



US Army Corps  
Of Engineers  
Wilmington District

# PUBLIC NOTICE

Issue Date: April 23, 2013

Comment Deadline: May 23, 2013

Corps Action ID #: SAW-2003-00214

**The Wilmington District, Corps of Engineers (Corps) has received an application from Mr. Burrows Smith of Savana Land Company, LLC seeking Department of the Army authorization for the discharge of fill material into 0.017 acre of wetlands and 0.050 acre of jurisdictional tributaries, associated with the construction of the residential development known as Berkeley at Westbay Estates. The 57.55 acre project area is located at 403 Torchwood Boulevard, in Wilmington, New Hanover County, North Carolina.**

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx>

**Applicant:**

**Savana Land Company, LLC**  
Attn: Mr. Burrows Smith  
7036 Wrightsville Avenue, Suite 101  
Wilmington, North Carolina 28403

**Agent (if applicable):**

Southern Environmental Group, Inc.  
Attn: David Syster  
5315 South College Road., Suite E  
Wilmington, North Carolina 28412

**Authority**

The Corps will evaluate this application and decide whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of Section 404 of the Clean Water Act (33 U.S.C. 1344).

**Location**

The 57.55 acre project area is located at 403 Torchwood Boulevard, on the north side of Market Street (US Hwy 17), within Westbay Estates subdivision, in the township of

Ogden, New Hanover County, North Carolina. The site is bound by Lendire Drive to the southwest, Section 1 of Kingswood at Westbay Estates and Beacon Drive to the south and east, Torchwood Drive to the north and northeast and North Carolina Department of Transportation (NCDOT) right-of-way to the west and northwest. The site contains approximately 1.17 acres of jurisdictional wetlands and 2,875 lf of unnamed tributaries to Smith Creek, a tributary to the Northeast Cape Fear River, a Navigable Water of the United States. Site coordinates are 34.283397°N, -77.824710°W.

### **Existing Site Conditions**

The project area is the last remaining undeveloped tract of Westbay Estates, a 497-acre development located east of Gordon Road and north of Market Street. Known as Berkeley at Westbay Estates, it is surrounded by six other subdivisions that contain approximately 473 lots in total, with an average lot size of 0.15 acre. A Department of the Army permit was issued to Dallas Harris Construction in 2005 for permanent impacts to 0.611 acre of wetlands and 2.79 acres of jurisdictional tributaries for the construction of Westbay Estates. The permit was transferred to Savana Land Company LLC, and later modified in 2007 to impact 0.24 acre of wetlands and 1.33 acres of jurisdictional tributaries. The permit expired before the completion of the Berkeley subdivision which was a portion of the transferred permit.

The site is partially wooded mostly undeveloped land, with the exception of two large storm water ponds existing on the north and west sides of the tract. There are four wetland pockets within the project area that have been deemed Wetland Preservation Area as required by previous permit conditions (recorded in the New Hanover County Register of Deeds, Mapbook 56, page 5). There is also an easement for the proposed NCDOT Military Cutoff Extension which borders the project area along its northwestern edge.

According to the New Hanover County Generalized Soil Survey, uplands and wetlands within the site are classified as Murville fine sand and Leon fine sand. All wetlands and tributaries onsite appear to drain to the north via Tulloch ditches and eventually discharge into Smith Creek within the Northeast Cape Fear River Basin (HUC 03030007). Wetlands within the site support mostly pocosin family species such as swamp titi, redbay, sweetbay, gallberry, fedder, cinnamon fern, broomsedge and Greenbriar, however, the site is mostly devoid of understory vegetation because it is mowed regularly. The uplands support Leon flatwoods species such as pond pine and gallberry, with a few long leaves, wiregrass and creeping blueberry as well.

### **Applicant's Stated Purpose**

The applicant's stated purpose is to construct a new phase of residential dwellings in Westbay Estates, with associated roads and lot access.

## **Project Description**

The applicant has proposed to discharge fill material into an additional 0.017 acre of wetlands and 0.050 acre of jurisdictional tributaries to complete the planned 57-acre development. The development would consist of 141 lots, with the average size lot being approximately 0.20 acre. **Project plans have been included with this Public Notice.**

The applicant submitted an Alternatives Analysis that includes a No Action Alternative, Alternate Sites and the Preferred Project. **This information has been included with this Public Notice as well.**

Compensatory mitigation for previously permitted Wetland Impact Areas A-F was completed through restoration of 2.77 acres of non-riparian wetland and preservation of 4.70 acres of existing wetlands (total preservation of 7.47 acres). Therefore, the Applicant does not propose any further mitigation with this application.

