



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: February 14, 2017
Comment Deadline: March 16, 2017
Corps Action ID Number: SAW-2016-02385

The Wilmington District, Corps of Engineers (Corps) received an application from Orton Plantation Holdings, LLC, seeking Department of the Army authorization to permanently impact 1.2 acres of wetlands and temporarily impact 24.2 acres of wetlands, associated with restoring and protecting a historic rice field within Pleasant Oaks Plantation in Brunswick 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.aspx>

Applicant: Orton Plantation Holdings, LLC
Attn: Mr. Peter Talty
37th Floor, 11 Times Square
New York, New York 10036

AGENT (if applicable): Land Management Group, Inc
Attn: Mr. Steve Morrison
3805 Wrightsville Ave., #15
Wilmington, North Carolina 28403

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

- ☒ Section 404 of the Clean Water Act (33 U.S.C. 1344)
- ☐ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- ☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)

Location

Directions to Site: From Wilmington, head south on Hwy 17. Exit and head south on Hwy 133 (River Road). Travel approximately 10.5 miles to Kendall Chapel Road and turn left. Travel approximately 0.6 miles until you veer left. This dirt road will lead you to Sandhill Pond which is across the roadway from the rice field. The property is bordered by NC Highway 122 to the west, the Cape Fear River to the east, undeveloped land to the north and Kendall Chapel Road to the south.

Project Area (acres): 25.5 Nearest Town: Winnabow
Nearest Waterway: Cape Fear River River Basin: Cape Fear
Latitude and Longitude: 34.113767 N, 77.951344 W

Existing Site Conditions

The project area lies within the Pleasant Oaks Plantation which is a former rice plantation developed around 1725, located north of the historic Orton Plantation. The project area is adjacent to the Cape Fear River and is protected from the main Cape Fear River channel by Campbell Island, which is located to the east. An existing pond known as Sandhill Pond (fed by Sandhill Creek) provides a fresh water source for irrigation at the proposed restoration project site (see Project Narrative submitted by applicant). Drainage pipes and water control structures are located at the western end of the dike. An existing 15" inlet pipe and water control structure allows water to flow from Sandhill pond to the rice field to the river. Sandhill Pond is managed through water control structures with two 4" outlet pipes that drain to the river. The existing water control valve does function but is currently closed. An earthen dike on the interior separates the rice field from the Cape Fear River. According to the applicant, the dike has a current elevation of approximately +4' NAVD88 with a base width of 10 ft. to 12 ft. The historic rice field is a wetland area dominated by *Phragmites australis*.

Eroded areas of the dike wall were repaired and 0.045 acre of wetland fill were authorized under a Nationwide Permit 3 verified by the Corps on 3/20/15.

The waters of the Cape Fear River are classified as SC (Aquatic life propagation/ protection and secondary recreation) and the waters of Sandhill Creek / Pond are classified as C (Aquatic life propagation/ protection and secondary recreation); Water Supply (WS) by the NC Division of Water Resources. They are not designated as Primary Nursery Area (PNA) by the Division of Marine Fisheries, nor open to the harvesting of shellfish.

Applicant's Stated Purpose

The applicant's purpose as indicated in the permit application is to "restore and protect a remaining, intact rice field located within the historic Pleasant Oaks Plantation. The intent of the project is to maintain the historic rice field which has been present in this location since the mid-1700s. The property owner is a direct descendant of the original

land grant recipient, and as such, has an interest in restoring and preserving the last remaining Pleasant Oaks Plantation rice field for posterity and historical value.”

Project Description

The applicant is proposing to elevate the existing rice field dike, build a travel surface along the existing dike structure, excavate interior drainage systems and replace associated water control structures for the overall reversion of the project area to a rice field for rice production. The applicant proposes to increase the elevation of the rice field dike by 2’ utilizing earthen fill, bringing the elevation to +6’ NAVD88. A 10 ft. wide travel surface is proposed on the dike crest to allow for access and maintenance of the rice field. Permanent impacts include 1.2 acres of wetland fill to increase the dike base width to approximately 15 ft. According to the applicant the proposed project does not involve any wetland impacts outside of the existing outer toe slope of the dike which is bordered by coastal wetlands.

