

DEPARTMENT OF THE ARMY  
Wilmington District, Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890  
(<http://www.saw.usace.army.mil/wetlands/regtour.htm>)

Action ID No. 200201028

January 21, 2003

PUBLIC NOTICE

The Oleander Company, Post Office Box 3145, Wilmington, North Carolina 28406, has applied for a Department of the Army (DA) permit TO AUTHORIZE THE DISCHARGE OF APPROXIMATELY 30,300 CUBIC YARDS OF FILL MATERIAL INTO 6.268 ACRES OF JURISDICTIONAL WETLANDS IN THE HEADWATERS OF HEWLETTS CREEK, located on the east side of Independence Boulevard (S.R. 1209), north of Shipyard Boulevard (S.R. 1101), in Wilmington, New Hanover County, North Carolina.

The following description of the work is taken from data provided by the applicant and from observations made during a site visit by a representative of the Corps of Engineers. Plans submitted with the application show the construction of a multi-family housing development and associated infrastructure on a 23.7-acre section of the property known as the Alderman Tract. The plan and permit application have been developed in association with a wetland fill violation and consent agreement with the United States Environmental Protection Agency (EPA; Case # CWA-04-99-1017) and U.S. Army Corp of Engineers (USACE; AID No. 199900818 and 199901027). The construction of the proposed development would include the placement of fill material into approximately 6.268 acres of jurisdictional wetlands in the headwaters of Hewletts Creek. The purpose of the work is to construct a residential development and to settle a ditching violation with EPA. Plans showing the work are included with this public notice.

A jurisdictional determination was completed for this site in 1995. A notice of violation (NOV) was sent to Mr. Nelson McCrae of The Oleander Company, on February 23, 1999, due to excavation of drainage ditches and deposition of earthen material into jurisdictional wetlands of the United States without a Department of the Army Permit. The unauthorized work directly impacted approximately 1500 square feet of jurisdictional wetlands. The notice of violation requested the limits of Corps jurisdiction be reestablished and that all fill material be removed from wetlands. The violation was challenged by The Oleander Company and was sent to the Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ). As an interim measure, on April 15, 1999, Mr. Wayne Wright, then Chief Wilmington Regulatory District, instructed Mr. Nelson McCrae to construct 25-foot earthen plugs within the excavated ditches. On March 12, 2002, the Environmental Protection Agency Region 4 (EPA) and the U.S. Department of Justice (DOJ) reached a settlement in principle with The Oleander Company and Mr. Nelson McCrae, resolving the United States' claims for Clean Water Act (CWA) violations

at the Olcander Company/McCrae site. The resolution will result in the payment of a monetary penalty and implementation of a supplemental environmental project to preserve approximately 40 acres of highly functional, urban wetlands at the site. This area was potentially facing Section 404 permit requests.

The applicant has granted a conservation easement to the North Carolina Coastal Land Trust (NCCLT) covering 40 acres of jurisdictional wetlands adjacent to the current proposed development as part of the settlement with EPA for the ditching activity. The application includes a mitigation proposal that was approved as part of the EPA consent agreement. The proposal calls for a total of 9.33 acres of on-site wetland restoration and 15.67 acres of on-site wetland preservation as compensation for the proposed 6.268 acres of wetland impact. A total of 800 linear feet of an old perimeter ditch will be filled to facilitate the restoration of 9.33 acres of drained wetlands. Favorable areas for restoration were determined using DRAINMOD analysis. Groundwater levels in the restoration area will be monitored for five years or until deemed hydrologically successful. Two shallow groundwater monitoring wells will be installed in the restoration area and a reference well will be installed in the center of the existing 40-acre preservation area located to the north of the site proposed for restoration. Readings will be taken on a daily basis and annual monitoring reports will be submitted to the USACE, North Carolina Division of Water Quality, and the EPA no later than January 31<sup>st</sup> of each year. Proposed success criteria for restoration are the establishment of a static groundwater table within 12 inches of the soil surface for at least 5% of the growing season during periods of normal precipitation or the establishment of a hydroperiod at least as great as that of the reference well. An additional 15.67 acres of wetlands will be preserved in perpetuity. A conservation easement for the entire mitigation area, restoration and preservation, will be granted to the North Carolina Coastal Land Trust (NCCLT) or preserved through another acceptable conservation easement. In addition, a 50-foot upland buffer will be included on the western and southern sides as part of the easement.

