#### U.S. ARMY CORPS OF ENGINEERS

WILMINGTON DISTRICT

Action Id. **SAW-2019-01481** County: **Bertie County** U.S.G.S. Quad: **Windsor South** 

#### NOTIFICATION OF JURISDICTIONAL DETERMINATION

**Property Owner/Applicant:** Geenex Solar

Juergen Fehr

Address: 7804-C Fairview Road # 257

Charlotte, NC 28226

Email: Juergen.fehr@geenexsolar.com

Size (acres) 3,047.8 Nearest Town Nearest Waterway Cashie River River Basin Roanoke

USGS HUC <u>03010107</u> Coordinates Latitude: <u>35.91577</u>

Longitude: <u>-76.894883</u>

Location description: The Site encompasses approximately 3,047.8 acres and is located off of Middle Tract

Road and Woodard Road in Bertie County, North Carolina.

#### **Indicate Which of the Following Apply:**

#### A. Preliminary Determination

- X There are waters, including wetlands, on the above described project area, 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. 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 are wetlands on the above described 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 of the U.S. on your 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 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 of the U.S., including wetlands, on the above described project area 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 of the U.S. on your 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 of the U.S., including wetlands, on your project area have been delineated and the delineation has been verified by the Corps. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and Page 1 of 2

#### ATTACHMENT C TO PREFILED SUPPLMENTAL TESTIMONY OF AMANDA MACK EMP-110 SUB 0

#### SAW-2019-01481

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.

- There are no waters of the U.S., to include wetlands, present on the above described project area 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.
- X 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 Elizabeth City, NC, at (252) 264-3901 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 **Anthony Scarbraugh at (910) 251-4619 or Anthony.D.Scarbraugh@usace.army.mil**.

- C. Basis For Determination: The wetlands within the property were delineated using the Corps of Engineers 1987 Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement Version 2.0.
- D. Remarks: All aquatic resources within the review area are accurately depicted on the attached Figure 4 entitled Wetlands and Waters of the U.S. Delineation Map Sheet Numbers 1 through 11 revised 11/18/19 and received on September 10, 2020.

#### E. Attention USDA Program Participants

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

#### F. Appeals Information for Approved Jurisdiction Determinations (as indicated in Section B. above)

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: Mr. Philip A. Shannin
Administrative Appeal Review Officer
60 Forsyth Street SW, Floor M9
Atlanta, Georgia 30303-8803
AND
PHILIP.A.SHANNIN@USACE.ARMY.MIL

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 <u>N/A</u> .

It is not necessary to subm	it an RFA form to the	Division Office if you	do not object to the de	termination in this
correspondence.				
_	$\bigcirc$			

Corps Regulatory Official:	
Date: September 18, 2020	Expiration Date: <u>N/A</u>

## ATTACHMENT C TO PREFILED SUPPLMENTAL TESTIMONY OF AMANDA MACK EMP-110 SUB 0

#### SAW-2019-01481

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our Customer Satisfaction Survey, located online at <a href="http://corpsmapu.usace.army.mil/cm">http://corpsmapu.usace.army.mil/cm</a> apex/f?p=136:4:0.

Copy Furnished:

Timmons Group
Hunter Wines
1001 Boulders Parkway, Suite 300
Richmond, VA 23225
Hunter.Wines@timmons.com

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

Applicant: Juergen Fehr, Geenex Solar	File Number: SAW-2019-014	<u> 181</u>	Date: <u>September 18, 2020</u>
Attached is:		See Se	ection below
☐ INITIAL PROFFERED PERMIT (Standard Perm	nit or Letter of permission)		A
PROFFERED PERMIT (Standard Permit or Lett	er of permission)		В
PERMIT DENIAL			С
APPROVED JURISDICTIONAL DETERMINA	TION		D
PRELIMINARY JURISDICTIONAL DETERM	INATION		Е

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <a href="http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx">http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx</a> or 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 division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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**Jun 02 2022** 

## ATTACHMENT C TO PREFILED SUPPLMENTAL TESTIMONY OF AMANDA MACK EMP-110 SUB 0

SAW-2019-01481

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.