New drains within the rice field are proposed with four 10 ft. wide by 4 ft. deep quarter drains through the interior and one 20 ft. wide by 6-8 ft. deep collector drain running along the southwestern side of the pond to the water control structures on the western end of the rice field (see sheets 3 and 4 of 6). The total area of drains to be excavated within wetlands is 1.32 acres. The applicant is proposing new water control structures and new intake and outlet pipes. An extension of the inlet pipe from Sandhill Pond is proposed in order to reach the collector drain, which will result in an additional 25 sq. ft. of permanent wetland impact. Rice field preparation activities will include the clearing of vegetation (Phragmites) and the grading of the field surface. Final rice field elevations are proposed of +1’ NAVD88 away from the drains to 0’ NAVD88 near the drain edges.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

“Complete avoidance of wetland impacts was not possible since the purpose of the project is to restore the rice field in its historic location. The Cape Fear River shoreline in this location is relatively high in elevation (approximately +10’MSL to a maximum +25’ MSL) with a steep slope to the river. The historic and current water source for the rice field is Sandhill Pond which sits approximately six feet to ten feet higher in elevation than the rice field. Flooding to the field was historically, and would continue to be, gravity-fed. Due to the topography, there is no upland location along the shoreline where the rice field could be located and impact less wetland. Relocating the field to the upland elevation of Sandhill Pond would require mechanical pumping and would not meet the intention of this project to restore the historic rice field. It is noted that an approximate 75’ to 270’ width of coastal marsh exists between the waterward edge of the existing dike and the Cape Fear River. All coastal marsh impacts have been avoided. Proposed dike/berm expansion work would begin at the waterward edge of the existing dike and expand towards the interior of the field. Expansion towards the interior would contain

wetland impacts to the previously disturbed field, which is currently dominated by *Phragmites* sp., and would avoid all coastal marsh.

Wetland impacts have been minimized by limiting dike expansion to the narrowest functionable width and by expanding towards the interior of the field as mentioned. Access to the rice field, by foot or by equipment needed to maintain the field, would be available from the top of the dike only. The proposed top width (10') is the minimal width that would allow for safe and stable equipment access. The proposed top width also appears to be consistent with the previous width which has narrowed and eroded in sections due to a previous lack of maintenance. Side slopes for the fill would be at a 2:1 slope, the steepest slope that can be vegetatively stabilized and maintained. The final elevation of the dike would be 6' NAVD88, which would raise the current elevation by approximately two feet. The minimum height needed to maintain proper water level control and access is requested to further minimize side slope fill.

All requested wetland fill would be placed in the interior of the rice field, an area which has already been functionally altered. Although the existing field meets wetland criteria, it has been historically altered and converted. The field is currently a monospecific stand of invasive, nonnative *Phragmites* and has been disconnected from lateral flooding by the river. Impacts are thought to be to a relatively low-functioning wetland when compared to an undisturbed wetland in a similar geomorphic position (such as brackish/salt marsh).

Wetland impacts could not be completely avoided due to the purpose and intention of the project, however, impacts to high functioning coastal marsh have been completely avoided. Impacts to previously altered wetland in the interior of the field has been minimized by maintaining the minimum dike height and width needed for safe access and proper function.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: Payment to the Lower Cape Fear Umbrella Mitigation Bank (LCFUMB). Purchase of 1.2 acres of riverine riparian wetland credits is proposed. A mitigation ratio of 1:1 is offered based on the previously altered condition of the wetland to be impacted.

Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project may affect, but not likely to adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- ☐ Should historic properties, or properties eligible for inclusion in the National Register, be present within the Corps' permit area; the proposed activity requiring the DA permit (the undertaking) is a type of activity that will have no potential to cause an effect to an historic properties.
- ☐ No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit area; therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Properties ineligible for inclusion in the National Register are present within the Corps' permit area; there will be no historic properties affected by the proposed work. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; however, the undertaking will have no adverse effect on these historic properties. The Corps subsequently requests concurrence from the SHPO (or THPO).
- ☐ Historic properties, or properties eligible for inclusion in the National Register, are present within the Corps' permit area; moreover, the undertaking may have an adverse effect on these historic properties. The Corps subsequently initiates consultation with the SHPO (or THPO).
- ☒ The proposed work takes place in an area known to have the potential for the presence of prehistoric and historic cultural resources; however, the area has not been formally surveyed for the presence of cultural resources. No sites eligible for inclusion in the National Register of Historic Places are known to be present in the vicinity of the proposed work. Additional work may be necessary to identify and assess any historic or prehistoric resources that may be present.

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

Endangered Species

Pursuant to the Endangered Species Act of 1973, the Corps 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 determines that the proposed project would not affect federally listed endangered or threatened species or their formally designated critical habitat.
- ☒ The Corps determines that the proposed project may affect federally listed endangered or threatened species or their formally designated critical habitat. The Corps initiates consultation under Section 7 of the ESA and will not make a permit decision until the consultation process is complete.
- ☐ The Corps is not aware of the presence of species listed as threatened or endangered or their critical habitat formally designated pursuant to the Endangered Species Act of 1973 (ESA) within the project area. The Corps will make a final determination on the effects of the proposed project 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.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Resources (NCDWR): The Corps will generally not make a final permit decision until the NCDWR issues, denies, or waives the state Certification as 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 NCDWR Central Office in Raleigh constitutes initial receipt of an application for a 401 Certification. A waiver will be deemed to occur if the NCDWR fails to act on this request for certification within sixty days of receipt of a complete application. Additional information regarding the 401 Certification may be reviewed at the NCDWR Central Office, 401 and Buffer Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for a 401 Certification should do so, in writing, by March 16, 2017 to:

NCDWR Central Office
Attention: Ms. Karen Higgins, 401 and Buffer Permitting Unit
(USPS mailing address): 1617 Mail Service Center, Raleigh, NC 27699-1617

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDCM):

- ☒ The application did not include a certification that the proposed work complies with and would 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 Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corps will request, upon receipt, concurrence or objection from the NCDCM.
- ☐ Based upon all available information, the Corps determines that this application for a Department of Army (DA) permit does not involve an activity which would affect the coastal zone, which is defined by the Coastal Zone Management (CZM) Act (16 U.S.C. § 1453).

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.