## **Other Required Authorizations**

This notice and all applicable application materials are being forwarded to the appropriate State agencies for review. The Corps will generally not make a final permit decision until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice combined with the appropriate application fee at the North Carolina Division of Water Quality central office in Raleigh will constitute initial receipt of an application for a 401 Water Quality Certification. A waiver will be deemed to occur if the NCDWQ fails to act on this request for certification within sixty days of the date of the receipt of this notice in the NCDWQ Central Office. Additional information regarding the Clean Water Act certification may be reviewed at the NCDWQ Central Office, 401 Oversight and Express Permits Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1650 Mail Service Center, Raleigh, North Carolina 27699-1650 Attention: Ms. Karen Higgins by **May 23, 2013.**

## **Coastal Area Management Act**

The applicant has not provided to the Corps a certification statement that his/her proposed activity complies with and will be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2(b)(2), the Corps cannot issue a permit for the proposed work until the applicant submits such a certification to the Corps and the North Carolina Division of Coastal Management (NCDCM), and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification.

## **Essential Fish Habitat**

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. According to the NOAA EFH Mapper, there is no EFH within the project limits. The closest EFH is within Howe and Pages Creek approximately 1.5 miles to the east. The Corps' initial determination is that the proposed project will not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

## **Cultural Resources**

The Corps has consulted the latest published version of the National Register of Historic Places and is not aware that any registered properties, or properties listed as being eligible for inclusion therein are located within the project area or will be affected by the proposed work. Presently, unknown archeological, scientific, prehistoric, or historical data may be located within the project area and/or could be affected by the proposed work.

## **Endangered Species**

The Corps has reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information, the Corps has determined pursuant to the Endangered Species Act of 1973, that the proposed project will not have an effect on any federally listed species or their formally designated critical habitat. A search of the North Carolina Natural Heritage Program database was conducted to identify areas within or around the site that are already known to support federally-listed species. No rare species were noted within the project area. The closest element occurrence is approximately 4,000 feet from the project area. A final determination on the effects of the proposed project will be made upon additional review of the project and completion of any necessary biological assessment and/or consultation with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

## **Evaluation**

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental

concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline 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 discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

### **Commenting Information**

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidate State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine 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 determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

Written comments pertinent to the proposed work, as outlined above, will be received by the Corps of Engineers, Wilmington District, until 5pm, **May 23, 2013**. Comments should be submitted to Emily B. Hughes, 69 Darlington Avenue, Wilmington, North Carolina, 28403-1398, telephone (910) 251-4635.

## **I. Alternatives**

The Applicant considered other potential means of developing the subject parcel and has been unable to find a practicable alternative that would achieve his goal and meet his stated purpose.

### **A. Alternative 1. – No Action**

The No Action Alternative (leaving the proposed impact areas undeveloped) would not be feasible, as not developing these lots would make the project economically impractical.

