

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. 200400192

November 18, 2004

**PUBLIC NOTICE**

Landfall Associates, LLC, attn: Mr. Ken Kirkman, 100 Estates Way, Cary, North Carolina 27513, has applied for a Department of the Army (DA) permit TO DISCHARGE FILL MATERIAL INTO 1.57 ACRES OF SECTION 404 WETLANDS ADJACENT TO HOWE CREEK, A TRIBUTARY TO THE ATLANTIC INTRACOASTAL WATERWAY, ASSOCIATED WITH THE CONSTRUCTION OF THE LANDFALL RETIREMENT CENTER, LOCATED ALONG THE NORTHEAST SIDE OF OLD MCCUMBER STATION ROAD, EAST OF MILITARY CUTOFF ROAD, IN THE LANDFALL DEVELOPMENT, 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. The project site is comprised of an approximately 45-acre tract in the Landfall development property. This tract includes approximately 1.57 acres of jurisdictional wetlands. Plans submitted with the application show permanent impacts to 1.57 acres of jurisdictional wetlands associated with construction of a retirement center. Prior Corps of Engineers permitting of impacts to jurisdictional waters at the Landfall Development include the October 5, 1998 Individual Permit (Action ID #199603138) for 83.5 acres of impact to jurisdictional wetlands for the development of a nine-hole golf course with 200 associated residential lots and the construction of a retirement center. On October 3, 2000, the Corps of Engineers issued a modification to this original permit for 1.57 acres of additional impacts to facilitate the construction of the retirement center. Subsequently, this permit expired on December 31, 2001 and the work on the retirement center never commenced. The applicant is now requesting re-authorization of this previously permitted wetland impact of 1.57 acres.

The current use of the majority of the project area is undeveloped and the Landfall Associates golf course designers have utilized this area over the recent years as a soil and plant stockpile area and nursery irrigation zone. This project area also contains approximately 1.57 acres of pine flatwood wetlands, which according to the applicant, were historically disturbed during the initial construction stages of the Landfall development. The surrounding land use is a mixture of residential development, a golf course, and conservation areas that include jurisdictional wetlands and Waters of the United States.

Proposed impacts to jurisdictional wetlands and waters are associated with construction of a retirement center. Plans for the project include the proposed placement of 5700 cubic yards of fill material for the development of a retirement center. Plans showing the work are included with this public notice.

The proposal also includes a description of the previously submitted and approved Wetland Mitigation Plan (Special Conditions of Individual Permit Action ID#199603138) that includes:

- (1) Preservation of 152.6 acres of non-riparian, Pineflat/Pocosin wetlands on-site;
- 2) Preservation of 210.8 acres of marsh wetland adjacent to Howe Creek and the Atlantic Intracoastal Waterway;
- (3) Restoration of 100 acres of non-riparian wetlands located at the Angola Bay/Taylor Farm in Pender County, North Carolina.

Additional mitigation was required for the 1.57 acres of wetland impact previously authorized through the Permit Modification referenced above. This mitigation included:

- (1) Preservation of 1.57 acres of non-riparian wetlands on-site;
- (2) Preservation of 2.05 acres of uplands and pond on-site;
- (3) Restoration of 0.15 acres of tidal marsh on-site.

All mitigation conditions for the original permit and subsequent permit modification have been completed.

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 are 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 applicant has not provided a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Plan. The Corps cannot issue a permit for the proposed work until the applicant submits such a certification statement to the Corps and the State concurs with that certification statement.

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 Wetlands/401 Unit, NCDWQ, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction cost.

All persons desiring 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), 1621 Mail Service Center, Raleigh, NC 27699-1621, on or before December 6, 2004, Attn: Ms. Cyndi Karoly.

Written comments pertinent to the proposed work, as outlined above, will be received in the Corps of Engineers, Wilmington District, Wilmington Regulatory Field Office, Attn: Ms. Jennifer Frye, Post Office Box 1890, Wilmington, North Carolina, 28402-1890, until 4:15 p.m., December 20, 2004, at telephone (910) 251-4923.