The remaining wetlands within the project site and the proposed mitigation site consist of pine flat woods located in the headwaters of Hewletts Creek. Ditches on the property have affected the hydrology on portions of the project site and the area designated for the proposed restoration. The property is vegetated with a canopy of *Pinus taeda* and *P. serotina*; a shrub layer of *Magnolia virginiana*, *Lyonia lucida*, *Cyrilla racemiflora*, and *Rex glabra*; and an understory of *Woodwardia areolata* and *Osmunda cinnamomea*. The underlain soil type, Murville (poorly drained), is listed in "Hydric Soils of the United States."

The applicant has determined that the proposed work is consistent with the North Carolina Coastal Zone Management Plan and has submitted this determination to the North Carolina Division of Coastal Management (NCDCM) for their review and concurrence. This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).

b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).

c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.

d. The issuance of an easement to fill or otherwise occupy State-owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.

e. The approval of an Erosion and Sedimentation Control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 A-50-66).

The requested Department of the Army (DA) permit will be denied if any required State or local authorization and/or certification is denied. No DA permit will be issued until a State coordinated viewpoint is received and reviewed by this agency. Recipients of this notice are encouraged to furnish comments on factors of concern represented by the above agencies directly to the respective agency, with a copy furnished to the Corps of Engineers.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The District Engineer's initial determination is that the proposed project would not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register is the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision, whether to issue a permit, will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that may be expected to accrue from the proposal must be balanced against its foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore decided by the outcome of the general balancing process. That decision should reflect the national concern for both protection and use of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects of it. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (according to Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer decides that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to decide whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to decide the need for a public hearing and to decide the public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Environmental Operations Section, North Carolina Division of Water Quality (NCDWQ), Salisbury Street, Archdale Building, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

