

# Pender County Planning and Community Development

## Planning Division

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## Washington Acres Commercial Cross Access Corridor Variance

**Case Number:** VAR 2023-16

**Application Type:** Variance

**Applicant:** Little Hampstead, LLC

**Owner:** Tanner Postal Commercial Real Estate & O'Leary Property Management LLC

**Location:** The subject property is located on the west side of US Highway 17 across from the intersection of Washington Acres Road and US Highway 17.

**Property ID #(s):** 3282-53-4438-0000 & 3282-53-8940-0000

**Description:** Little Hampstead, LLC, applicant on behalf of Tanner Postal Commercial Real Estate and O'Leary Property Management, LLC, owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.4.4, Cross Access Corridors. Specifically, the applicant is requesting to be exempt from the cross access connection requirement.

**Current Zoning:** General Business (GB)

### Board of Adjustment Meeting

2/21/2024 (Tabled)

3/20/2024 (Withdrawn)

**Included:** Staff Report, Application Package, Narrative, Site Plan

**STAFF REPORT FOR VAR 2023-16  
VARIANCE APPLICATION**

<b>APPLICATION SUMMARY</b>	
Case Number	VAR 2023-16
Hearing Date	February 21, 2024 – Board of Adjustment (Continued) March 20, 2024 – Board of Adjustment
Applicant	Little Hampstead, LLC
Property Owners	Tanner Postal Commercial Real Estate, O’Leary Property Management LLC
Parcel Identification Number	3282-53-4438-0000 & 3282-53-8940-0000
Acreage	Approximately 7.1 acres
Township	Topsail
Zoning District	GB, General Business
Pender 2.0 Future Land Use Category	Regional Mixed Use

<b>VARIANCE PROPOSAL</b>
<p>Little Hampstead, LLC, applicant on behalf of Tanner Postal Commercial Real Estate and O’Leary Property Management, LLC, owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.4.4, Cross Access Corridors. Specifically, the applicant is requesting to be exempt from the cross access connection requirement.</p>
<b>LOCATION</b>
<p>The subject properties are zoned GB, General Business and are located on the west side of US Highway 17 across from Washington Acres Road in the Topsail Township. The properties may be further identified by Pender County PIN(s) 3282-53-8940-0000 and 3282-53-4438-0000.</p>

**Figure 1: Aerial Map of Subject Properties**



### PROPERTY DESCRIPTION

The subject properties consist of two tracts, the larger of which is undeveloped (PIN: 3282-53-4438-0000) and the smaller of which is developed with two commercial structures that house O'Leary's Automotive Repair and Offroad Towing (PIN: 3282-53-8940-0000). Based on the applicant's site plan, the two commercial structures would be removed as part of the development of the site.

The subject parcels are located on the west side of US Highway 17 across from its intersection with Washington Acres Road. The North Carolina Department of Transportation (NCDOT) has identified Washington Acres Road as a project site for future realignment such that the roadway will be shifted southwest from its existing location so that it intersects US Highway 17 closer to a 90-degree angle.

The Pender County Streets Plan, updated in 2021 and commonly referred to as the Collector Street Plan, has identified a future collector street on the subject properties. A collector street is

a street that connects local roads and neighborhoods to arterial roadways. Country Club Drive and Sloop Point Loop Road are examples of collector streets in the County. The purpose of the Collector Street Plan is to guide investment in new collector streets to improve connectivity, inform land development, maintain acceptable levels-of-service on existing roadways, ensure conservation of natural areas, and provide a safe and high-quality transportation network for residents, businesses, and visitors using all modes of travel. In other words, the Plan seeks to identify vital locations for future roadway corridors.

As noted in the applicant's submittal and shown on their site plan, the site includes a future collector road, which is aligned with the future alignment of Washington Acres Road. The intent is for there to be a collector road running east-west through the site as the property west of the site develops.

**Figure 2: Probable Collector Street Locations**



## VARIANCE DESCRIPTION

The applicant is seeking a variance for relief from Article 7.4.4, Cross Access Corridors, of the Pender County Unified Development Ordinance (UDO). A cross access corridor is a driveway constructed between adjoining properties to provide an alternative passageway to access adjoining developments without entering and exiting the roadway. These cross access corridors are intended to link parking areas on adjoining developments (7.4.4.A). This Article requires that cross access corridors be established for all nonresidential adjacent properties (7.4.4.B).

In this case, the subject site is adjacent to property that is zoned GB, General Business, to the north and is thus required to create a stub to the property line where the cross access corridor will be located. As noted in Article 7.4.4.C, if a site is developed adjoining to an undeveloped parcel, it shall be designed so that its parking, access, and circulation are easily tied together to create a unified system at a later date. If the building site abuts an existing developed property, it shall tie into the abutting parking, access, and circulation to create a unified system when possible. This shall be accomplished by requiring the applicant to:

- a) Construct a cross access future connection to the property line to allow for future connection or dedicate an easement of sufficient width to accommodate a future cross access corridor.