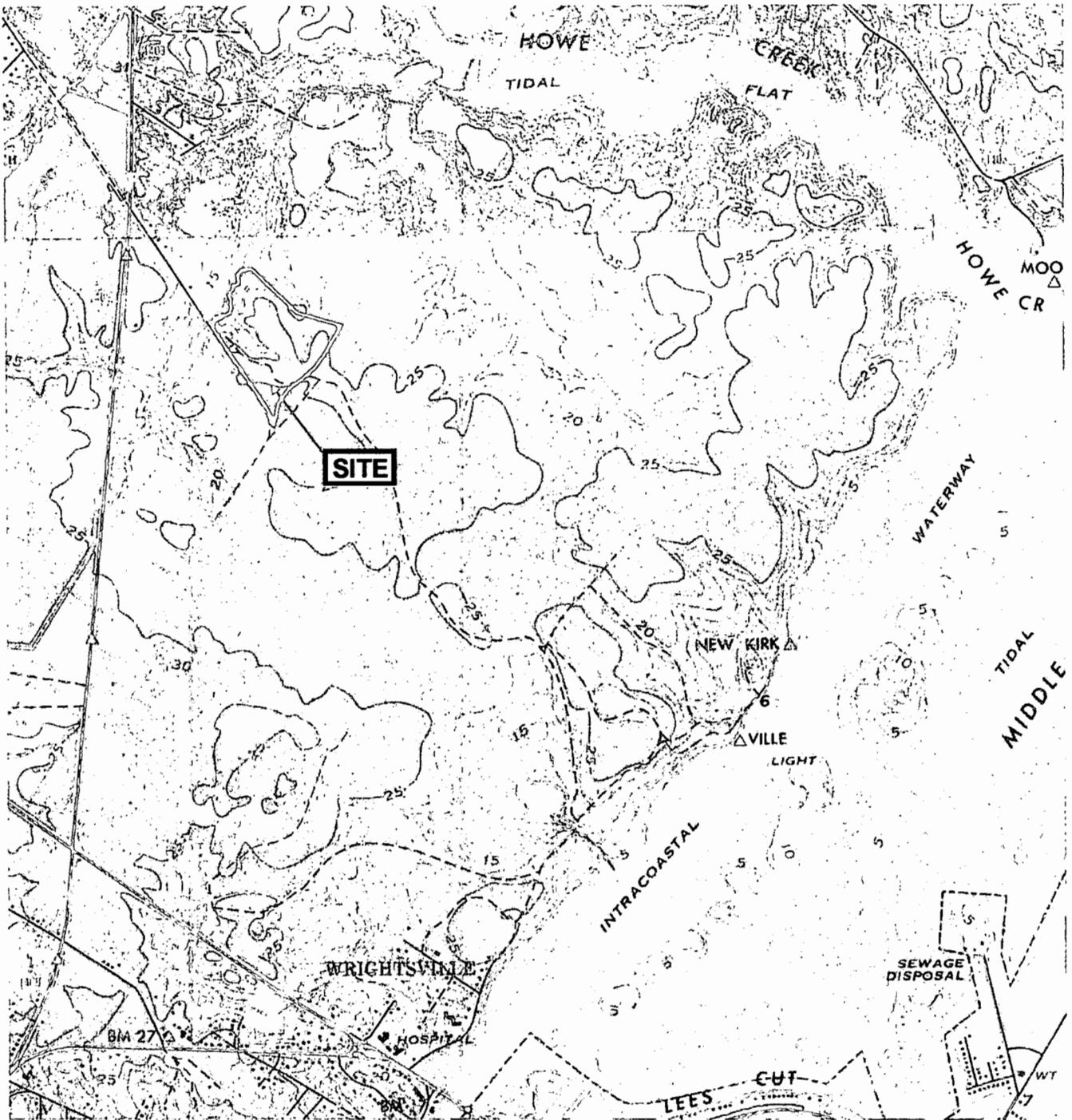
SCALE 1" = 2.4 miles

Map Source: DeLorme: North Carolina Atlas and Gazetteer., 1997 p. 84.