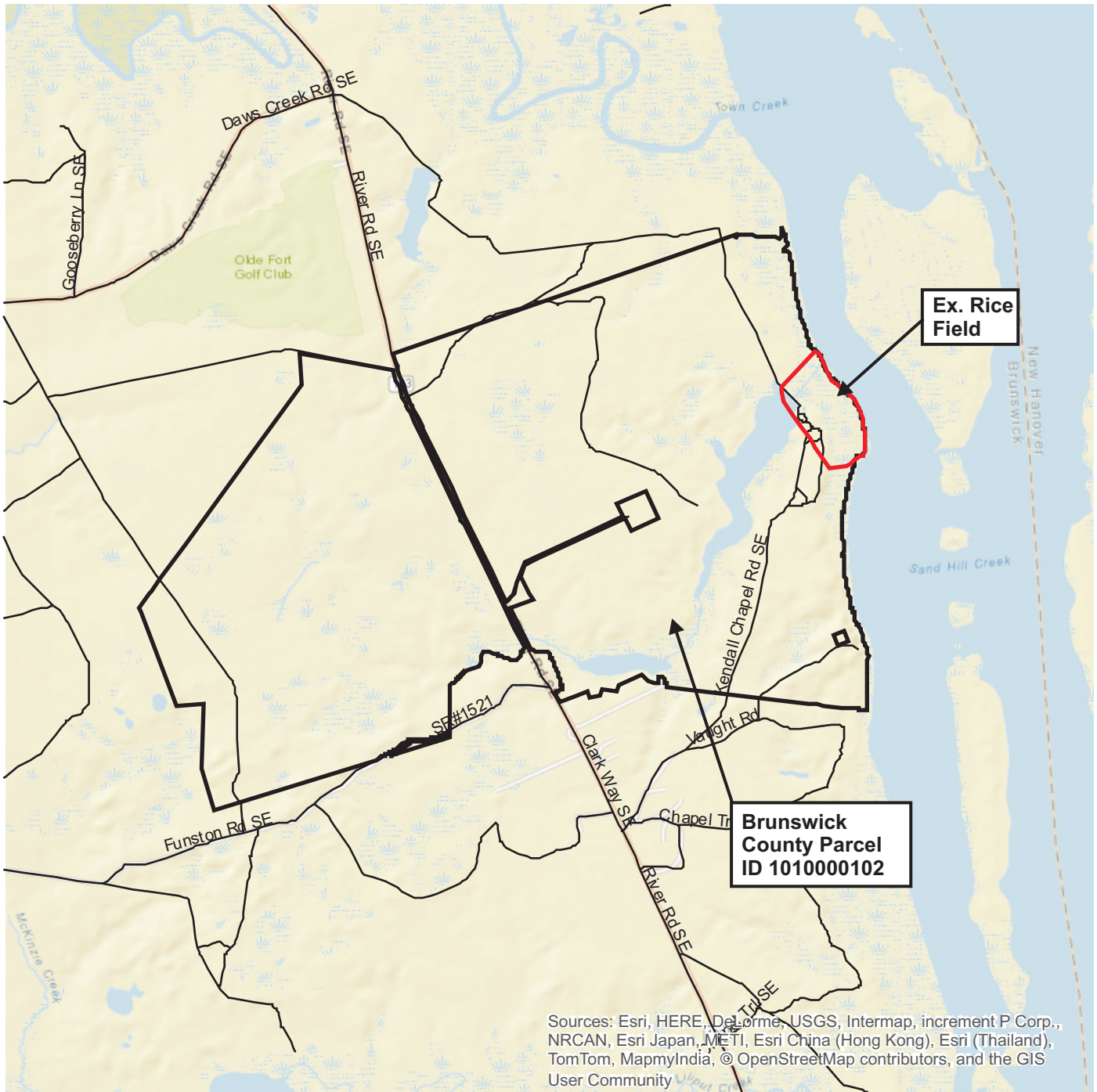
Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated 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.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, March 16, 2017. Comments should be submitted to Brennan Dooley, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wake Forest, North Carolina 27587, at (910) 251-4694.



SCALE 1" = 3000'