### **B. Alternative 2. – Alternate Sites**

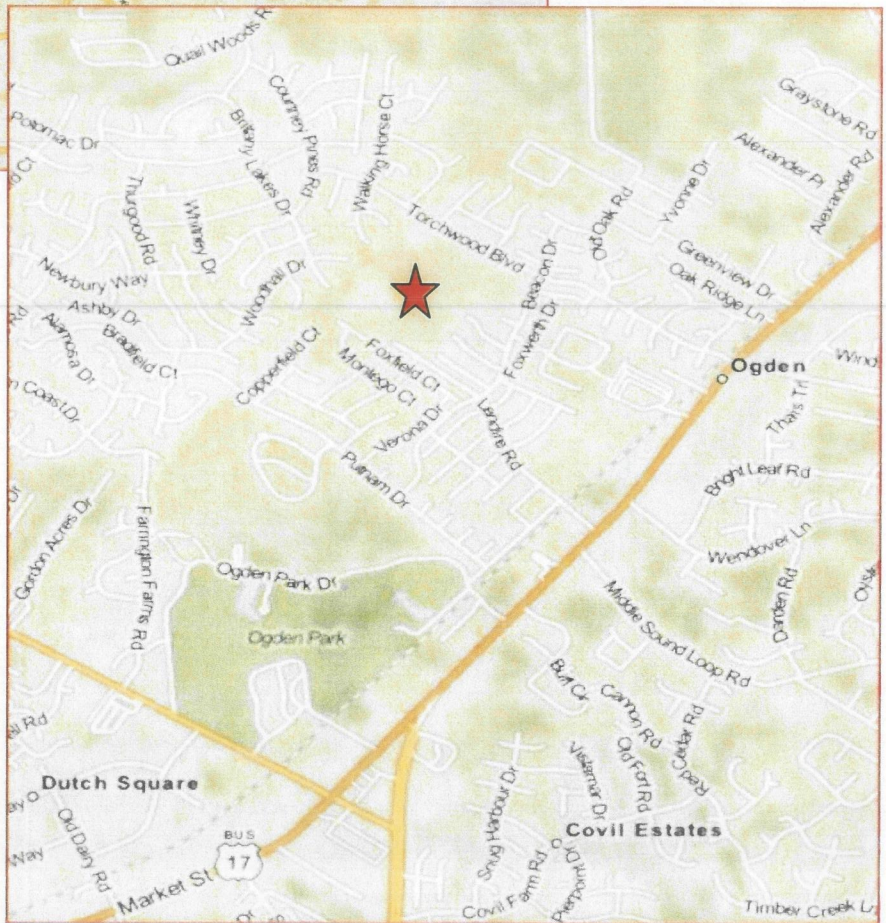
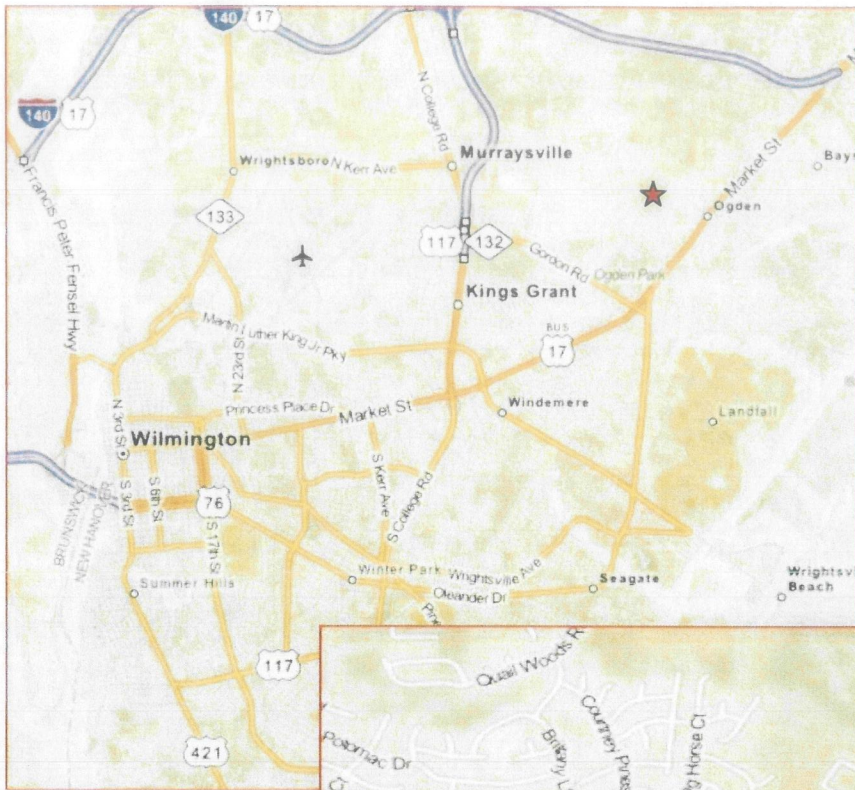
Using an alternate site is not feasible for several reasons: 1) all infrastructure and roadway access are in place within Westbay Estates and the proposed tract is currently owned by the Applicant; and the Applicant builds homes equal in quality, design and size to the existing homes in the subdivision.

### **C. Alternative 3 – Preferred Location**

The proposed impacts are the preferred alternative, as they provide the location specific impacts necessary to meet the purpose and need of the project.