Landfall Tract  
 New Hanover County, NC  
 01-03-301

**Land Management Group, Inc.**  
 Environmental Consultants  
 Wilmington, N.C.  
 October, 2003

Site Location Map



Boundary information taken from "Landfall - A Legacy Of Luxury - The Master Plan" Real Estate Brochure. Boundaries are approximate and not meant to be absolute.

Map Source: Wrightsville Beach and Scotts Hill USGS 7.5' Topographic quadrangle, 1970.



SCALE 1" = 2000'

Landfall Tract  
New Hanover County, NC  
01-03-301

**Land Management Group, Inc.**  
Environmental Consultants  
Wilmington, N.C.  
October, 2003

1970  
7.5' Topographic Quadrangle



Boundary information taken from "Landfall - A Legacy Of Luxury - The Master Plan" Real Estate Brochure. Boundaries are approximate and not meant to be absolute.

Map Source: Wrightsville Beach and Scotts Hill USGS 7.5' Orthophoto quadrangle, 1980.



SCALE 1" = 2000'

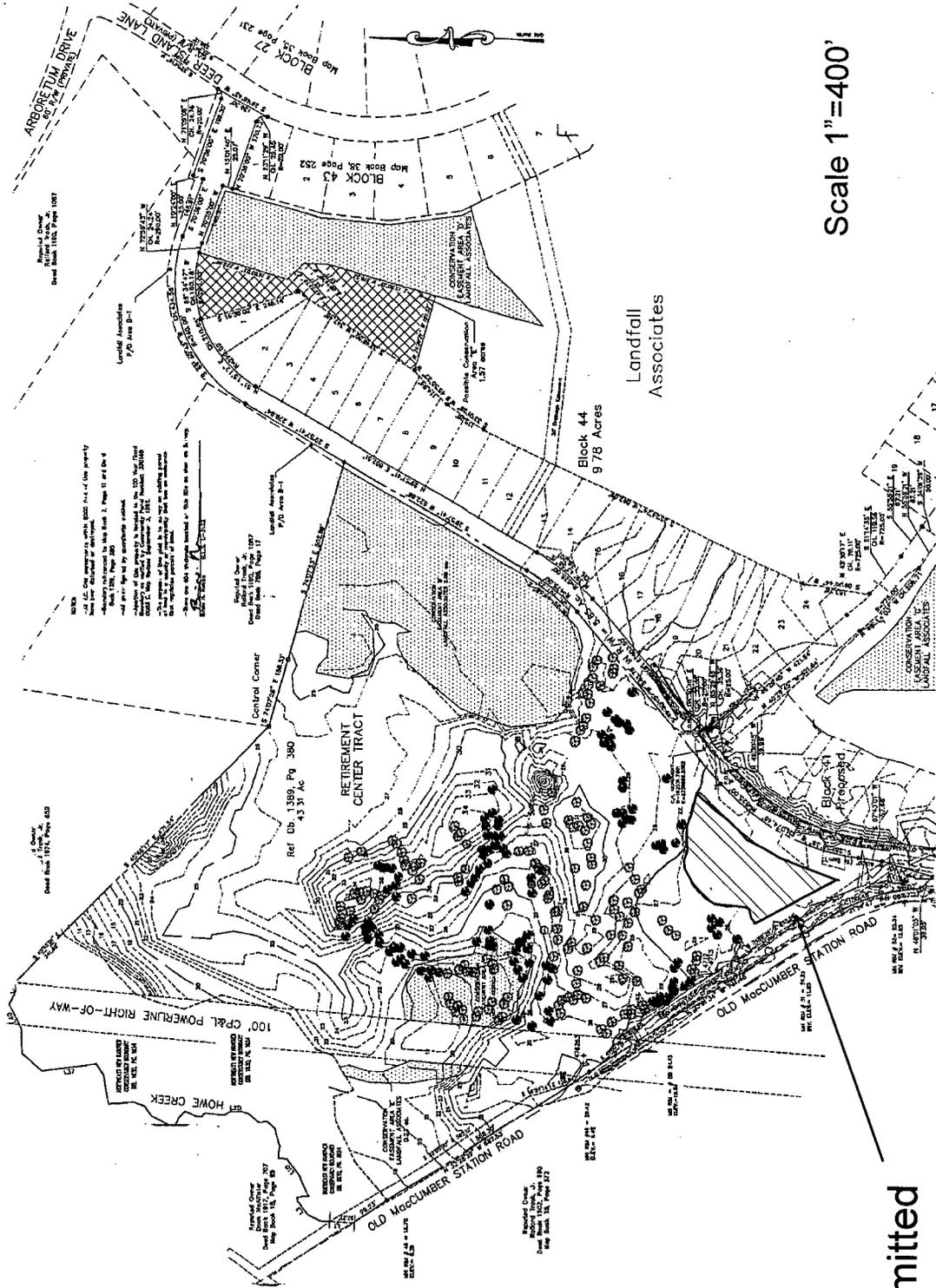
Landfall Tract  
New Hanover County, NC  
01-03-301

