U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. **SAW-2022-01949** County: **Currituck** U.S.G.S. Quad: **NC-Camden Point**

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Requestor:	**Howard Land Development, Inc.**
	CA Howard, Jr.
Address:	**2854A Caratoke Highway**
	Currituck, North Carolina 27929
Telephone Number:	**(252) 202-3500**
E-mail:	**cahowardjr@hotmail.com**

Size (acres)	**26.83**	Nearest Town	**Grandy**
Nearest Waterway	**Currituck Sound**	River Basin	**Pasquotank**
USGS HUC	**03010205**	Coordinates	Latitude: **36.246609,**
			Longitude: **75.884235**

Location description: **The review area for this Jurisdictional Determination consists of two tracts composing approximately 26.83-acre portion and known as Currituck County Parcel Pin #s: 0094000161C0000 and 0094000161B0000 is located off Caratoke Highway in Grandy, Currituck County, NC. The site is located on the northeastern side of Caratoke Highway between Poplar Branch Road and Caratoke Highway. The review area is comprised entirely of uplands.**

Indicate Which of the Following Apply:

A. Preliminary Determination

☐ There appear to be **waters** 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** 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 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** 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** 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** at the project area, which is not sufficiently accurate and reliable to support an enforceable permit decision. We recommend that you have the **waters** 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**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** 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** 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. We strongly 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** have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on. 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 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 D. Scarbraugh at (910) 251-4619 or anthony.d.scarbraugh@usace.army.mil**.

C. Basis For Determination: See the approved jurisdictional determination form dated 02/02/2023.

D. Remarks: The review area for this Jurisdictional Determination is shown on the attached map entitled, "*Wetland Map for Phyllis C. Hutchison, James A. Hutchinson, Jr. & Howard Land Development, Inc.*", dated 02/02/2023.

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)

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 **04/03/2023**.
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: **02/02/2023** Expiration Date of JD: **02/01/2028**

THIS CERTIFIES THAT THIS COPY OF THIS PLAT IDENTIFIES ALL AREAS OF WATERS OF THE UNITED STATES REGULATED PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT AS DETERMINED BY THE UNDERSIGNED ON THIS DATE. UNLESS THERE IS CHANGE IN THE LAW OR OUR PUBLISHED REGULATIONS, THIS DETERMINATION OF SECTION 404 JURISDICTION MAY BE RELIED UPON FOR A PERIOD NOT TO EXCEED FIVE YEARS FROM THIS DATE. THE UNDERSIGNED COMPLETED THIS DETERMINATION UTILIZING THE APPROPRIATE REGIONAL SUPPLEMENT TO THE 1987 U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL.