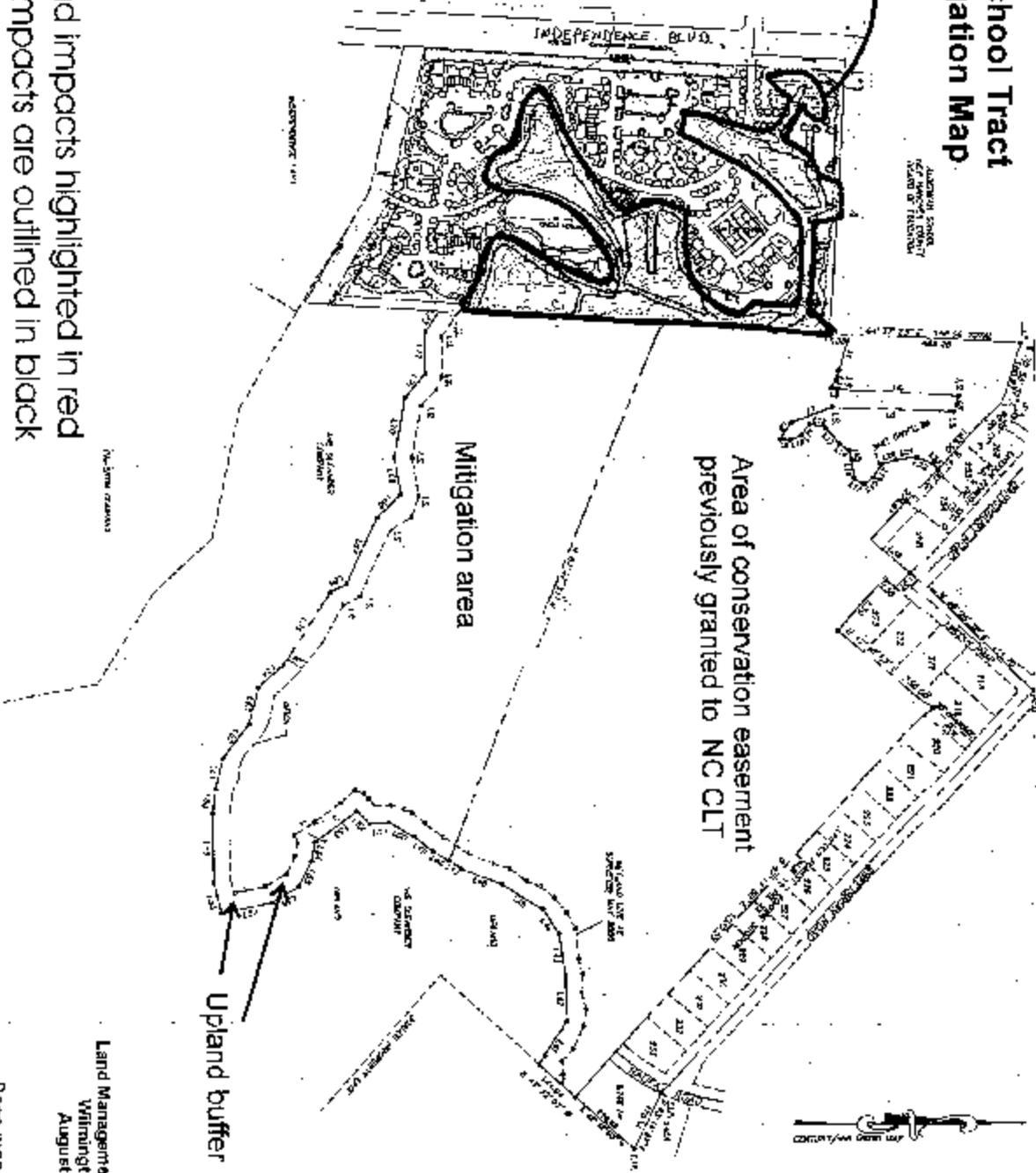
All persons wanting to make comments regarding the application for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1650 Mail Service Center, Raleigh, North Carolina 27699-1650, on or before February 13, 2003, Attention: Mr. John Dorney.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Angie Pennock, until 4:15 p.m., February 21, 2003, or telephone (910) 251-4611.

