

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** March 4, 2016

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

WithersRavenel  
Attn: Martin Richmond  
115 Mackenan Dr.  
Cary, NC 27511

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Wilmington, 8550 Stephenson Rd. site/Merion Investment Properties, LLC/Apex/Wake County, SAW-2014-01336

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:** Please see the attached Waters location table and site map for locations of jurisdictional waters on site.

**(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: NC County/parish/borough: Wake City: Apex  
Center coordinates of site (lat/long in degree decimal format): Lat. 35.6880388407731° N, Long. -78.8126175731849° W.  
Universal Transverse Mercator:  
Name of nearest water body: Middle Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 3,201 linear feet: varies width (ft) and/or acres.  
Cowardin Class: Riverine  
Stream Flow: Intermittent and perennial  
Wetlands: 0.38 acres.  
Cowardin Class: Forested

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:  
Non-Tidal:

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLIES):**

- ☒ Office (Desk) Determination. Date: 3/4/16  
☒ Field Determination. Date(s): 7/15/14

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as

is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply - checked items should 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: WithersRavenel.
- ☒ 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: Apex Quad 1:24,000.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Wake County 1970.
- ☒ National wetlands inventory map(s). Cite name: Simsuite NWI data set.
- ☐ State/Local wetland inventory map(s):
- ☒ FEMA/FIRM maps: Simsuite FEMA NFHL.
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): NCOneMap 2010.  
or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 3/4/16  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining the signature is  
Impracticable)

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

**Applicant:** WithersRavenel Attn: Martin Richmond

**File Number:** SAW-2013-01336

**Date:** March 4, 2016

**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 type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" 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/inet/functions/cw/cecwo/reg> 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 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,  
Raleigh Regulatory Field Office  
James Lastinger, Regulatory Specialist  
3331 Heritage Trade Dr., suite 105  
Wake Forest, NC 27587  
919-554-4884 ext 32**

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

**Mr. Jason Steele, 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: \_\_\_\_\_, 69 Darlington Avenue, Wilmington, North Carolina 28403**

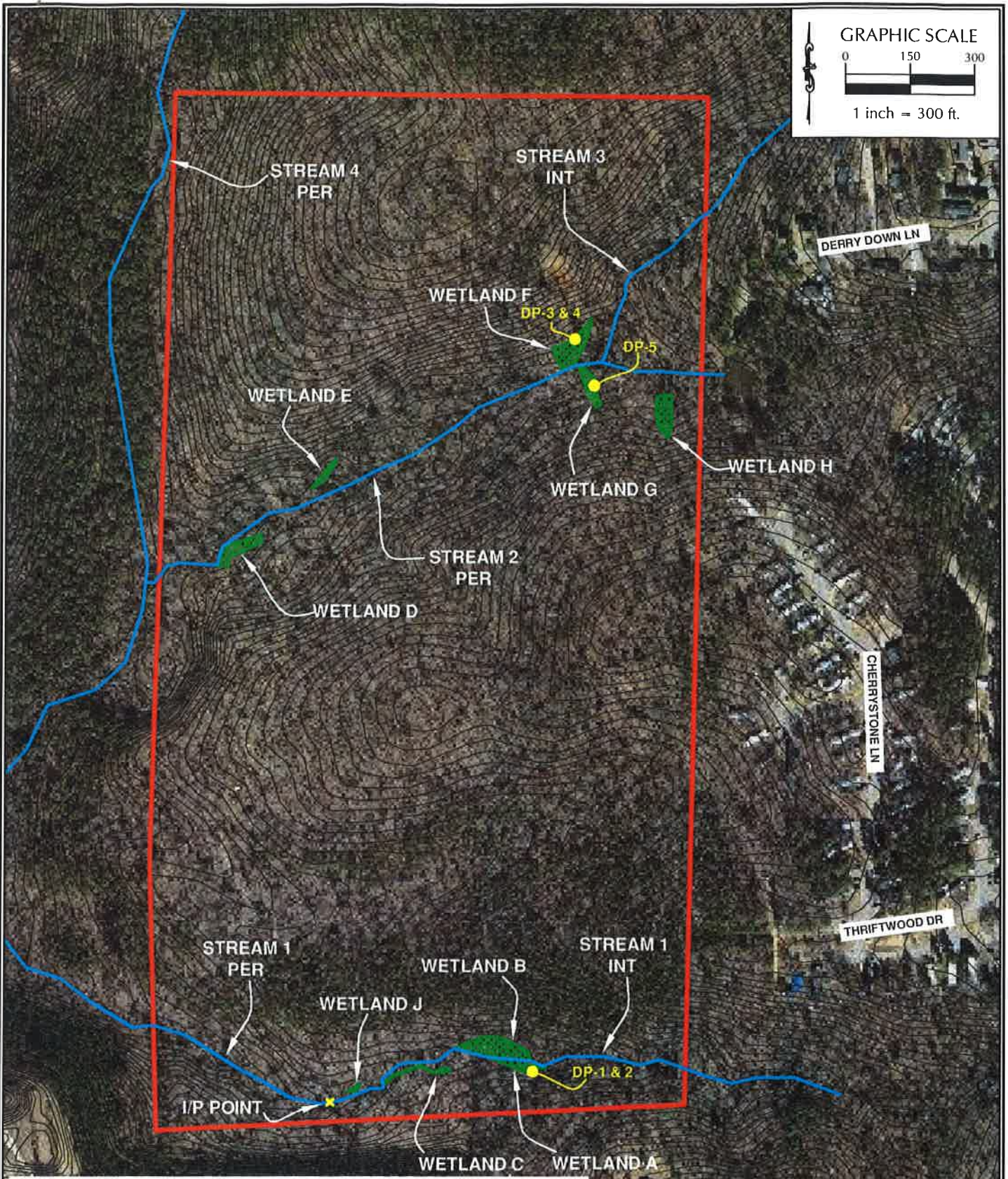
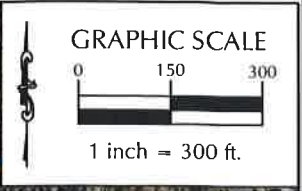
**For Permit denials, Proffered Permits and approved Jurisdictional Determinations send this form to:**