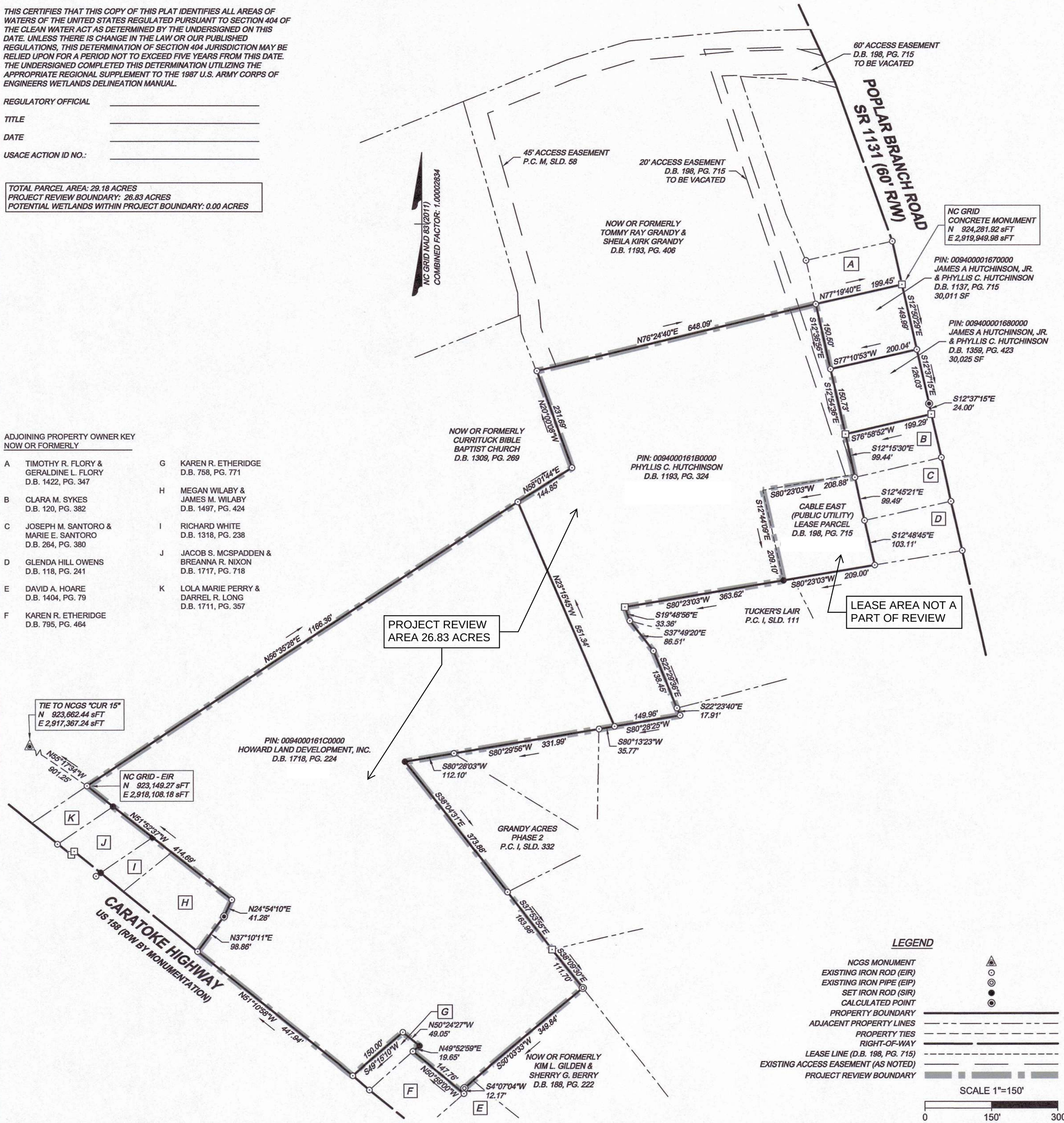
REGULATORY OFFICIAL _____

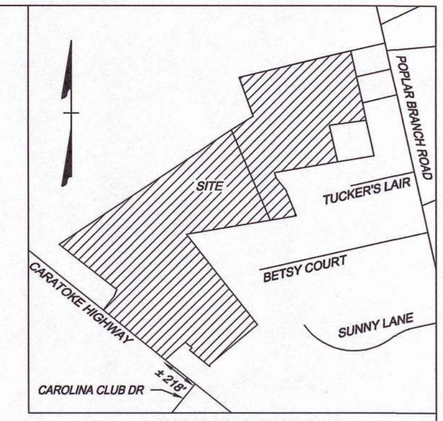
TITLE _____

DATE _____

USACE ACTION ID NO.: _____

TOTAL PARCEL AREA: 29.18 ACRES
PROJECT REVIEW BOUNDARY: 26.83 ACRES
POTENTIAL WETLANDS WITHIN PROJECT BOUNDARY: 0.00 ACRES





VICINITY MAP
(NOT TO SCALE)

I, JASON A. MIZELLE CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM THE DEED DESCRIPTION RECORDED IN D.B. 1137, PG. 715, D.B. 1193, PG. 324, D.B. 1359, PG. 423, D.B. 1718, PG. 224, & D.B. 198, PG. 715; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN THE REFERENCES SHOWN HEREON; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 95% CONFIDENCE; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 2ND DAY OF FEBRUARY, A.D., 2023.