# Alderman School Tract Overall Mitigation Map

ALDERMAN SCHOOL  
OFF CAMPUS FACILITY  
SCHOOL OF EDUCATION

Impact  
Area



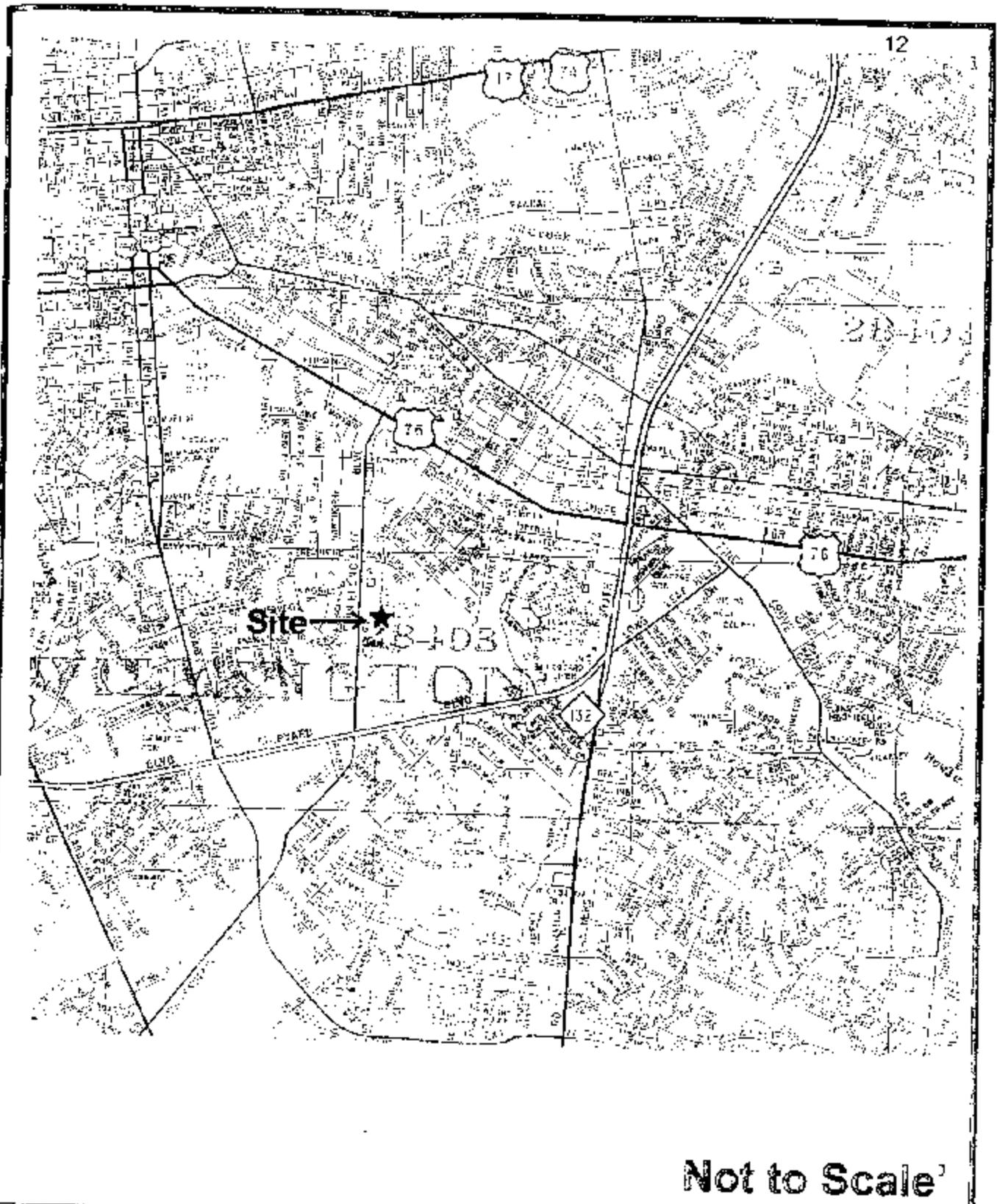
Proposed wetland impacts highlighted in red  
Proposed ditch impacts are outlined in black

7/15/02 (2002)