Berkeley at Westbay Vicinity Map



Appendix A



Berkeley at West Bay







**BERKELEY at WESTBAY**  
WETLANDS IMPACTS for

**BERKELEY at WESTBAY**  
WETLANDS IMPACTS for  
OWNER: TORCHWOOD DEVELOPMENT CO., INC.  
2088 WINDSHILL AVE.  
WILMINGTON, NC 28403  
LOCATED IN HARRIETT TOWNSHIP  
NEW HANOVER COUNTY, NORTH CAROLINA

**PRELIMINARY**

REV. NO.	DATE	REMARKS

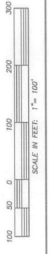
DATE: 3-14-13  
 DRAWN BY: RUP  
 CHECKED BY: RUP  
 PROJECT NO.: 04-0003  
 SHEET NO. 1 OF 1



IMPACT	AREA
A	183.2' x 198.2' (AD)
B	183.2' x 198.2' (AD)
C	183.2' x 198.2' (AD)
D	183.2' x 198.2' (AD)
E	183.2' x 198.2' (AD)
TOTAL	183.2' x 198.2' (AD)

NOTES:  
 IMPACTS C, D AND E WILL BE FILLED TO ALLOW CONSTRUCTION OF BANK  
 OF PROPOSED STABILIZED POND (SEE PLAN)

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**REG. WILM. FLD. OFC.**



**LEGEND**

[Symbol]	EXISTING IMPACT
[Symbol]	STABILIZED POND
[Symbol]	100 FT BOW BASIN
[Symbol]	LOT LINE