LAND MANAGEMENT GROUP INC.
Environmental Consultants
www.LMGroup.net

Phone: 910.452.0001 • 1.866.LMG.1078

Fax: 910.452.0060

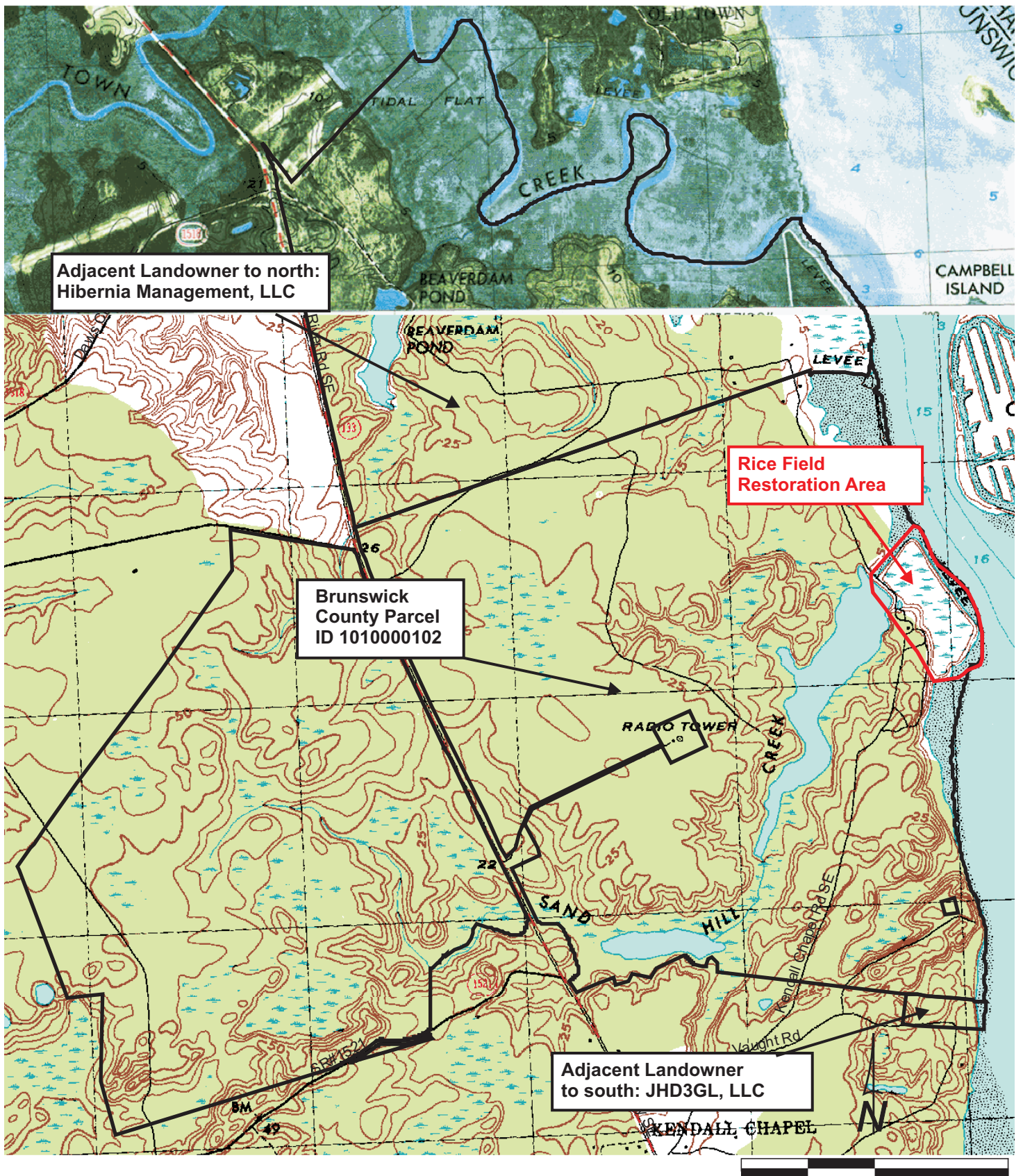
3805 Wrightsville Avenue
Wilmington, NC 28403

CAMA Major Permit Application
Pleasant Oaks Plantation, Brunswick County, NC
Rice Field Restoration and Protection Project