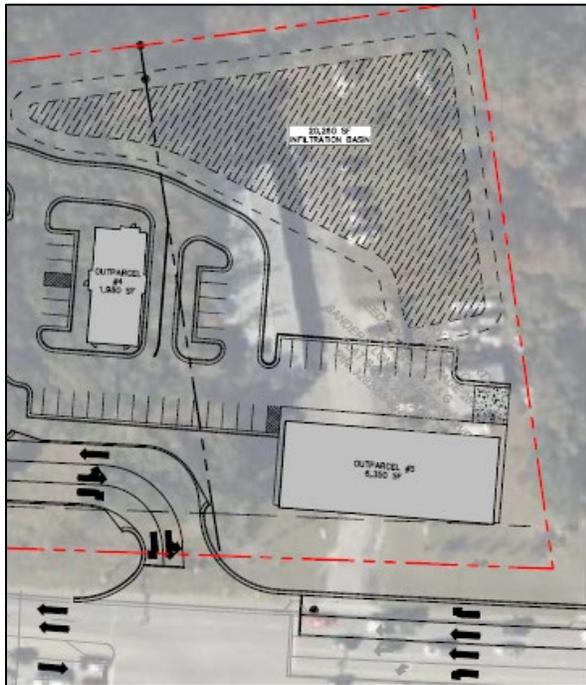
In this case, the abutting property to the north is developed and houses the True Blue Butcher and Baker (PIN: 3282-54-9096-0000). The property to the north of that parcel is also developed and houses Arbor Landing, a senior living facility (PIN: 3282-64-2389-0000). As shown on Figure 3, the Arbor Landing property was required to stub a cross access corridor to the True Blue Butcher and Baker site when it was developed. If redeveloped, the True Blue Butcher and Baker site will be required to connect their internal circulation system to that stub, which would then connect to a stub on the subject site. This system of cross access corridors across the three sites would provide for internal connectivity such that these parcels would be accessible without having to exit one site and travel on US Highway 17 to get to an adjacent site. This internal connectivity that is desired by the County's UDO is partially started, and as the properties continue to develop and/or redevelop, the internal connectivity created by the cross access corridor requirement will continue to be built out.

**Figure 3: Existing Cross Access Corridor Stub at Arbor Landing site**



The applicant’s site plan has also changed over time. The initial site plan that was submitted to staff showed a different layout of the northern-most structure and associated parking that is proposed to be developed as part of this project. Figure 4 shows a structure that is situated such that the associated parking would create a more natural cross access connection to the adjacent northern parcel, whereas the reconfigured site plan most recently submitted (Figure 5) shows the proposed building oriented roughly 90 degrees from the initial layout. The proposed reorientation of the structure inhibits the ability to provide a cross access corridor. The initial site plan demonstrates a concept that would be much more suitable for a cross access corridor connection.

**Figure 4: First Submittal**



**Figure 5: Most Recent Submittal**



### ZONING ADMINISTRATOR'S CONCLUSION

As stated in Article 1.4 of the UDO, it is the purpose of the UDO to promote the health, safety and general welfare of the residents of Pender County (1.4.1.A), facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements (1.4.1.I), and minimize congestion in the streets and accommodate the use of alternatives to the private automobile including public transportation and pedestrian and bicycle facilities (1.4.1.J). The requirement of cross access connections between commercial properties aligns with the purpose statements of the UDO by providing a safe point of access between commercial sites. In this case, the requirement provides an alternative to travelling on US Highway 17 to get between adjacent parcels, thus improving safety and reducing congestion on the roadway.

The applicant's narrative references development challenges associated with the installation of a collector street, changes in topography, and the presence of wetlands on the property. Those three factors, both individually and collectively, are not unique or peculiar to land in Pender County. Based on a Wetland Delineation Report completed by ECS Southeast, LLP, and included in the Board's packet as Attachment 1, neither Waters of the United States nor wetlands were found on the larger parcel. The applicant also submitted a preliminary wetlands map of the smaller parcel, which showed approximately 0.07 acres of potential jurisdictional wetlands (see Attachment 2). Additionally, the applicant has stated that the changes in topography are due to the installation of the collector road. Based on available data from the County's Geographic

Information System (GIS), existing conditions on the site do not indicate dramatic changes in topography along the site's northern boundary. The changes in topography appear to be the result of the applicant's preferred design of the site, not the collector street requirement or the natural grade of the land.

Article 7.4.4.B.3 of the UDO permits the Administrator to modify or waive the cross access corridor requirements if it can be proven that strict compliance would be impractical due to unique site conditions such as environmental concerns, safety concerns, extreme slope, or similar characteristics. An administrative waiver request was submitted by the applicant and subsequently denied by the Administrator.