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

Merion Tract, Apex NC  
Preliminary JD Inventory Table

Site Number	Latitude	Longitude	Cowardin Class	Estimated Amount of Aquatic Resource in the Review Area	Class of Aquatic Source
Wetland A	35.6851°N	-78.8117°W	Riparian	±0.04 acres	Non-section 10 wetland
Wetland B	35.6852°N	-78.8118°W	Riparian	±0.13 acres	Non-section 10 wetland
Wetland C	35.6851°N	-78.8125°W	Riparian	±0.01 acres	Non-section 10 wetland
Wetland D	35.6884°N	-78.8142°W	Riparian	±0.06 acres	Non-section 10 wetland
Wetland E	35.6888°N	-78.8135°W	Riparian	±0.01 acres	Non-section 10 wetland
Wetland F	35.6897°N	-78.8115°W	Riparian	±0.09 acres	Non-section 10 wetland
Wetland G	35.6894°N	-78.8114°W	Riparian	±0.04 acres	Non-section 10 wetland
Wetland J	35.6850°N	-78.8133°W	Riparian	±0.01 acres	Non-section 10 wetland
Total Wetlands (Approximate)				0.38 acres	
Stream 1	35.6851°N	-78.8116°W	Riparian - Intermittent	±863 lf	Non-section 10 Non-wetland
Stream 1	35.6851°N	-78.8141°W	Riparian - Perennial	±482 lf	Non-section 10 Non-wetland
Stream 2	35.6893°N	-78.8123°W	Riparian - Perennial	±1,416 lf	Non-section 10 Non-wetland
Stream 3	35.6898°N	-78.8112°W	Riparian - Intermittent	±440 lf	Non-section 10 Non-wetland
Total Streams (Approximate)				±3,201 lf	





- NOTES:**
- 1) WETLAND DELINEATION FIELD VERIFIED BY JAMES LASTINGER WITH ACOE ON 7/15/14.
  - 2) WETLAND & STREAM LIMITS ARE APPROXIMATE BASED ON GPS LOCATION OF WETLAND FLAGS.

08/07/14