**Land Management Group, Inc.**  
Environmental Consultants  
Wilmington, N.C.  
October, 2003

1980  
7.5' Orthophoto Quadrangle

# Landfall Retirement Center Tract Fill Request Plan

Fill request area (1.57 acres)



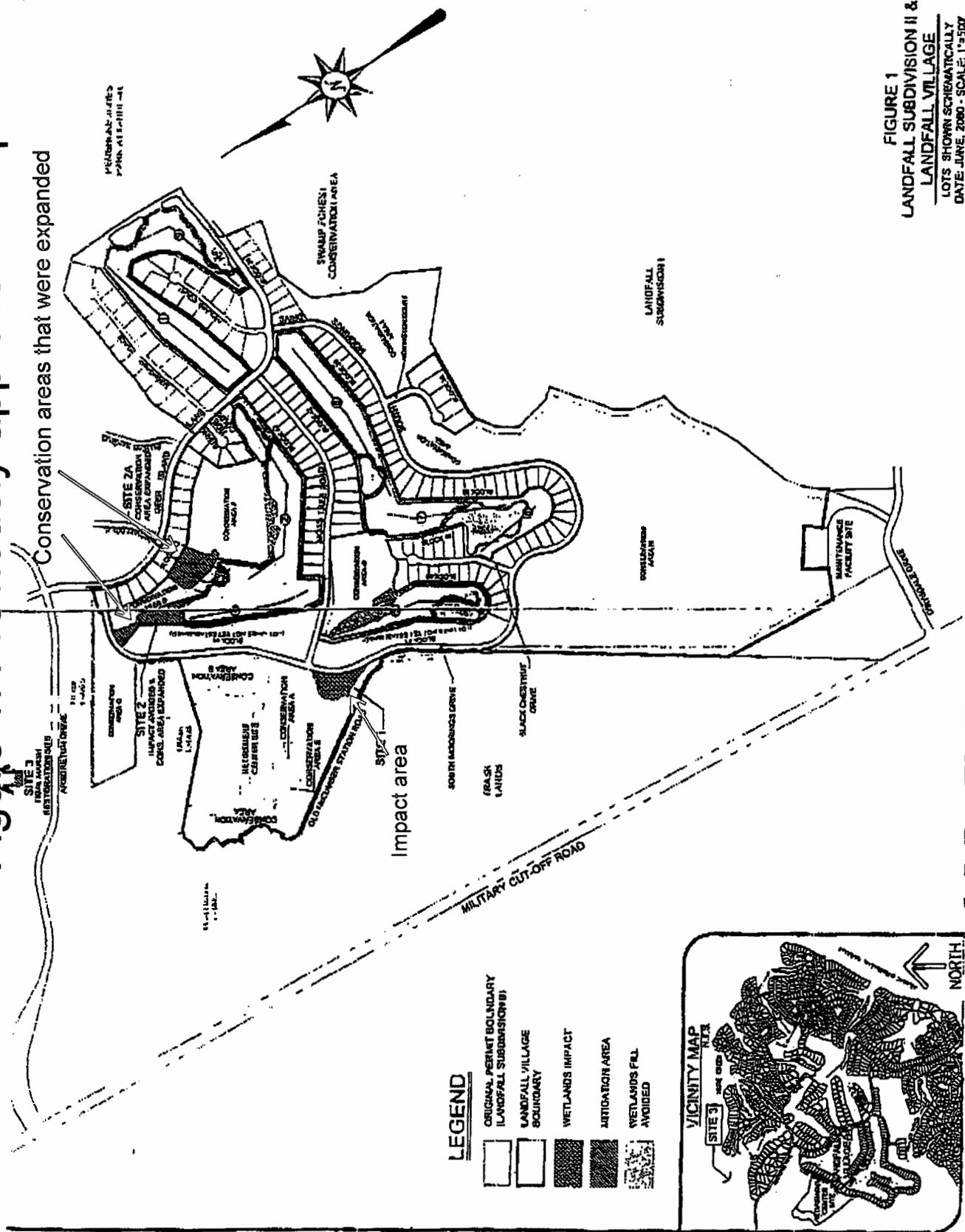
Scale 1"=400'