CECTIONIII	DEOLIEGE FOR	ADDEAT	OD IECTIONIC TO	ANTINITETAT	DDOFFFDFD	DEDIME
SECTION II -	REQUEST FOR	APPEAL OF	· 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	If you only have questions regarding the appeal process you may
appeal process you may contact:	also contact:
District Engineer, Wilmington Regulatory Division,	US Army Corps of Engineers

District Engineer, Wilmington Regulatory Division,
Attn: Anthony Scarbraugh

US Army Corps of Engineers
South Atlantic Division
Attn: Mr. Philip A. Shannin

Administrative Appeal Review Officer 60 Forsyth Street SW, Floor M9 Atlanta, Georgia 30303-8803

PHILIP.A.SHANNIN@USACE.ARMY.MIL

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

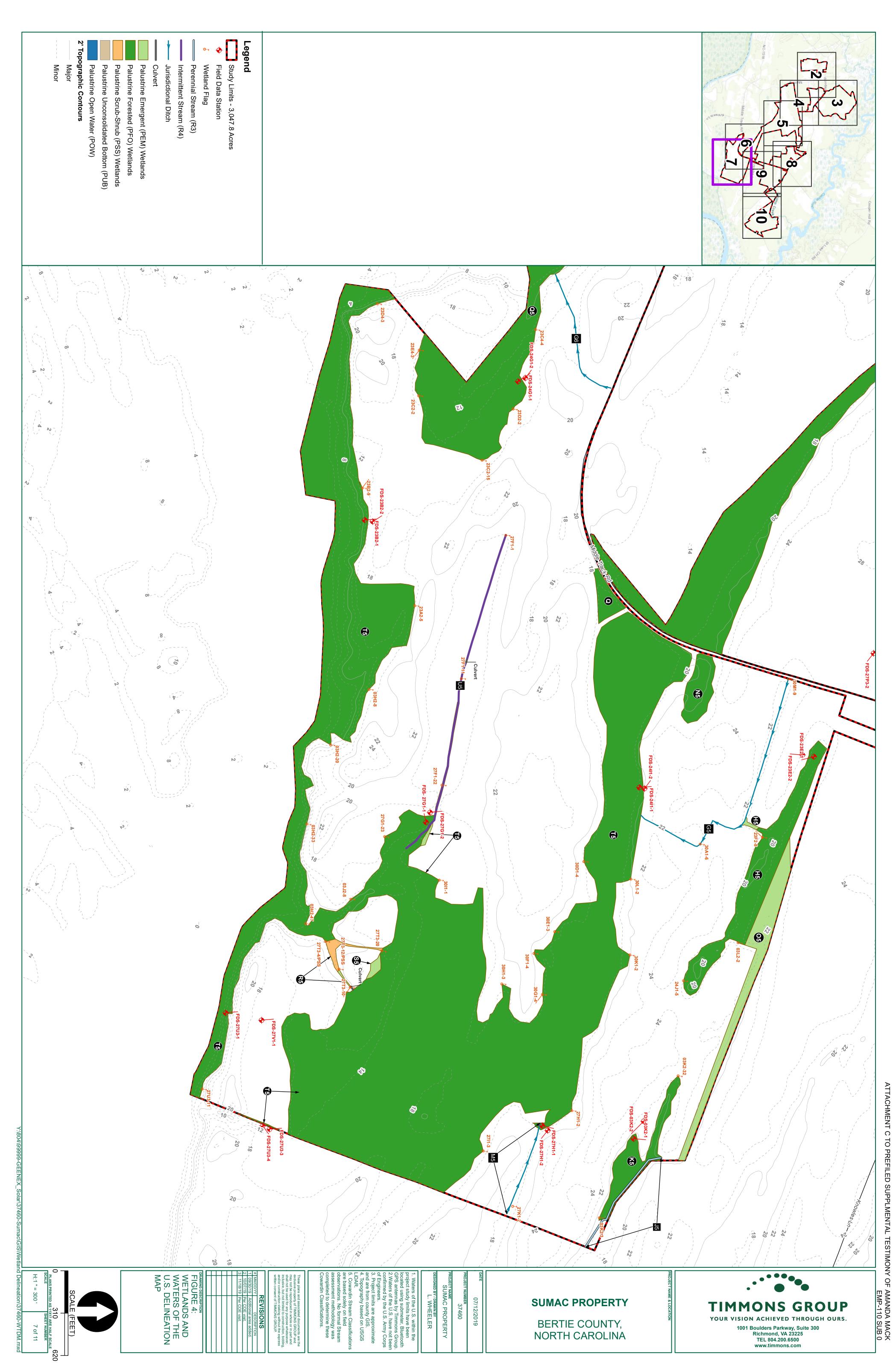
notice of any site investigation, and will have the opportunit	y to participate in all site investig	gations.
	Date:	Telephone number:
Signature of appellant or agent.		