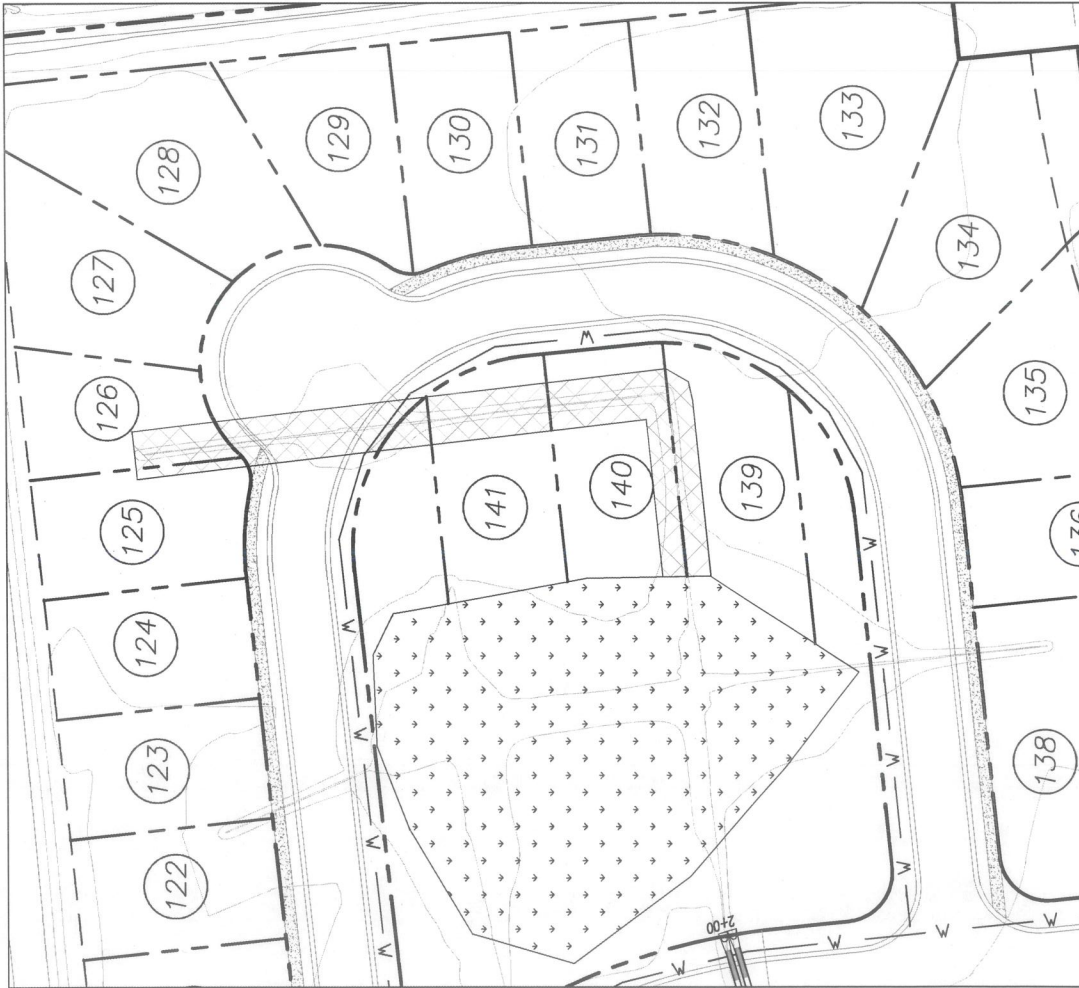




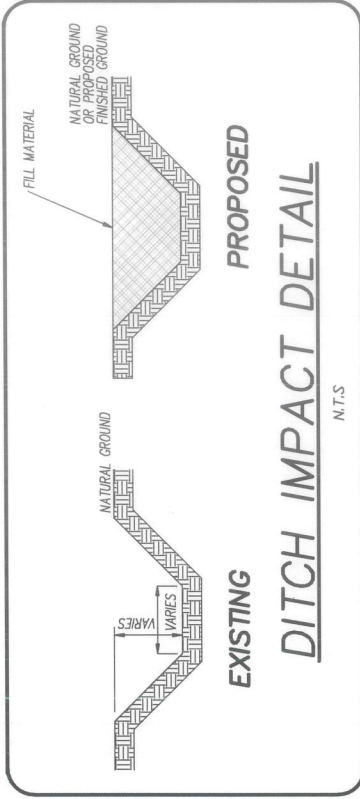




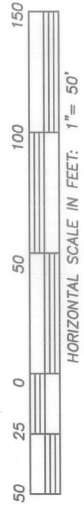
**IMPACT AREA "C"**



IMPACT C  
 294.86 LF @ 2 FT AVG. WIDTH  