## PENDER COUNTY UDO VARIANCE EVALUATION

### 3.14 VARIANCE

#### 3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

#### 3.14.6 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.

#### 3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
  - 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
  - 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

**BOARD OF ADJUSTMENT: FINDING OF FACTS**

- 1. It is the Board’s CONCLUSION that the hardship of which the applicant complains **results/does not result** from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - a. This conclusion is based on the following FINDINGS OF FACT:
- 2. It is the Board’s CONCLUSION that, the hardship **results/does not result** from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - a. This conclusion is based on the following FINDINGS OF FACT:
- 3. It is the Board’s CONCLUSION that the hardship **results/does not result** from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

a. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board’s CONCLUSION that, the requested variance is **consistent/not consistent** with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

a. This conclusion is based on all of the FINDINGS OF FACT:

**BOARD OF ADJUSTMENT ACTION FOR VARIANCE**

MOTION	SECONDED

APPROVED	DENIED	UNANIMOUS

Kipfer	Breuer	Keeler	ALT: Olsen	ALT: Snider

# **APPLICATION**

**APPLICATION FOR VARIANCE**

THIS SECTION FOR OFFICE USE			
Application No.	VA	Date	
Application Fee	\$	Invoice Number:	
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Little Hampstead, LLC	Owner's Name:	Tanner Postal Commercial Real Estate & O'Leary Property Management LLC
Applicant's Address:	13755 US Hwy 17	Owner's Address:	621 NW 53rd St, Ste 320 Boca Raton, FL 33487 & PO Box 10317 Wilmington, NC 28404
City, State, & Zip	Hampstead, NC 28443	City, State, & Zip	Wilmington, NC 28404
Phone Number:		Phone Number:	
Email Address:	rob@impeccabledevelopment.com	Email Address:	rob@impeccabledevelopment.com
Legal relationship of applicant to landowner:			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3282-53-4438-0000 & 3282-53-8940-0000	Total property acreage:	+/-7.1 acres
Zoning Classification:	GB	Variance Size:	+/-6.75 acres
Variance Location & Address	13755 US Hwy 17, Hampstead, NC		
Describe Variance and amount or type requested:	See attached.		
<b>SECTION 3: SIGNATURES</b> <small>DocuSigned by:</small>			
Applicant's Signature	<i>Rob Tanner</i>	Date:	11/3/2023
Applicant's Name Printed	<del>Rob Tanner</del>	Date:	
Owner's Signature	<i>Rob Tanner</i>	Date:	11/3/2023
Owner's Name Printed	Rob Tanner	Date:	
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.</li> <li>An application for a variance shall be submitted in accordance with application requirements.</li> <li>Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.</li> <li>The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.</li> <li>Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>Applicant or agent authorized in writing must attend the public hearing.</li> <li>Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input type="checkbox"/> VA Fees \$250	Total Fee Calculation \$		
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application received by:			Date:

## APPLICATION FOR VARIANCE

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Application No.	VA	Date	
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City, State, & Zip	Hampstead, NC 28443	City, State, & Zip	
Phone Number:		Phone Number:	
Email Address:	rob@impeccabledevelopment.com	Email Address:	rob@impeccabledevelopment.com
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Zoning Classification:	GB	Variance Size:	
Variance Location & Address	13755 US Hwy 17, Hampstead, NC		
Describe Variance and amount or type requested:	See attached.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature		Date:	
Applicant's Name Printed	Rob Tanner	Date:	
Owner's Signature	<i>Dennis O'Leary</i>	Date:	11/03/2023
Owner's Name Printed	Dennis O' Leary	Date:	
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.</li> <li>5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input type="checkbox"/> VA Fees \$250	Total Fee Calculation \$		
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application received by:		Date:	

Application completeness approved by:		Date:
Date scheduled for public hearing:		

**NARRATIVE**

## NARRATIVE

Little Hampstead, LLC is requesting a variance for the property located at 13755 US Hwy 17 in Hampstead, North Carolina. They are requesting to be exempt from the Cross Access Corridor described in Sec. 7.4.4 of the Pender County UDO. The preliminary plan for the project is attached for your review.

ATTACHMENT TO VARIANCE SUBMISSION  
Little Hampstead, LLC

Section 2: Project Information

Describe Variance and amount or type requested:

A variance is requested to exempt this project from Sec. 7.4.4 Cross Access Corridor.

1. **Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**

An unnecessary hardship is created by strict application of the ordinance as the collector road required by the county removes viable, buildable land from the project and requires fill which negatively impacts the potential for a cross access corridor. In addition, the current alignment of Washington Acres requires the property access from HWY 17 to be located close to the eastern edge of the property which could create a conflict with the cross access corridor. Further, the future Washington Acres realignment requires specific internal site design constraints which constitute a public taking of otherwise developable property. Finally, the cross access requirement creates a hardship to the property owner through extra maintenance on private property without just compensation to the property owners.