Previously permitted  
fill area\*\*

\*\* Previously permitted via action id #199603138. Mitigation for said permit has been completed.

# Figure 1. Previously approved site plan

Conservation areas that were expanded



**FIGURE 1**  
**LANDFALL SUBDIVISION II &**  
**LANDFALL VILLAGE**  
 LOTS SHOWN SCHEMATICALLY  
 DATE: JUNE, 2000 - SCALE: 1"=500'

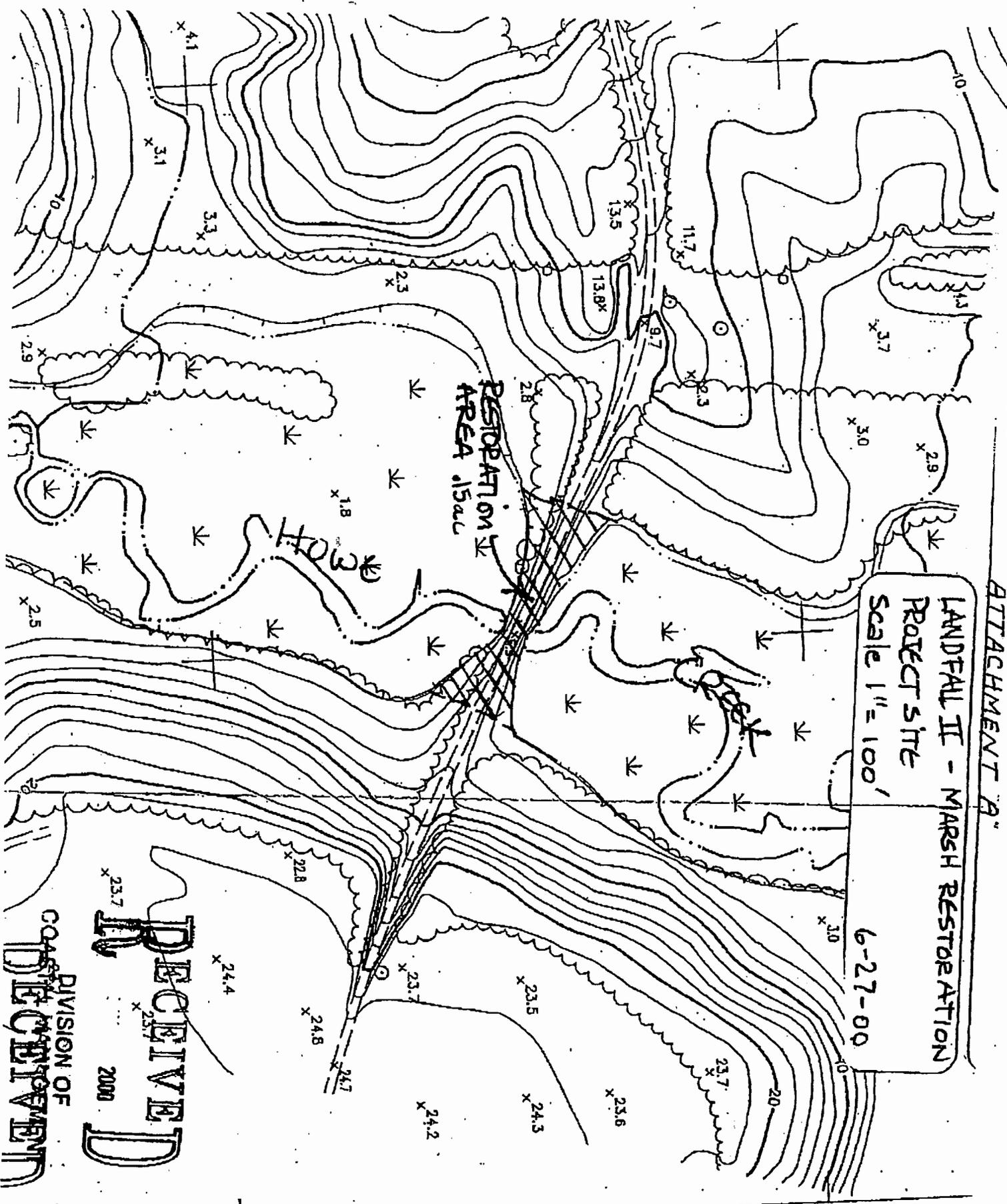


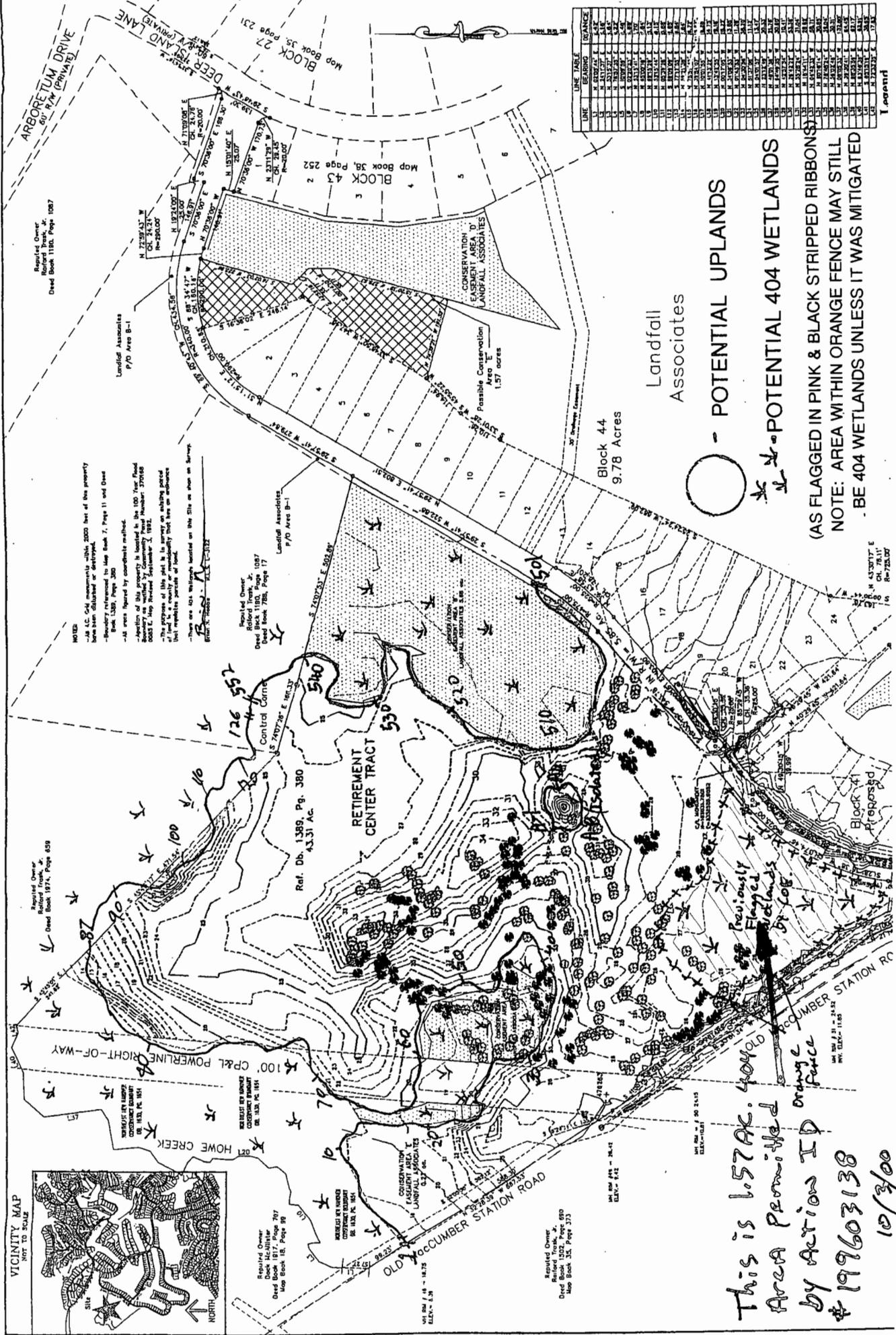
FIGURE 2

ATTACHMENT A"