 = 589.72 SF (0.0135 AC)



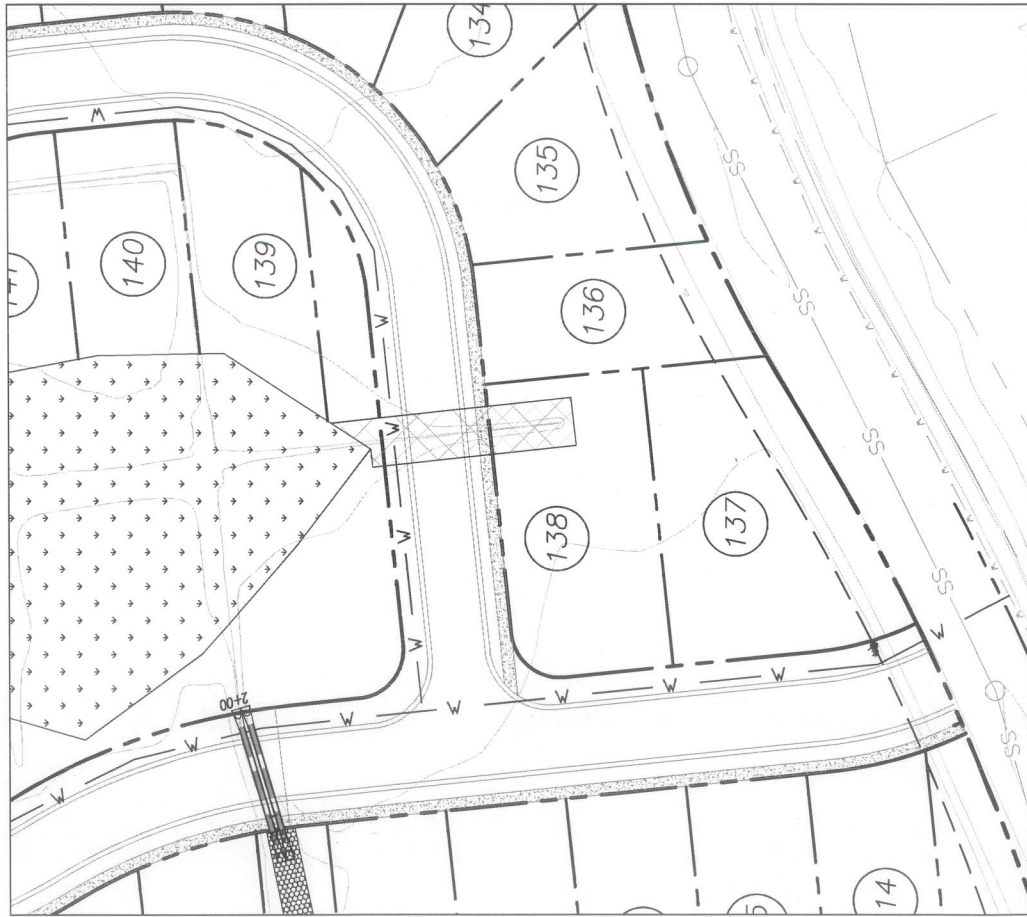
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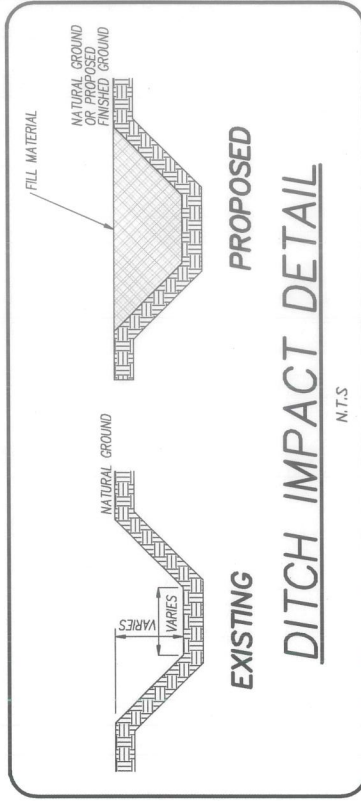
REV. NO.	DATE	BY	DATE	REMARKS