2. **The hardship results from conditions that are peculiar to the property, such as location, size, and topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;**

The property is of a peculiar shape and orientation as shown on the site plan. The narrow western part of the property requires an access easement for the adjacent residential properties. The property also contains existing utility easements which must be taken into consideration in designing the site. There are identified wetlands on the property which must be avoided while constructing improvements. In addition, this commercially zoned parcel directly abuts residential uses to the north and the proposed project is designed with additional buffering to project the quiet enjoyment of the residential uses. The required collector road and future realignment of Washington Acres are particular to the property and limit the developable area.

3. **The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship;**

None of the hardships result from actions taken by the applicant or the property owner.

4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

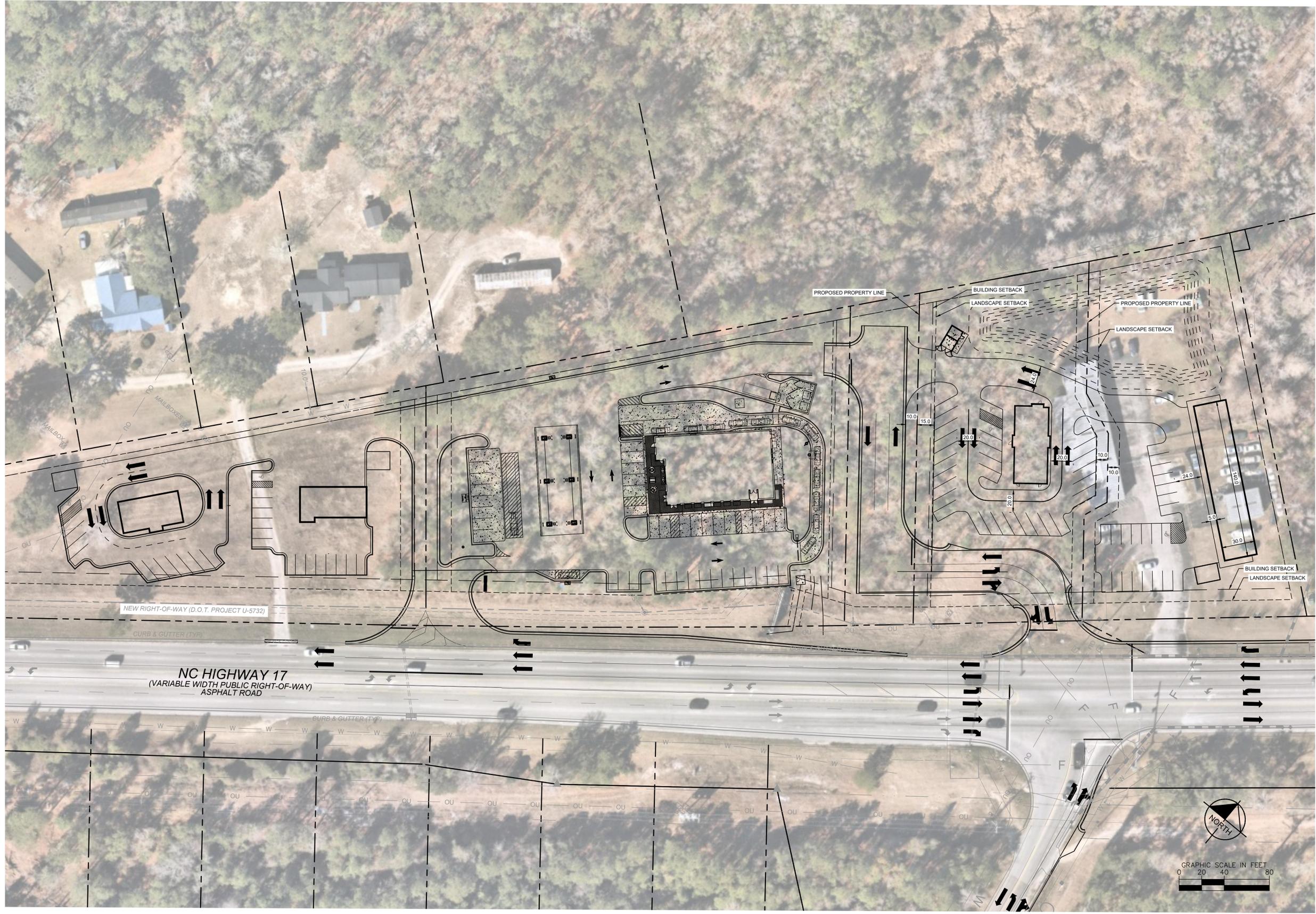
The requested variance is consistent with the spirit, purpose, and intent of the ordinance. Not only is public safety secured, but it is also enhanced by removing any potential vehicular movement conflicts between the cross access and the required access from HWY

ATTACHMENT TO VARIANCE SUBMISSION  
Little Hampstead, LLC

17 due to the current location of Washington Acres and protecting the adjacent residential properties through enhanced buffers. In addition, substantial justice is achieved by allowing additional property to be used for the project since the county is taking property for the collector road and realignment of Washington Acres.