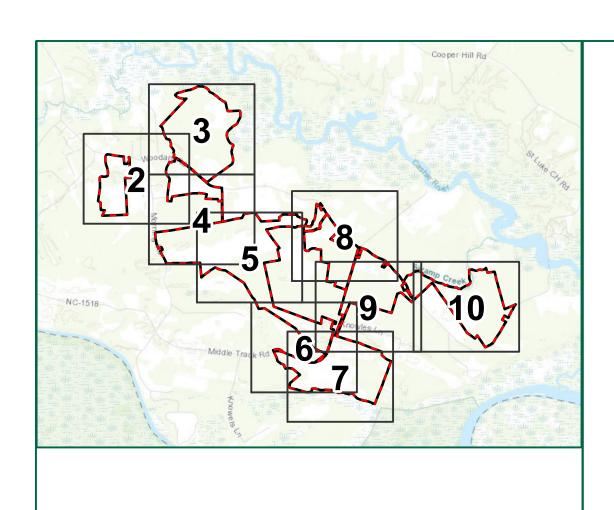
For appeals on Initial Proffered Permits send this form to:

District Engineer, Wilmington Regulatory Division, Attn: Anthony Scarbraugh, 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. Philip Shannin, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801 Phone: (404) 562-5137, PHILIP.A.SHANNIN@USACE.ARMY.MIL





Legend

Study Limits - 3,047.8 Acres

Field Data Station

—— Perennial Stream (R3)

Jurisdictional Ditch

2' Topographic Contours

- Major

---- Minor

Culvert

Intermittent Stream (R4)

Palustrine Emergent (PEM) Wetlands

Palustrine Forested (PFO) Wetlands

Palustrine Open Water (POW)

Palustrine Scrub-Shrub (PSS) Wetlands

Palustrine Unconsolidated Bottom (PUB)

Wetland Flag

_				Con	firmation	)				Resource
Resource Identification	PFO	PSS	PEM	POW	PUB	R3	R4	R6	Ditch	Descriptio
Identification	(sq ft)	(sq ft)	(sq ft)	(sq ft)	(sq ft)	(If)	(If)	(If)	(If)	Notes*
Α									1,997	NT/NV
A2	3,240									NT/V
A3	4.40						1,201			NT/V
A4	440								206	NT/V
A5 A6			0.117						306	NT/NV
A6 A7		6,498	9,117							NT/V NT/V
B		0,490				1,168				NT/NV
B2	5,035					1,100				NT/V
B3	1,012,043									NT/V
B4	44									NT/V
B6			627							NT/V
B7	66,532									NT/V
С	68,535									NT/V
C2	1,420									NT/V
C3			9,800							NT/V
C4									1,067	NT/NV
C5									865	NT/NV
C7			28,220							NT/V
D							1,407			NT/NV
D2	7,361									NT/V
D5	8,607								740	NT/V
D6									718	NT/NV
E2	F 04F			0.007					1,073	NT/NV
E3 E5	5,615 1,285,097			6,997						NT/V; NT/N NT/V
E5	1,205,097								3,242	NT/NV
E7	438,264								0,272	NT/V
F	67,517									NT/V
F3	01,011						1,549			NT/NV
F5							,		1,007	NT/V
F6									1,014	NT/NV
F7	52,093									NT/V
G									144	NT/NV
G2									279	NT/NV
G3	36,481									NT/V
G4									5,193	NT/NV
G5									2,051	NT/NV
G6									1,014	NT/NV
G7									199	NT/V
H	11,026									NT/V
H2	1,025									NT/V
H3	479,811								0.450	NT/V
H4									3,456	NT/NV
H5	295,927		3,257							NT/V
H6	700 705								55	NT/NV
H7	733,765								124	NT/V
<u>                                    </u>	5,324,306	9,244	25,974						134	NT/NV NT/V
12 13	5,324,300	9,244	25,974						1,077	NT/NV
13 14									3,567	NT/NV
 I5	181,056		98,075						0,007	NT/V
	.01,000								332	NT/NV
J	5,800								552	NT/V
J3	,								882	NT/NV
J4									503	NT/NV
J5						891				NT/NV
J6						3,884				NT/NV
J7	2,529,066									NT/V
K									2,723	NT/NV
K2	169,880		15,489							NT/V
K3									233	NT/NV
K5	117,501									NT/V
L	4,789		361							NT/V
L2									2,790	NT/NV
L3			1,144							NT/V
L4									250	NT/NV
L5	156,215									NT/V
	13,068,491	· ·	192,064	6,997	0	5,943	4,157	0	36,171	
Total	•		40.0	00 00 4	•	1	0046			i .
	land Area		-	283,294 so 46,271 If	η π		304.8	04 ac		