October 18, 2016

Project Location Map

Sheet 1 of 6



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Environmental Consultants

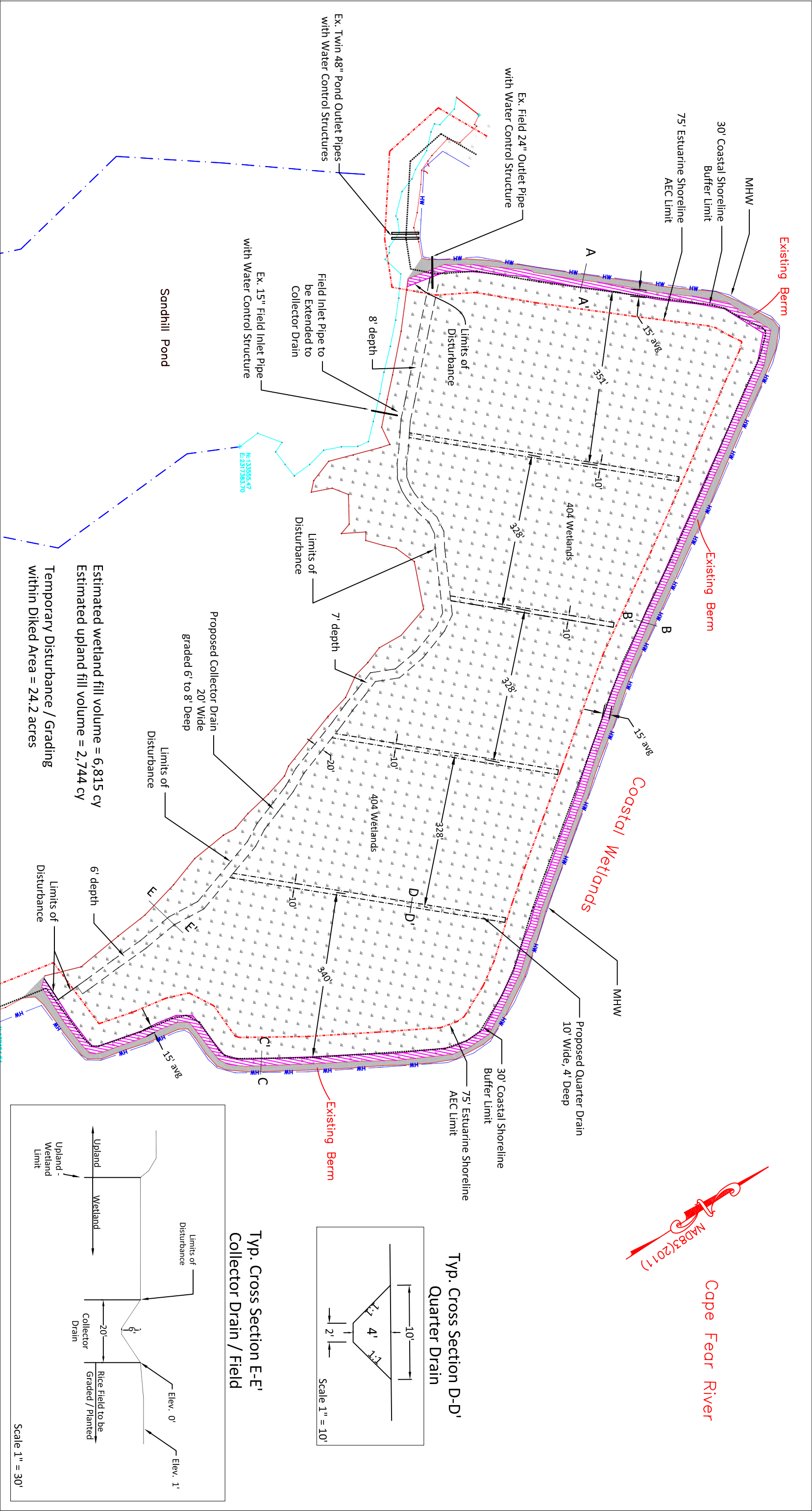
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USGS Topographic Map
Wilmington &
Carolina Beach
(7.5 min quadrangles)


Sheet 2 of 6



PRELIMINARY; NOT FOR CONSTRUCTION
FOR ENVIRONMENTAL PERMITTING ONLY

- 404 Wetlands
- Existing Berm
- Proposed Berm Expansion
- 404 Wetland Fill (~1.2 acres).
- Avg width of wetland fill = 15'.

- Mean High Water
- 30' Coastal Shoreline Buffer
- 75' Estuarine Shoreline AEC
- Proposed Quarter Drains (10' wide)
- Proposed Collector Drain (20' wide)



IMG
LAND MANAGEMENT GROUP INC.
Environmental Consultants
3805 Wrightsville Ave, Suite 15
Wilmington, North Carolina 28403
Telephone: 910-452-0001

Project: Pleasant Oaks Plantation Brunswick County, NC	Date: 6/6/2016	Revision Date: 10/25/2016
	Scale: 1"=200'	Job Number: 02-10-110P
Title: Site Plan Proposed Rice Field Restoration and Protection		Sheet Number: 3 of 6