# **SITE PLAN**

Plotted By: Anderson, Connor. Sheet Set: HAMPSTEAD, NC PRELIMINARY LAYOUT.dwg. October 10, 2023. 01:30:53pm. K:\VIC-DVA\113020 - Sheet\113682000 - 13821 Route 17 - Hampstead - NC\CAD\Exhibits\2023-10-10 - LAYOUT\2023-10-10 PRELIMINARY LAYOUT.dwg  
 This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



No.	REVISIONS	DATE	BY

**Kimley»Horn**  
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KHA PROJECT	XXXXXX
DATE	10/10/2023
SCALE	AS SHOWN
DESIGNED BY	---
DRAWN BY	---
CHECKED BY	---

**PRELIMINARY LAYOUT**

**HAMPSTEAD, NC**  
 PREPARED FOR  
**IMPECCABLE DEVELOPMENT**  
 PENDER COUNTY NC

**ATTACHMENT 1:  
Wetland Delineation  
Report**

# WETLAND DELINEATION REPORT



HIGHWAY 17 AND WASHINGTON ACRES ROAD SITE

HIGHWAY 17 AND WASHINGTON ACRES ROAD  
HAMPSTEAD, NORTH CAROLINA 28443

ECS PROJECT NO. 49:19299

FOR: IMPECCABLE DEVELOPMENT

JANUARY 13, 2023





January 13, 2023

Mr. Rob Tanner  
Impeccable Development  
1200 N Federal Hwy  
Suite 200  
Boca Raton, Florida, 33432

ECS Project No. 49:19299

Reference: Waters of the U.S. Delineation Report, Highway 17 and Washington Acres Road Site, Highway 17 and Washington Acres Road, Hampstead, Pender County North Carolina

Dear Mr. Tanner:

ECS Southeast, LLP (ECS) is pleased submit this report of the Waters of the U.S. (WOUS) services for the above-referenced site. ECS services were provided in general accordance with ECS Proposal No. 49:35508P authorized on January 5, 2023 and generally meets the requirements of the 1987 U.S. Army Corps of Engineers (USACE) Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 dated November 2010. **Based on our field reconnaissance, potentially jurisdictional WOUS not present onsite.**

If there are questions regarding this report, or a need for further information, please contact the undersigned.

ECS Southeast, LLP

Jonathan Grubb  
Environmental Project Manager  
jgrubb@ecslimited.com  
910-686-9114

Brandon Fulton, LSS, PSC, PWS  
Environmental Principal  
bfulton@ecslimited.com  
704-525-5152

## 1.0 INTRODUCTION

This report presents the findings of a delineation conducted by ECS Southeast, LLP (ECS) for Impeccable Development at the Highway 17 and Washington Acres Road Site located at Highway 17 and Washington Acres Road, Hampstead, Pender County, North Carolina (34.357, -77.722). According to the Pender County Geographic Information System (GIS) website, the Parcel Identification Numbers (PINs) is: 3282-53-4438-0000 The site includes approximately 5.66 acres, as shown on the Site Location Map (Appendix I, Figure 1). The site currently consists of wooded land. Surrounding areas consists of commercial properties, single-family residences, wooded land, and agricultural fields. The purpose of this study was to identify and delineate jurisdictional Waters of the U.S. (WOUS) within the project study area (PSA).

Wetlands are defined by the United States Army Corps of Engineers (USACE) and the United States Environmental Protection Agency (EPA) as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.” In order for an area to be classified as wetland, hydrophytic vegetation, hydric soils, and wetland hydrology indicators must be present described in the 1987 “Corps of Engineers Wetlands Delineation Manual” and the Appropriate Regional Supplement.

## 2.0 METHODOLOGY

The findings of the WOUS delineation is based on ECS’ professional judgment and application of the technical criteria presented in the 1987 USACE Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 dated November 2010.

ECS completed the following tasks to identify and delineate potentially jurisdictional WOUS boundaries onsite:

### 2.1 Literature Review

ECS reviewed supporting information from publicly-available databases to identify possible ecological effects the project may have on potential state- and/or federally-jurisdictional water resources. During the desktop review, ECS documented relevant, site-specific details (e.g., topographic characteristics, soil composition, recent precipitation, level of disturbance, plant community structure, etc.) and integrated the obtained information with the onsite delineation effort.

### 2.2 Methodology for Field Investigation

Wetland boundaries were delineated using the routine onsite determination method described in the USACE Manual and Regional Supplement, in conjunction with the Atlantic and Gulf Coastal Plain 2020 Regional Wetland Plant List and the USDA Soil Survey.