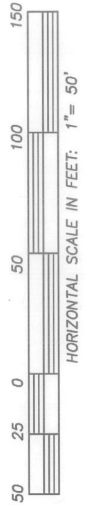
**IMPACT AREA "D"**



IMPACT D  
 88.0 LF @ 2 FT AVG. WIDTH  
 = 88 X 2 = 176 SF (0.0040 AC)



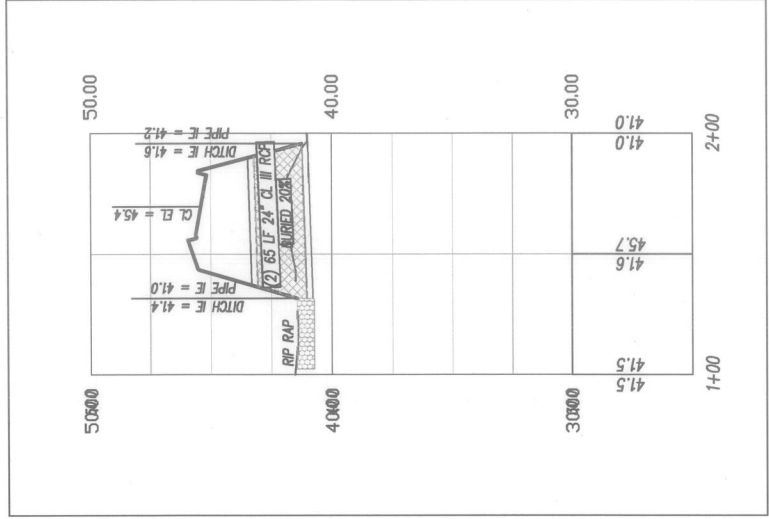
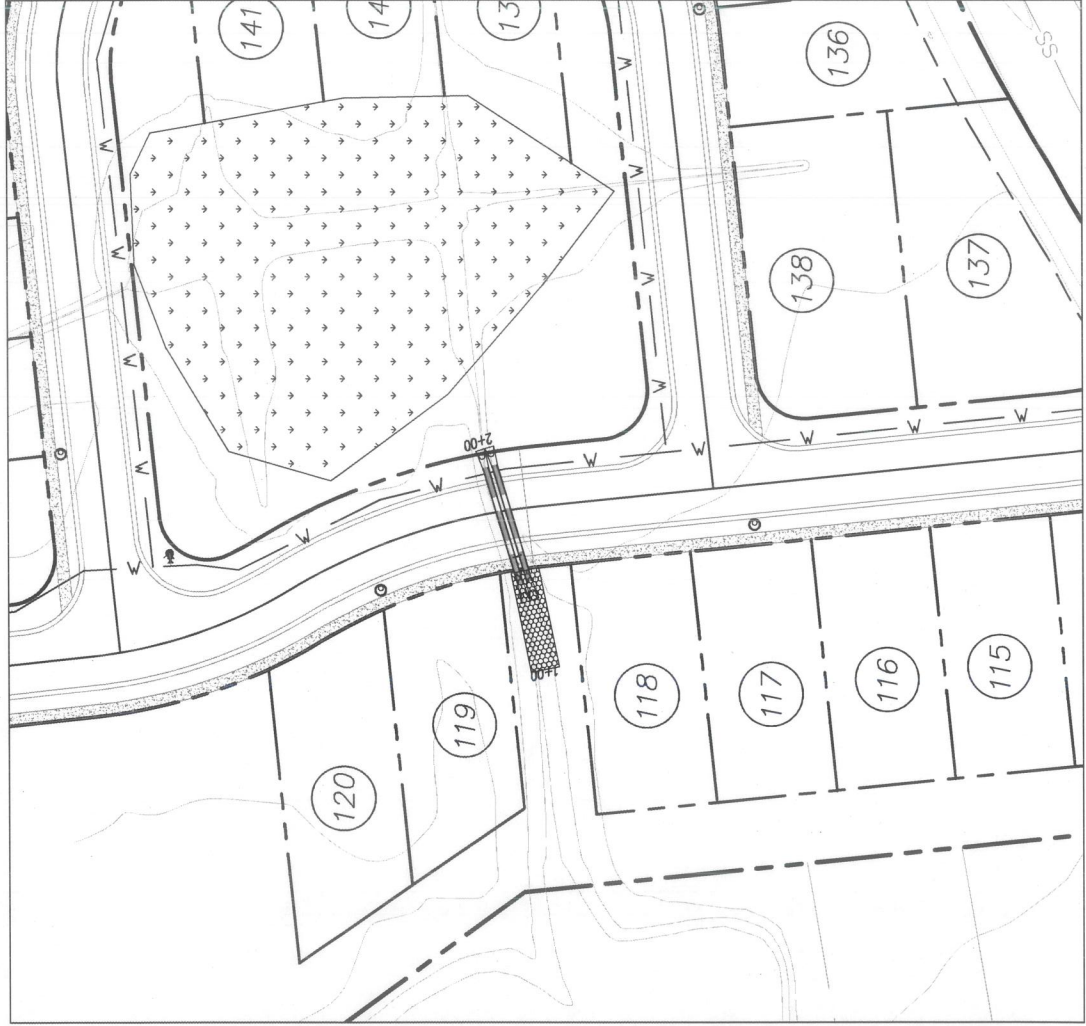
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**APR 17 2013**  
**REG. WILLIAM, FLD, OFG.**