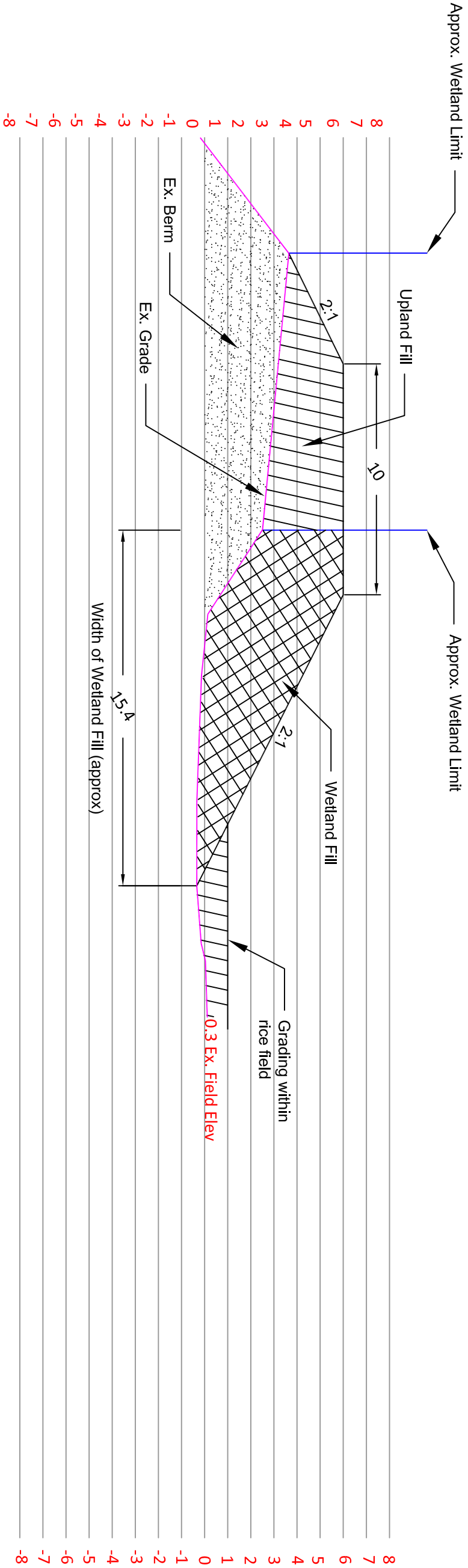
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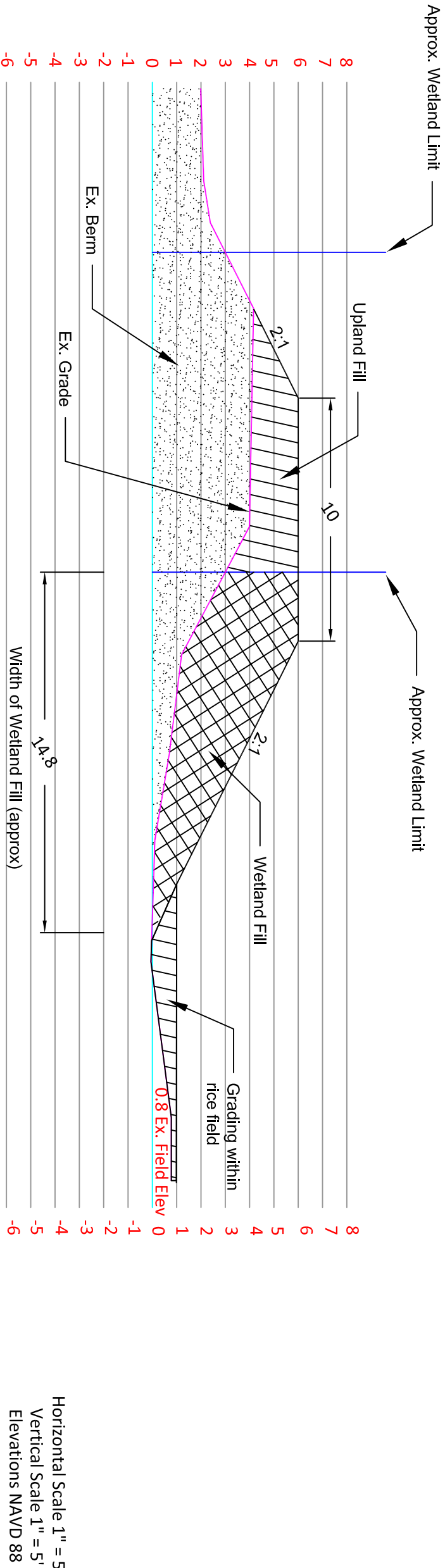
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<div></div> <div>IMG LAND MANAGEMENT GROUP, INC. <i>Environmental Consultants</i> 3805 Wrightsville Ave., Suite 15 Wilmington, North Carolina 28403 Telephone: 910-452-0001</div>		Project: Pleasant Oaks Plantation Brunswick County, NC	Date: 6/6/2016	Revision Date: 10/25/2016
Title: Site Plan-2014 Aerial Overlay Proposed Rice Field Restoration and Protection		Scale: 1"=200'	Job Number: 02-10-110R	Sheet Number: 4 of 6