Land Management Group, Inc.  
Wilmington, NC  
August 2002

Base map taken from survey



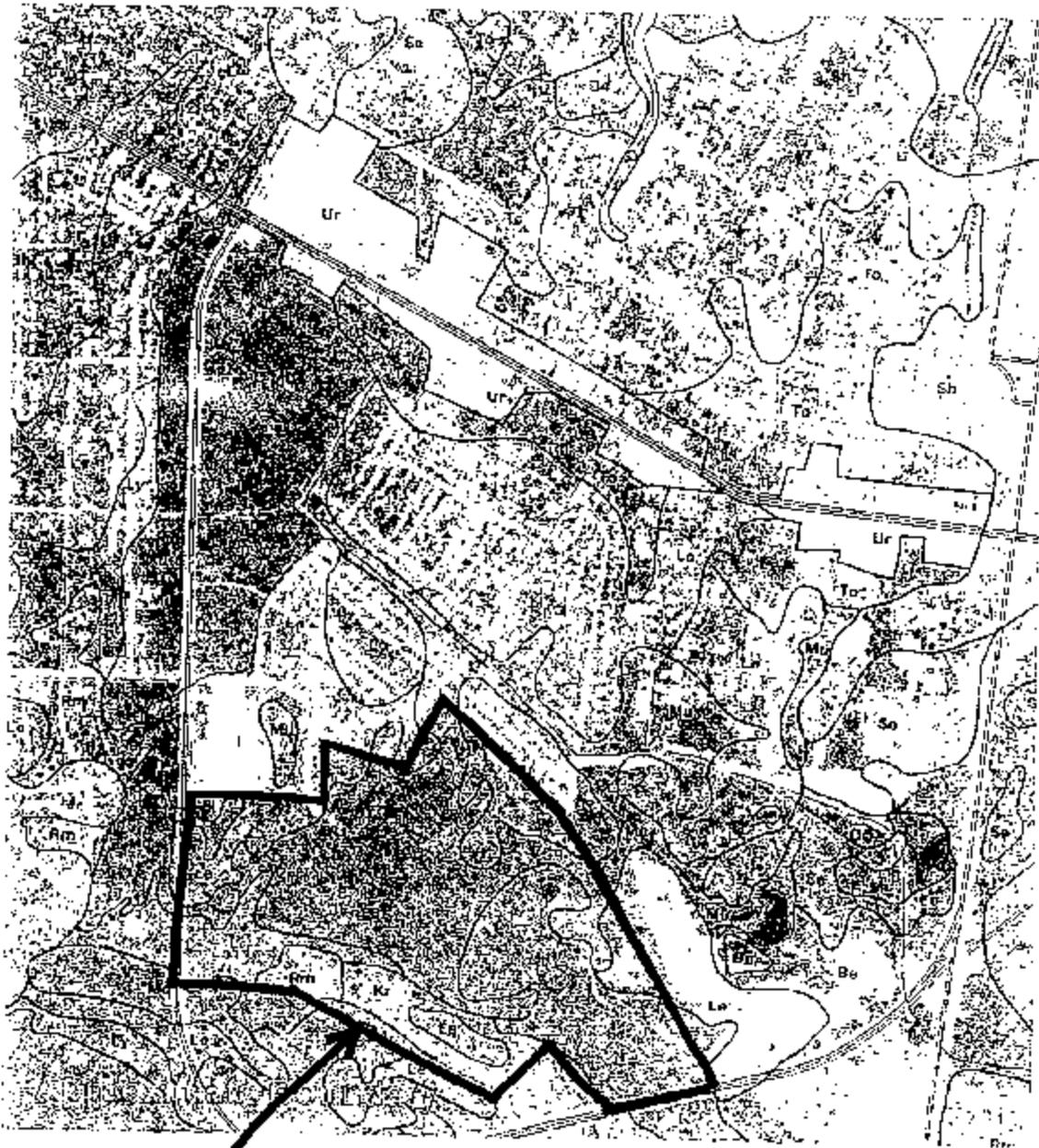


**Not to Scale**

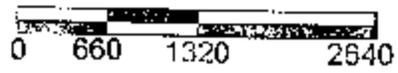
Figure 1. Vicinity map.

**Land Management Group, Inc.**  
 Environmental Consultants  
 Wilmington, N.C.  
 December 2000

The Oleander Company  
 Alderman Tract  
 Wilmington, NC



Approximate Boundary



SCALE 1" = 1320'

Figure 2. N.R.C.S.  
Soils Map

*Land Management Group, Inc.*  
Environmental Consultants  
Wilmington, N.C.  
March 2000