LANDFALL II - MARSH RESTORATION  
 PROJECT SITE  
 Scale 1" = 100'  
 6-27-00

RECEIVED  
 DIVISION OF  
 COASTAL MANAGEMENT  
 2000

N 186000



LINE	BEARING	DISTANCE
1	N 111° 15' 00" E	1.57
2	S 79° 00' 00" W	1.57
3	N 111° 15' 00" E	1.57
4	S 79° 00' 00" W	1.57
5	N 111° 15' 00" E	1.57
6	S 79° 00' 00" W	1.57
7	N 111° 15' 00" E	1.57
8	S 79° 00' 00" W	1.57
9	N 111° 15' 00" E	1.57
10	S 79° 00' 00" W	1.57
11	N 111° 15' 00" E	1.57
12	S 79° 00' 00" W	1.57
13	N 111° 15' 00" E	1.57
14	S 79° 00' 00" W	1.57
15	N 111° 15' 00" E	1.57
16	S 79° 00' 00" W	1.57
17	N 111° 15' 00" E	1.57
18	S 79° 00' 00" W	1.57
19	N 111° 15' 00" E	1.57
20	S 79° 00' 00" W	1.57
21	N 111° 15' 00" E	1.57
22	S 79° 00' 00" W	1.57
23	N 111° 15' 00" E	1.57
24	S 79° 00' 00" W	1.57
25	N 111° 15' 00" E	1.57
26	S 79° 00' 00" W	1.57
27	N 111° 15' 00" E	1.57
28	S 79° 00' 00" W	1.57
29	N 111° 15' 00" E	1.57
30	S 79° 00' 00" W	1.57
31	N 111° 15' 00" E	1.57
32	S 79° 00' 00" W	1.57
33	N 111° 15' 00" E	1.57
34	S 79° 00' 00" W	1.57
35	N 111° 15' 00" E	1.57
36	S 79° 00' 00" W	1.57
37	N 111° 15' 00" E	1.57
38	S 79° 00' 00" W	1.57
39	N 111° 15' 00" E	1.57
40	S 79° 00' 00" W	1.57
41	N 111° 15' 00" E	1.57
42	S 79° 00' 00" W	1.57
43	N 111° 15' 00" E	1.57
44	S 79° 00' 00" W	1.57
45	N 111° 15' 00" E	1.57
46	S 79° 00' 00" W	1.57
47	N 111° 15' 00" E	1.57
48	S 79° 00' 00" W	1.57
49	N 111° 15' 00" E	1.57
50	S 79° 00' 00" W	1.57
51	N 111° 15' 00" E	1.57
52	S 79° 00' 00" W	1.57
53	N 111° 15' 00" E	1.57
54	S 79° 00' 00" W	1.57
55	N 111° 15' 00" E	1.57
