infrastructure, structure (including footings), etc. shall be constructed.
4. If the conditions listed above are violated, a stop work order shall be issued.
5. Pre-construction meetings shall be held with the applicant and city staff to discuss the limits of the conditional approval, construction entrance driveways, tree preservation/removal, and any other issue of concern that staff and/or the developer may have. The Technical Review Committee meeting is not a pre-construction meeting.
6. The developer assumes all risks and penalties with any delay or stop work order associated with the violation of this policy. An indemnification statement shall be placed on each release to guarantee that the City of Wilmington will not be held liable for any costs associated with the clearing and grading release.
7. The applicant will sign the clearing and grading release to acknowledge that he/she understands the conditions and risks associated with the release.
8. No partial release for clearing and grading release will be granted for any applicant that has violated these conditions during a twelve month time period from the date of request for clearing and grading release.

Approved this 19th day of November, 2002:


Ron Satterfield, Senior Planner

Community Development
(910) 341-7836 telephone
(910) 341-7802 facsimile

Planning
(910) 341-3258 telephone
(910) 341-7801 facsimile

Engineering
(910) 341-7807 telephone
(910) 341-5881 facsimile

Development Management
(910) 254-0900 telephone
(910) 341-3264 facsimile