I, JASON A. MIZELLE, PLS-4917, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GNSS SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

1.) CLASS OF SURVEY: CLASS A
2.) POSITIONAL ACCURACY: 2-CENTIMETERS
3.) TYPE OF GPS FIELD PROCEDURE: "RTK"
4.) DATES OF SURVEY: 10-18, 10-20, 11-07, 11-08, & 12-13-2022
5.) DATUM/EPOCH: NC-GRID NAD83(2011); EPOCH 2010
6.) PUBLISHED/FIXED-CONTROL USE: OPUS-SOLUTION
7.) GEOID MODEL: GEOID12B
8.) COMBINED GRID FACTOR: 1.00002834
9.) UNITS: US SURVEY FEET

NORTH CAROLINA PROFESSIONAL SEAL L-4917 LAND SURVEYOR JASON A. MIZELLE

I, JASON A. MIZELLE PLS-4917, CERTIFY,

F(11) D. THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.

JASON A. MIZELLE, PLS L-4917

NOTES:

1. ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.
2. THE PROPERTY IS LOCATED IN FLOOD ZONE "X" AS SHOWN ON FLOOD MAP PANEL 3720990200K, DATED DECEMBER 21, 2018. SUBJECT TO CHANGE BY FEMA.
3. IT IS THE RESPONSIBILITY OF THE CONTRACTOR/OWNER TO VERIFY ALL BUILDING SETBACKS AND RESTRICTIVE COVENANTS PRIOR TO CONSTRUCTION.
4. THIS IS A WETLAND MAP ONLY NOT A BOUNDARY SURVEY. SEE RECORDED REFERENCES.

ADJOINING PROPERTY OWNER KEY
NOW OR FORMERLY

A TIMOTHY R. FLORY & GERALDINE L. FLORY D.B. 1422, PG. 347
B CLARA M. SYKES D.B. 120, PG. 382
C JOSEPH M. SANTORO & MARIE E. SANTORO D.B. 264, PG. 380
D GLENDA HILL OWENS D.B. 118, PG. 241
E DAVID A. HOARE D.B. 1404, PG. 79
F KAREN R. ETHERIDGE D.B. 795, PG. 464
G KAREN R. ETHERIDGE D.B. 758, PG. 771
H MEGAN WILABY & JAMES M. WILABY D.B. 1497, PG. 424
I RICHARD WHITE D.B. 1318, PG. 238
J JACOB S. MCSPADDEN & BREANNA R. NIXON D.B. 1717, PG. 718
K LOLA MARIE PERRY & DARREL R. LONG D.B. 1711, PG. 357

LEGEND

NCGS MONUMENT
EXISTING IRON ROD (EIR)
EXISTING IRON PIPE (EIP)
SET IRON ROD (SIR)
CALCULATED POINT
PROPERTY BOUNDARY
ADJACENT PROPERTY LINES
PROPERTY TIES
RIGHT-OF-WAY
LEASE LINE (D.B. 198, PG. 715)
EXISTING ACCESS EASEMENT (AS NOTED)
PROJECT REVIEW BOUNDARY

SCALE 1"=150'
0 150' 300'

WETLAND MAP FOR
PHYLLIS C. HUTCHINSON, JAMES A. HUTCHINSON, JR., & HOWARD LAND DEVELOPMENT, INC.
BEING PROPERTY DESCRIBED IN D.B. 1137, PG. 715, D.B. 1193, PG. 324, D.B. 1359, PG. 423, D.B. 1718, PG. 224, & D.B. 198, PG. 715
POPLAR BRANCH TOWNSHIP CURRITUCK COUNTY NORTH CAROLINA

TIMMONS GROUP
1805 West City Drive, Unit E, Elizabeth City, NC 27909
TEL 252.621.5030 www.timmons.com
North Carolina License Number C-1652

SCALE:	FILE NO:	DATE OF SURVEY:	DRAFTED:	DATE:	CHECKED:
1"=150'	56469	DECEMBER 13, 2022	JHS	FEBRUARY 02, 2023	JAM

S:\109\56469 - Poplar Branch-Caratoke Hwy Subdivision - Poplar Branch, NC\DWG\56469V_wetland.dwg | Plotted on 2/2/2023 8:05 AM | by John Sawyer

SAW-2022-01949

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 the Customer Satisfaction Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0

Copy furnished:

Agent:	**Atlantic Environmental Consultants, LLC**
	Doug Dorman
Address:	**Post Office Box 27949**
	Kitty Hawk, North Carolina 27949
Telephone Number:	**(252) 261-7707**
E-mail:	**dougdaec@gmail.com**