56	S 79° 00' 00" W	1.57
57	N 111° 15' 00" E	1.57
58	S 79° 00' 00" W	1.57
59	N 111° 15' 00" E	1.57
60	S 79° 00' 00" W	1.57
61	N 111° 15' 00" E	1.57
62	S 79° 00' 00" W	1.57
63	N 111° 15' 00" E	1.57
64	S 79° 00' 00" W	1.57
65	N 111° 15' 00" E	1.57
66	S 79° 00' 00" W	1.57
67	N 111° 15' 00" E	1.57
68	S 79° 00' 00" W	1.57
69	N 111° 15' 00" E	1.57
70	S 79° 00' 00" W	1.57
71	N 111° 15' 00" E	1.57
72	S 79° 00' 00" W	1.57
73	N 111° 15' 00" E	1.57
74	S 79° 00' 00" W	1.57
75	N 111° 15' 00" E	1.57
76	S 79° 00' 00" W	1.57
77	N 111° 15' 00" E	1.57
78	S 79° 00' 00" W	1.57
79	N 111° 15' 00" E	1.57
80	S 79° 00' 00" W	1.57
81	N 111° 15' 00" E	1.57
82	S 79° 00' 00" W	1.57
83	N 111° 15' 00" E	1.57
84	S 79° 00' 00" W	1.57
85	N 111° 15' 00" E	1.57
86	S 79° 00' 00" W	1.57
87	N 111° 15' 00" E	1.57
88	S 79° 00' 00" W	1.57
89	N 111° 15' 00" E	1.57
90	S 79° 00' 00" W	1.57
91	N 111° 15' 00" E	1.57
92	S 79° 00' 00" W	1.57
93	N 111° 15' 00" E	1.57
94	S 79° 00' 00" W	1.57
95	N 111° 15' 00" E	1.57
96	S 79° 00' 00" W	1.57
97	N 111° 15' 00" E	1.57
98	S 79° 00' 00" W	1.57
99	N 111° 15' 00" E	1.57
100	S 79° 00' 00" W	1.57

Landfall Associates  
 - POTENTIAL UPLANDS  
 - POTENTIAL 404 WETLANDS  
 (AS FLAGGED IN PINK & BLACK STRIPPED RIBBONS)  
 NOTE: AREA WITHIN ORANGE FENCE MAY STILL  
 BE 404 WETLANDS UNLESS IT WAS MITIGATED

PRELIMINARY 404 WETLANDS MAP  
 LANDFALL RETIREMENT TRACT

This is 1.57 AC. 404 Area Permitted by Action ID # 199603138  
 10/3/00

Figure 3.

SCALE: 1"=300'

PREPARED BY LAND MANAGEMENT GROUP 10-15-03

R-L-M