ECS performed onsite wetland delineations as described above. First, site hydrology was observed and the plant community within the data plot was characterized. The dominant plant species within each community were then identified, and it was determined whether or not hydrophytic (wetland) plants dominated the plant community. The USFWS has defined five wetland plant indicator categories including:

- Obligate wetland (OBL) – has >99% probability of occurring in wetlands
- Facultative wetland (FACW) – has 66% to 99% chance of occurring in wetlands
- Facultative (FAC) – has 33% to 66% chance of occurring in wetlands
- Facultative upland (FACU) – has 1 to 33% chance of occurring in wetlands
- Upland (UPL) – has <1% chance of occurring in wetlands
- No Indicator (NI) – no wetland indicator for the specified species, considered UPL

Plants identified as OBL, FACW, or FAC are considered wetland plants (or hydrophytes) by USACE.

In areas determined to have hydrophytic vegetation and potential wetland hydrology, an approximately 16-24 inch hand auger soil boring or shovel test pit was completed to determine if hydric soils were present. The soil boring was also inspected to determine if indicators of wetland hydrology (inundation, soil saturation, etc.) were present.

Once an area is determined to be a wetland, further testing was performed to locate the wetland/upland (non-wetland) boundary. A second soil data point was completed in the upland area to document non-wetland conditions. Wetland boundaries were marked with consecutively numbered surveyor's ribbon flags.

Data forms specified in the Regional Supplement were completed for each wetland and non-wetland soil data point location. The data forms recorded the vegetation, soils, and hydrology observations used in making the wetland determinations.

### 3.0 FINDINGS

No waters of the U.S. were identified within the PSA.

#### 3.1 Literature Review

ECS professionals reviewed the U.S. Geological Survey (USGS) Topographic Map, U.S. Department of Agriculture Natural Resource Conservation Service (USDA-NRCS) Soil Survey of Pender County, the Soil Data Access (SDA) Hydric Soils List, the Federal Emergency Management Agency (FEMA) Floodplain Mapping Service, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) Wetlands Mapper, and available aerial photographs to identify potentially jurisdictional Waters of the U.S. (i.e., streams, wetlands, natural ponds, lakes) and available watershed information.

##### 3.1.1 Literature Review Summary

The following is a summary of the available desktop information that was reviewed as part of this study:

- According to the Hampstead (North Carolina) USGS Topographic Map Quadrangle dated 1997 (Appendix I, Figure 2) depicts no potential waters of the US were depicted within the PSA. The PSA ranges from approximately 50 to 52 feet above mean sea level (MSL).
- According to the USDA-NRCS Pender County Soil Survey of Pender County (Appendix I, Figure 3), the PSA is comprised of the following soil map units: Alpin (AnB); fine sand, 1 to 6 percent slopes, Mandarin (Ma); fine sand, and Torhunta (To); mucky fine sand loam. All of the aforementioned soils are listed on the NRCS Hydric Soils List for Pender County, North Carolina.
- The US Fish and Wildlife NWI map (Appendix I, Figure 4) does not identify wetlands on the PSA. The site is located within the White Oak River Basin and Cape Fear River Basin watershed and is identified as Hydrologic Unit Code (HUC) 03020302 and 03030007.
- The FEMA Flood Insurance Rate Maps (FIRMs), Panel 3720328200J, dated February 16, 2007 (Appendix I, Figure 5) indicates the PSA is located in unshaded Zone X. These areas are determined to be outside the 0.2% Annual Chance Floodplain.
- ECS reviewed the NOAA LiDAR Elevation Data of the site (Appendix I, Figure 6). The on-site elevations range from approximately 29 feet above MSL to approximately 55 feet above MSL.
- ECS queried the USACE-developed Antecedent Precipitation Tool (APT) to gain an understanding of typical moisture conditions in the PSA vicinity. Pre- and post-investigation reports used to demonstrate typical versus atypical climatic conditions for the Project locale were, then, generated for a comparative analysis of current and historical moisture conditions. The analysis indicated the investigation was conducted during the Wet Season and conditions were Drier than Normal for the time of year (Appendix III).

### **3.2 Field Investigation Findings**

ECS personnel conducted the field investigation on January 6, 2023. The last precipitation event prior to the site reconnaissance was on January 4, 2023 and approximately 0.171 inches was recorded.

No wetlands were depicted within the PSA.

#### **3.2.1 Wetland Summary**

ECS did not identify potential wetland areas within the boundaries of the PSA during the site reconnaissance.

#### **3.2.2 Stream Summary**

ECS did not identify potential streams within the boundaries of the PSA during the site reconnaissance.

## 4.0 REGULATORY DISCUSSION

After review of the findings in the report and at the client's request, ECS can coordinate with the USACE and the NCDWR to conduct a jurisdictional determination and field visit, if necessary. The timeline of this process is dependent on the availability of the regulatory agency. ECS recommends receipt of the formal jurisdictional determination letter from the necessary agencies prior to conducting any land-disturbance activities.