The Oleander Company  
Alderman Tract  
Wilmington, NC

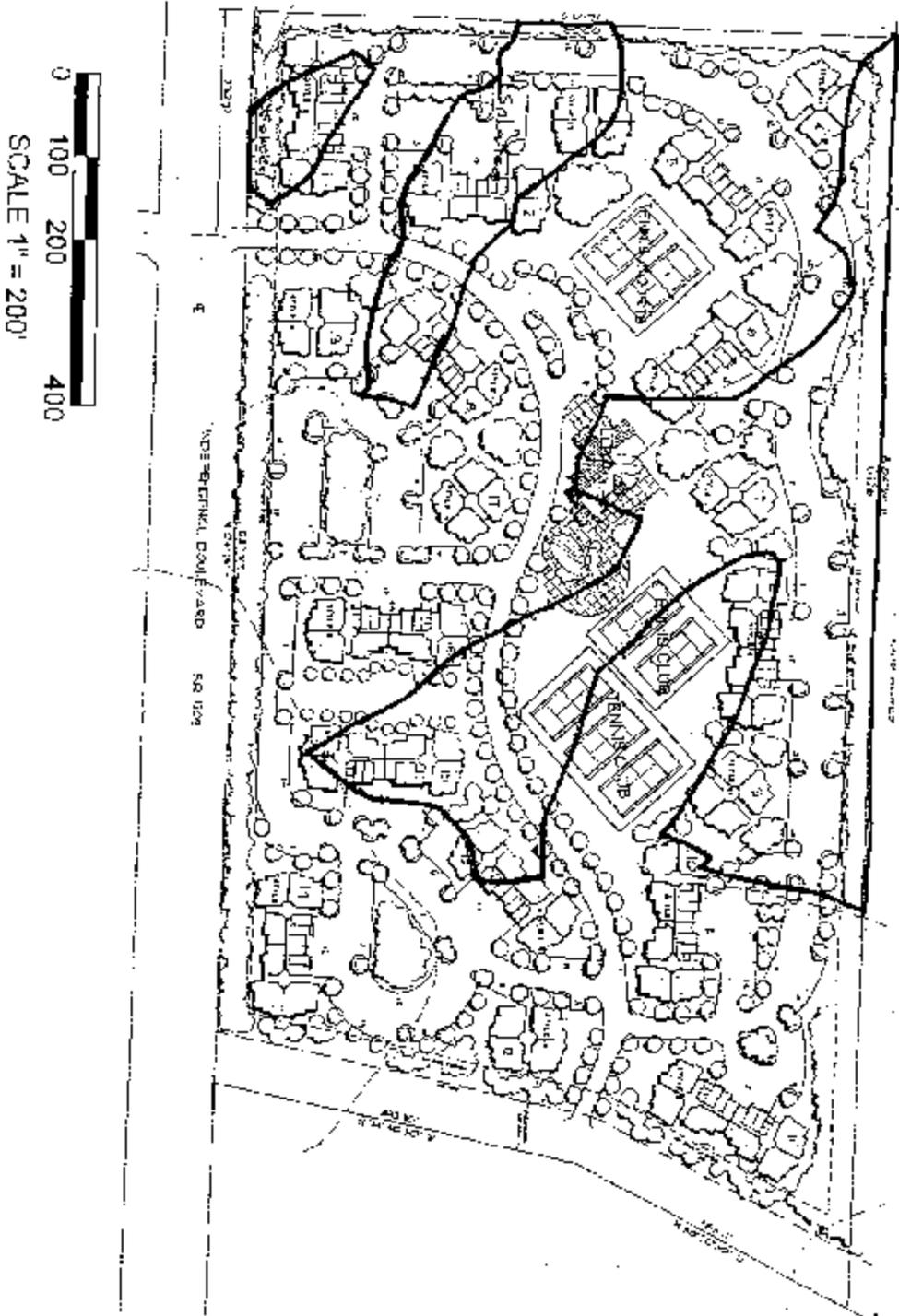