Cross Section A - A'

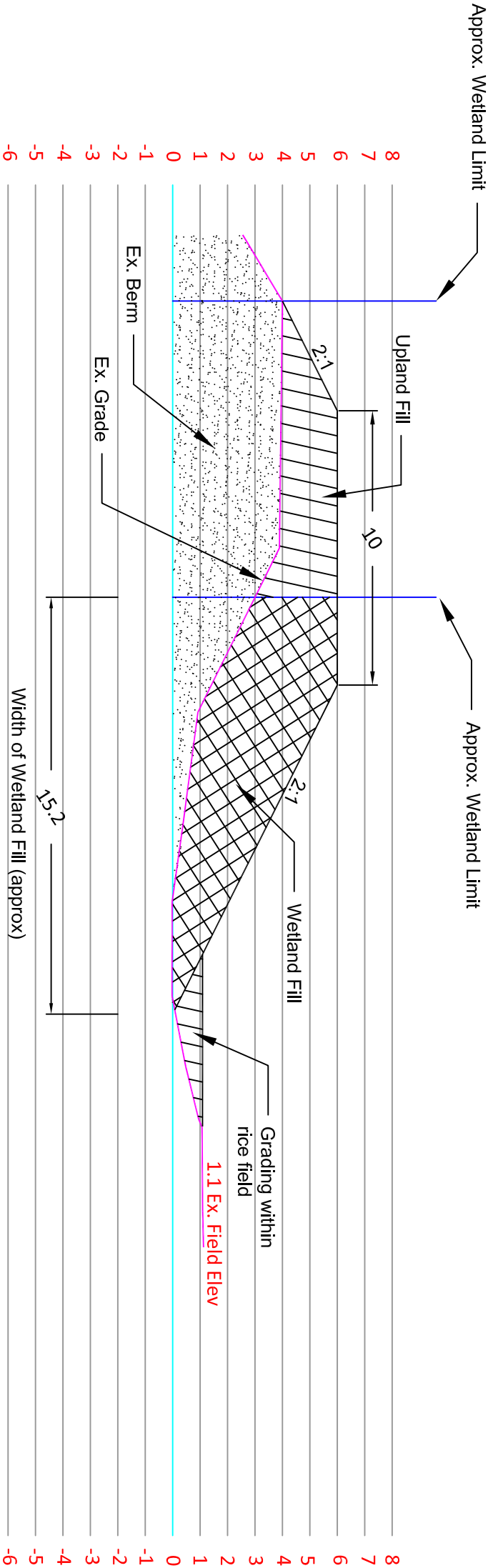


Cross Section B - B'




Horizontal Scale 1" = 5'
Vertical Scale 1" = 5'
Elevations NAVD 88

Cross Section C - C'



Horizontal Scale 1" = 5'
Vertical Scale 1" = 5'
Elevations NAVD 88

<div><div><div>LMG</div><div>LAND MANAGEMENT GROUP INC.</div><div>Environmental Consultants</div><div>3805 Wrightsville Ave., Suite 15</div><div>Wilmington, North Carolina 28403</div><div>Telephone: 910-452-0001</div></div></div>		Project:		Date:		Revision Date:	
Pleasant Oaks Plantation		Brunswick County, NC		6/6/2016		Job Number: 02-10-110R	
Title:				Scale: 1"=5'			
Typical Cross Section		Cross Section C		Sheet Number:			
				6 of 6			