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: **Howard Land Development, Inc., CA Howard, Jr.**	File Number: **SAW-2022-01949**	Date: **02/02/2023**

Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
☐	PERMIT DENIAL	C
☒	APPROVED JURISDICTIONAL DETERMINATION	D
☐	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 or 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: Anthony D. Scarbraugh** **Washington Regulatory Office** **U.S Army Corps of Engineers** **2407 West Fifth Street** **Washington, North Carolina 27889**	If you only have questions regarding the appeal process you may also contact: MR. PHILIP A. SHANNIN ADMINISTRATIVE APPEAL REVIEW OFFICER CESAD-PDS-O 60 FORSYTH STREET SOUTHWEST, FLOOR M9 ATLANTA, GEORGIA 30303-8803 PHONE: (404) 562-5136; FAX (404) 562-5138 EMAIL: PHILIP.A.SHANNIN@USACE.ARMY.MIL

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: Anthony D. 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

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): 02/02/2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Wilmington District, Grandy / 0 Caratoke Hwy / Grandy NC / Currituck County, SAW-2022-01949

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The review area for this Jurisdictional Determination consists of two tracts composing approximately 26.83-acre portion and known as Currituck County Parcel Pin #s: 0094000161C0000 and 0094000161B0000 is located off Caratoke Highway in Grandy, Currituck County, NC. The site is located on the northeastern side of Caratoke Highway between Poplar Branch Road and Caratoke Highway. The review area is comprised entirely of uplands.

State: NC County/parish/borough: Currituck City: Grandy
Center coordinates of site (lat/long in degree decimal format): Lat. 36.246609, , Long. 75.884235
Universal Transverse Mercator:
Name of nearest waterbody: Currituck Sound
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:
Name of watershed or Hydrologic Unit Code (HUC): 03010205

☒ 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): 09/08/2022 and 09/21/2022050050

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 waters[2] (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: acres.

[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).

c. Limits (boundaries) of jurisdiction based on:
Elevation of established OHWM (if known):

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

☐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. Wetlandadjacent 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 waterbody[4] 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:
Drainage area:
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐Tributary flows directly into TNW.
☐Tributary flows through tributaries before entering TNW.

Project waters are river miles from TNW.
Project waters are river miles from RPW.
Project waters are aerial (straight) miles from TNW.

[3] Supporting documentation is presented in Section III.F.
[4]Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW[5]:
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: **.**

Primary tributary substrate composition (check all that apply):

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

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

(c) Flow:
Tributary provides for:
Estimate average number of flow events in review area/year:
Describe flow regime:
Other information on duration and volume:

Surface flow is: **.** Characteristics:

Subsurface flow: . Explain findings:
☐Dye (or other) test performed:

Tributary has (check all that apply):
☐Bed and banks
☐OHWM[6](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):
☐High Tide Line indicated by: ☐Mean High Water Mark indicated by:

[5]Flow 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.
[6]A 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.
[7]Ibid.

☐oil or scum line along shore objects
☐fine shell or debris deposits (foreshore)
☐physical markings/characteristics
☐tidal gauges
☐other (list):
☐survey to available datum;
☐physical markings;
☐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: Explain:

Surface flow is**:**
Characteristics:

Subsurface flow: . 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 river miles from TNW.
Project waters are aerial (straight) miles from TNW.
Flow is from: **.**
Estimate approximate location of wetland as within the 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:
Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

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-RPWs[8] 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 jurisidictional. 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]

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[8] See Footnote # 3.

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

[10] Prior 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: **Atlantic Environmental Consultants, LLC (AEC) submitted a jurisdictional determination to USACE WFO on August 22, 2022, and September 7, 2022, with final survey received on February 2, 2023.**

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant. **AEC provided data sheet on August 22, 2022, to revision received on November 11, 2022.**

☒ 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:

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **NRCS Web Soil Survey accessed on February 2, 2023.**

☒ National wetlands inventory map(s). Cite name: **USFWS NWI Mapper accessed on September 8, 2022.**

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☐ Photographs: ☐Aerial (Name & Date):

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 and APT from 08/18/2022, 09/05/2022, 09/08/2022, 09/19/2022, and 09/21/2022.**

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The review area totals approximately 26.83 acres and is comprised entirely of uplands.