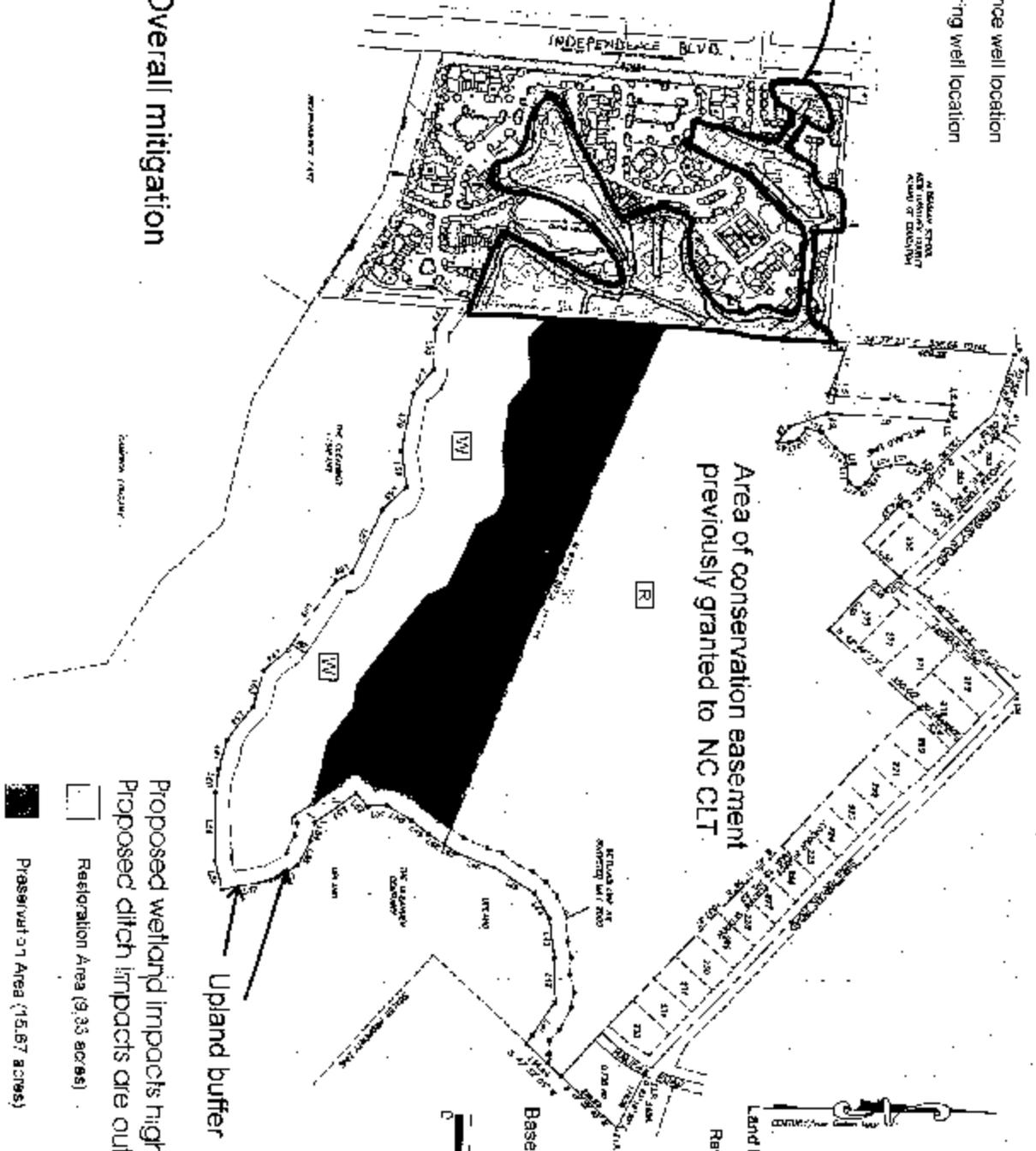
Figure 3. Proposed site plan.