Resource

Total Oticalli Lollgui Table A	40,27111	
* T=Tidal; NT=Non-tidal; V=Vege	tated; NV=Non-Vegetated; PF	O=Palustrine Forested Wetland; PSS=Palustrine
Scrub-Shrub Wetland; PEM=Palust	trine Emergent Wetland; POW	/= Palustrine Open Water; EIW= Estuarine Intertidal
Wetlands; R3= Upper P	Perennial Streams; R4=Intermi	ttent Streams; R6 = Ephemeral Streams

Resource	PFO	PSS	PEM	POW	nfirmatio PUB	R3	R4	R6	Ditch	Resource Description
Identification	(sq ft)	(sq ft)	P⊑IVI (sq ft)	(sq ft)	(sq ft)	(If)	(If)	(lf)	(lf)	Notes*
M	(54 11)	(54 11)	22,194	(54 11)	(54 II)	('')	(")	(11)	(11)	NT/V
M2			4,450							NT/V
M3	86,949		15,961							NT/V
M4	00,343		10,001						921	NT/NV
M5									712	NT/NV
M6									792	NT/NV
M7	5,705									NT/V
N			310							NT/V
N2			20							NT/V
N3									598	NT/NV
N4									1,683	NT/NV
N5	79,291									NT/V
N7	121,559									NT/V
0	244,012									NT/V; NT/N
O2	24,534									NT/V
O3	24,004								666	NT/NV
										+
04			100 105						1,726	NT/NV
O5			182,125							NT/V
O6									1,851	NT/NV
Р									3,303	NT/NV
P2									937	NT/NV
P3									729	NT/NV
P4									1,468	NT/NV
P5	57,782									NT/V
P6	,								204	NT/NV
Q Q	41,744									NT/V
Q2			93,375							NT/V
	4,993,271		<del>შ</del> ა,ა/5						0.005	
Q3									2,035	NT/NV
Q4									860	NT/NV
Q5	1,017,690									NT/V
Q7			492							NT/V
R	992,178		9,296							NT/V
R2	9,443									NT/V
R3									1,146	NT/NV
R4									496	NT/NV
R5		15,340	1,631							NT/V
S		10,010	1,001			1,614	1,582			NT/NV
S2						1,014	1,502		754	NT/NV
	7 000		7.450						7 34	
S3	7,893		7,450						407	NT/V
S4			0.705						407	NT/NV
S5			8,765							NT/V
S6	36,648									NT/V
Т									592	NT/NV
T2									1,397	NT/NV
T4									606	NT/NV
T5	5,639,502		16,425							NT/V
T6	13,702									NT/V
U	6,391,706		37,309							NT/V
U2	11,807		,							NT/V
U4	. 1,507								457	NT/NV
							2 440		401	
U5	06 404		7 744				2,448			NT/NV
V	86,101		7,711							NT/V
V2	534,959		56,265							NT/V
V4									470	NT/NV
W	110,345		22,329							NT/V
W2	32,935									NT/V
Х			1,431							NT/V
X2									2,436	NT/NV
X4						291			-	NT/NV
X5	4,018		2,081							NT/V
Y	9,853		_,001							NT/V
	ع,000 ا					E E0E				
Y2						5,585			070	NT/NV
Y3									376	NT/NV
Z	12,513									NT/V
<b>Z</b> 2							2,670			NT/NV
Z4									1,690	NT/NV
Z5	373,187	23,625		113,190	_					NT/V
Z6						3,586				NT/NV
	20,939,327	38,965	489,620	113,190	0	11,076	6,700	0	29,312	
Total	tland Area		·	,581,102 sq		-,5.0		13 ac		
	Alta		<b>4</b> 1;	-			<del>-</del>			
Total We	am I ength	Tahle R =		4/ ()XX IT						
Total We Total Stre	am Length L STREAM I			47,088 If 93,359 If		TOTAL	_ WETLANI	D ARFA -	2/1 2	864,396 If

PROJECT NAME & LOCATION

SUMAC PROPERT

07/12/2019

37460

SUMAC PROPERTY

1. Waters of the U.S. within the project study limits have been located using submeter, Bluetooth GPS antennas by Timmons Group. 2.Waters of the U.S. have not been

L. WHEELER

confirmed by the U.S. Army Corps of Engineers.

3. Project limits are approximate and are from county GIS.

4. Topography based on USGS

5. Cowardin Stream Classifications are based solely on field observations. No formal Stream assessment methodology was completed to determine these Cowardin Classifications.

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REVISIONS		
#	MM/DD/YY	DESCRIPTION
1	09/30/19	Additional area added.
2	10/07/19	Per COE visit.
3	11/18/19	Per COE visit.

FIGURE 4: WETLANDS AND WATERS OF THE U.S. DELINEATION MAP



PLANS PRINTED AS 11X17 ARE HALF SCALE

SCALE SHEET NUMBER 11 of 11