REV. NO.	BY	DATE	REMARKS

REV. NO.	DATE	BY	REMARKS

**IMPACT AREA "E"**

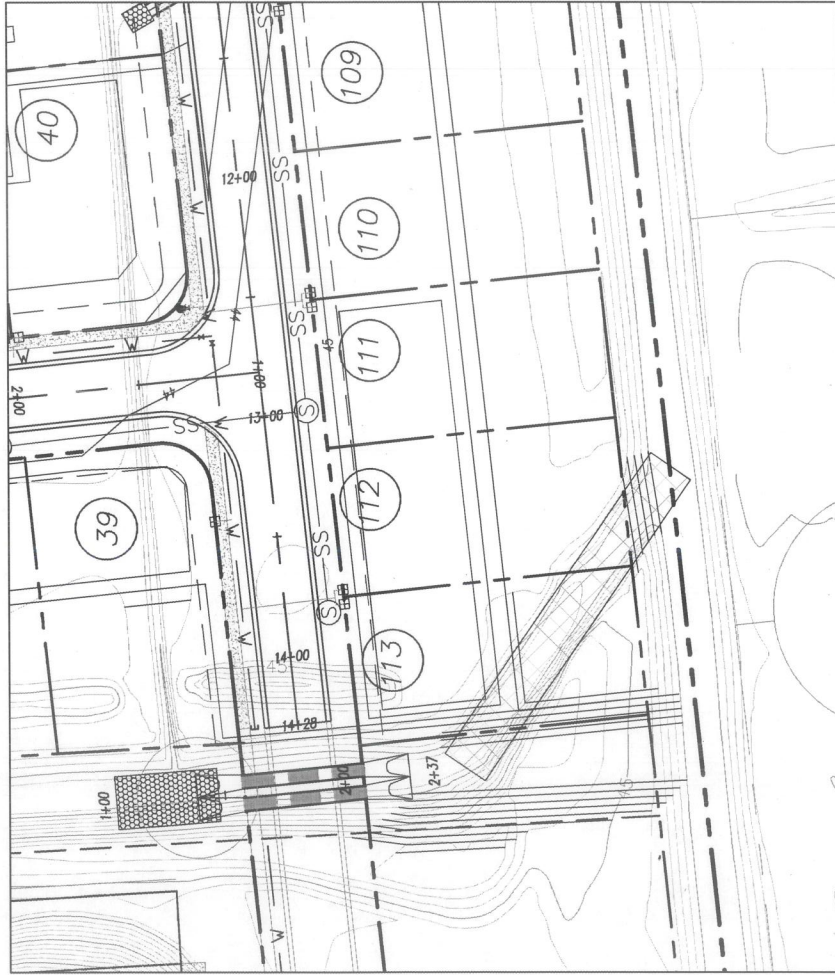


**RECEIVED**  
 IMPACT AREA "E"  
 100% LF @ 2 FEET WIDTH  
 = 100 X 2 = 200 SF (0.0046 AC)  
**APR 17 2013**

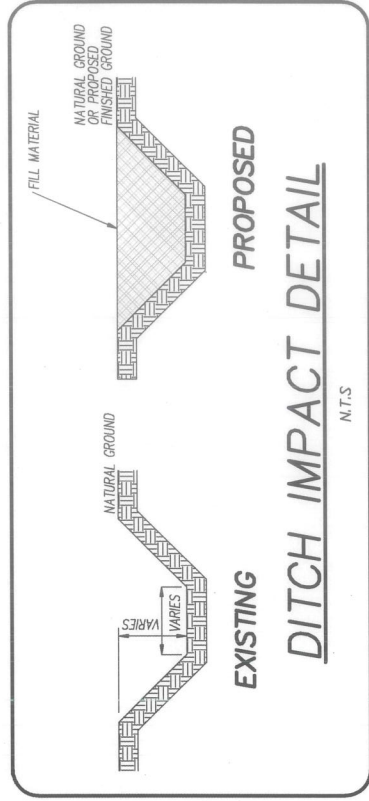


DATE: 4-4-13  
 100% SCALE: 1" = 50'  
 DRAWN BY: RWB  
 CHECKED BY: RWB  
 PROJECT NO.: 04-003

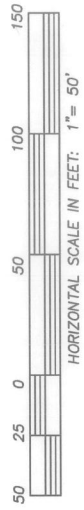
IMPACT AREA "F"



IMPACT F  
 151.50 LF @ 4 FT. AVG. WIDTH  
 = 151.5 X 4 = 606 SF (0.0139 AC)



**RECEIVED**  
**APR 17 2013**  
**REG. WILM. FLD. OFC.**



<p>COASTAL SITE DESIGN, PC                  ENGINEERING                  LAND PLANNING                  COMMERCIAL / RESIDENTIAL                  1000 W. MARKET STREET, SUITE 200                  WILMINGTON, NC 28408                  (910) 791-4411</p>	METLANDS IMPACTS for BERKELEY AT WESTBAY	METLANDS IMPACTS for BERKELEY AT WESTBAY LOCAL IN MARKET TOWNSHIP NEW HANOVER COUNTY, NORTH CAROLINA OWNER: TONKHOFF DEVELOPMENT CO., INC. 2038 WRIGHTVILLE AVE SUITE 101 WILMINGTON, NC 28403	PRELIMINARY
	REV. NO. BY DATE REMARKS	DATE: 4-4-13 DRAWN BY: RW CHECKED BY: MSF PROJECT NO.: 04-0023 SHEET NO. 6 of 6	