**Land Management Group, Inc.**  
Environmental Consultants  
Wilmington, N.C.  
March: 2000

**The Oleander Company**  
Alderman Tract  
Wilmington, NC

- R Reference well location
- W1 Monitoring well location

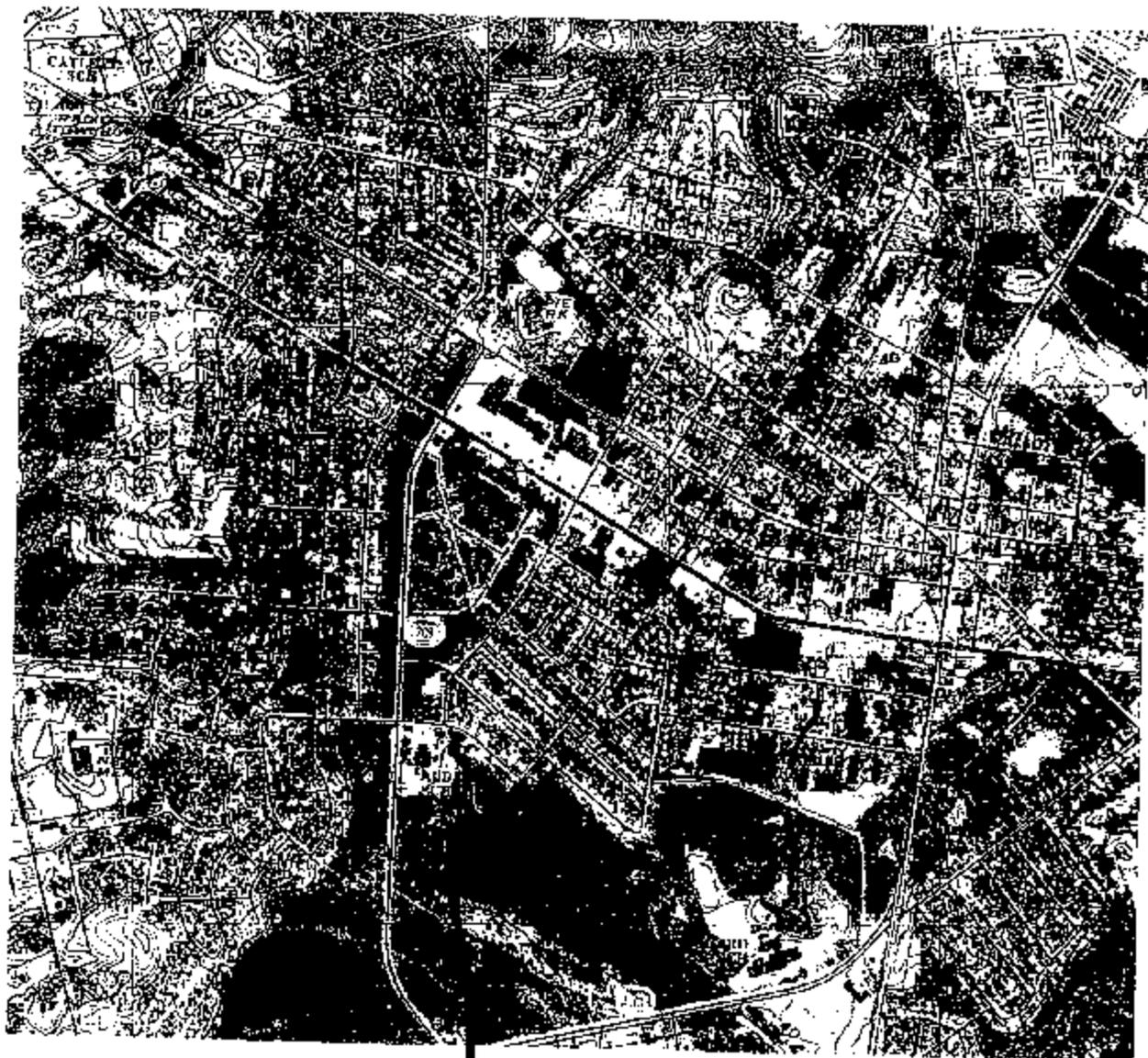
**Impact Area**



Area of conservation easement previously granted to NC CLT

**Figure 4. Overall mitigation proposal.**

Land Management Group, Inc.  
 Wilmington, NC  
 Revised December 2002



**SITE**

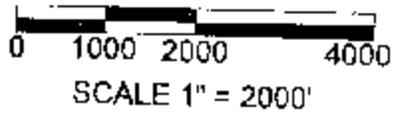


Figure 5. U.S.G.S. topo map (Wilmington Quad).

**Land Management Group, Inc.**  
Environmental Consultants  
Wilmington, N.C.  
March 2000

The Oleander Company  
The Alderman Tract  
Wilmington, NC

Table 1. Total mitigation areas for the Alderman School Tract.

Mitigation Type	Area (acres)
Restoration	9.33
Preservation	15.67
<b>Total</b>	<b>25.00</b>