The WOUS are regulated by Sections 401 and 404 of the Clean Water Act. State and Federal law dictates that any disturbance to WOUS must be permitted through the appropriate agencies. If any potential impacts are proposed, we can assist you with permitting options and support to complete the process. As part of the permitting process, we will conduct a preliminary review of state and federal agency records pertaining to Section 7 (Federal Endangered Species Act) and Section 106 (National Historic Preservation Act). If deemed necessary, we can assist you with targeted species surveys or cultural investigations to satisfy the requirements of the Nationwide Permit (NWP), Individual Permit (IP), or General Permit conditions.

Section 404 of the Clean Water Act regulates the discharge of dredge and fill materials into waters of the United States (lakes, rivers, ponds, streams, etc.), including wetlands. Waters of the United States include territorial seas, navigable coastal and inland lakes, rivers, perennial streams, intermittent streams, and wetlands. The EPA and the U.S. Army Corps of Engineers jointly administer the Section 404 program. Section 401 of the Clean Water Act grants each state the authority to approve, condition, or deny any Federal permits that could result in a discharge to State waters. Mitigation and stormwater management plans will be a condition of permits issued for the Site. Buffers may be required adjacent to streams and water bodies. In general, the mitigation requirements and thresholds for North Carolina are 0.1 (1/10) acre of wetlands and 0.02 acres of stream bed. The mitigation credits may be estimated by linear feet (LF) and acreage, state specific calculation worksheets, or other methods utilized in that state or USACE district.

For impacts to 0.5-acre or more of WOUS or to 0.05-acre or more of jurisdictional stream channel, an IP may be required. An IP may also be required to authorize impacts if wetlands and/or streams are located in a floodplain. An IP requires a habitat analysis, alternative site analysis, project justification, plans to avoid and minimize impacts, and a proposed mitigation plan. Depending on the habitat analysis and the extent of impacts, and Environmental Impact Statement may be required by the USACE. An IP allows for a public comment period and the timeline ranges from 4 to 18 months to obtain depending on the conditions that may arise during the USACE review and public comment period.

## 5.0 WATERSHED CLASSIFICATION/BUFFER REQUIREMENTS

### 5.1 State Riparian Buffer Requirements

According to the NCDWR website, the site occurs in the White Oak River Basin and Cape Fear River Basin, which is designated as Primary Contact Recreation, Tidal Salt Water (SB) or Aquatic Life, Secondary Contact Recreation, Tidal Salt Water (SC).

SB: Tidal salt waters protected for all SC uses in addition to primary contact recreation. Primary contact recreational activities include swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized manner or on a frequent basis.

SC: All tidal salt waters protected for aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish (not to include shellfish for market purposes), and Primary Nursey Areas); wildlife; and secondary contact recreation. Secondary contact recreation means wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.

Surface waters within the White Oak River basin and the Cape Fear River are not subject to state riparian buffers.

## 5.2 Local Buffer Requirements

According to the Pender County Planning Department, there are no additional riparian buffer requirements in addition to the state mandated rule.

ECS recommends consultation with a civil engineer to determine if mandatory vegetative buffers and/or regulated development (impervious surfaces) setbacks are required for the site in addition to those mentioned above.

## 6.0 CONCLUSIONS

No potentially jurisdictional wetland areas or potentially jurisdictional streams were identified within the study area. Our findings are illustrated on the attached Waters of the U.S. Delineation Map (Appendix I, Figure 7).

The findings summarized in this report represent our best professional judgment concerning the presence or absence of potential jurisdictional aquatic resources in the PSA at the time of the study. These findings are only to be considered preliminary and are for planning purposes only, as they have not yet been verified by the regulatory agencies and are, therefore, subject to change pending their review. ECS cannot guarantee that field conditions and/or WoUS boundaries will not change over time.

Prior to conducting construction-related activities onsite, ECS recommends requesting an approved Jurisdictional Determination from the USACE for verification of these results to satisfy the requirements of Section 404 of The Clean Water Act (33 U.S.C. 1344). No earth-disturbing activities should be conducted within the PSA until a USACE Determination has been issued.

# **Appendix I: Figures**

**Legend**

 Project Study Area



Client:



Project:

**WASHINGTON ACRES SITE**  
  
HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

**SITE LOCATION  
MAP**

**PENDER COUNTY**



Drawn By:

KMC

Scale:

1= 0.5 mi

Approved By:

WBF

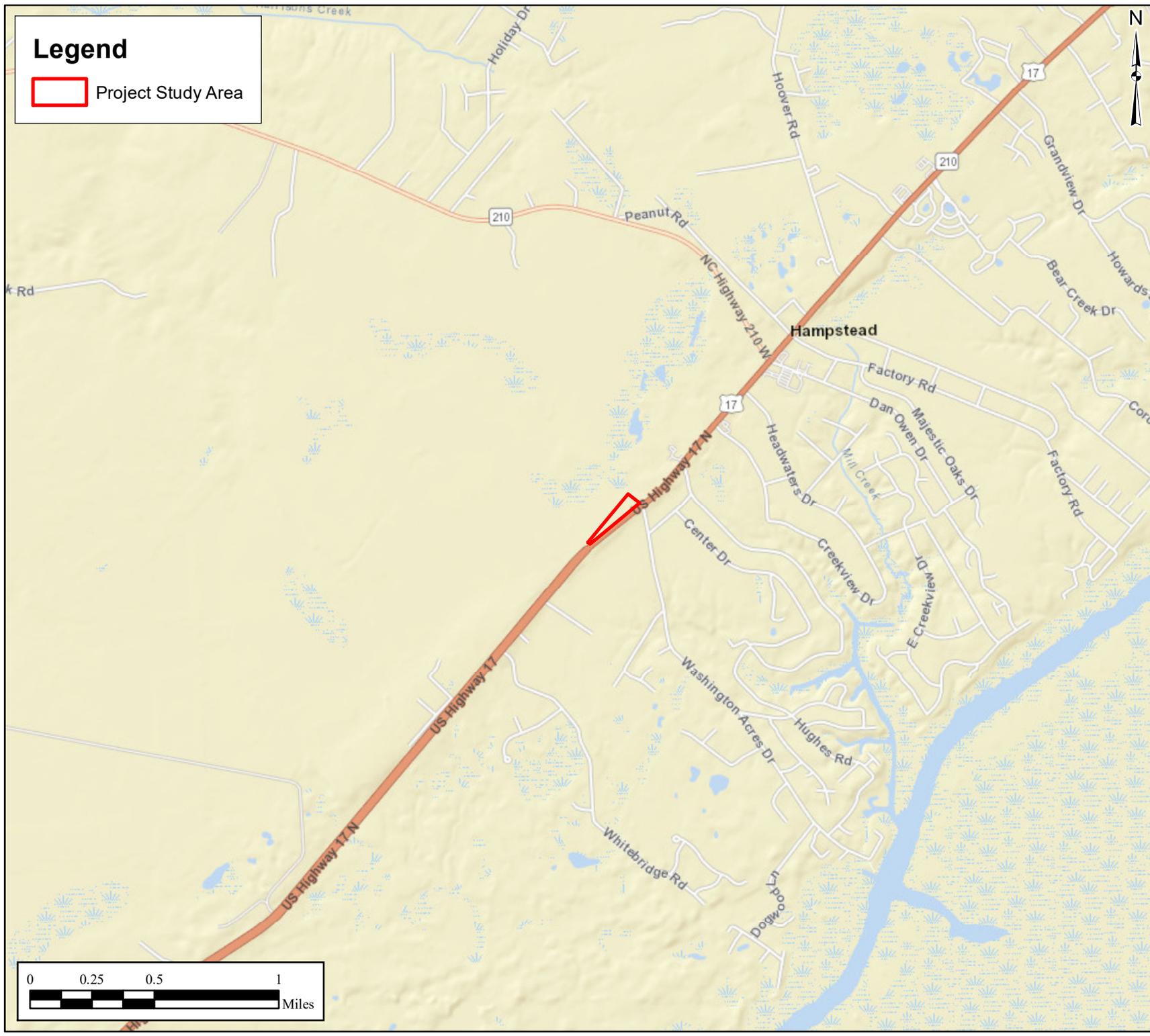
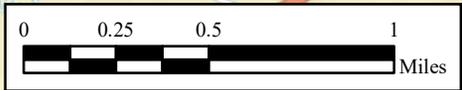
Date:

01/05/2023

ECS Project No.

**49:19299**

**FIGURE 1**



# Legend

 Project Study Area



Client:

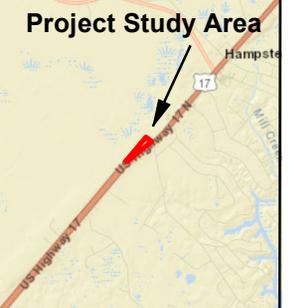


Project:

WASHINGTON ACRES SITE  
  
HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

USGS  
TOPOGRAPHIC  
MAP  
  
HAMPSTEAD NC  
QUADRANGLE  
DATED: 1997



Drawn By:

KMC

Scale:

1 in = 1,000 ft

Approved By:

WBF

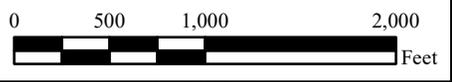
Date:

01/06/2023

ECS Project No.

49:19299

**FIGURE 2**



# Legend

 Project Study Area

## Soil Type

-  AnB *Alpin fine sand, 1 to 6 percent slopes*
-  Ma *Mandarin fine sand*
-  To *Torhunta mucky fine sandy loam*



Client:



Project:

WASHINGTON ACRES SITE

HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

USDA-NRCS  
WEB SOILS SURVEY  
MAP

DATED: 09/12/2022

### Project Study Area



Drawn By:

KMC

Scale:

1 in = 200 ft

Approved By:

WBF

Date:

01/06/2023

ECS Project No.

49: 19299

**FIGURE 3**

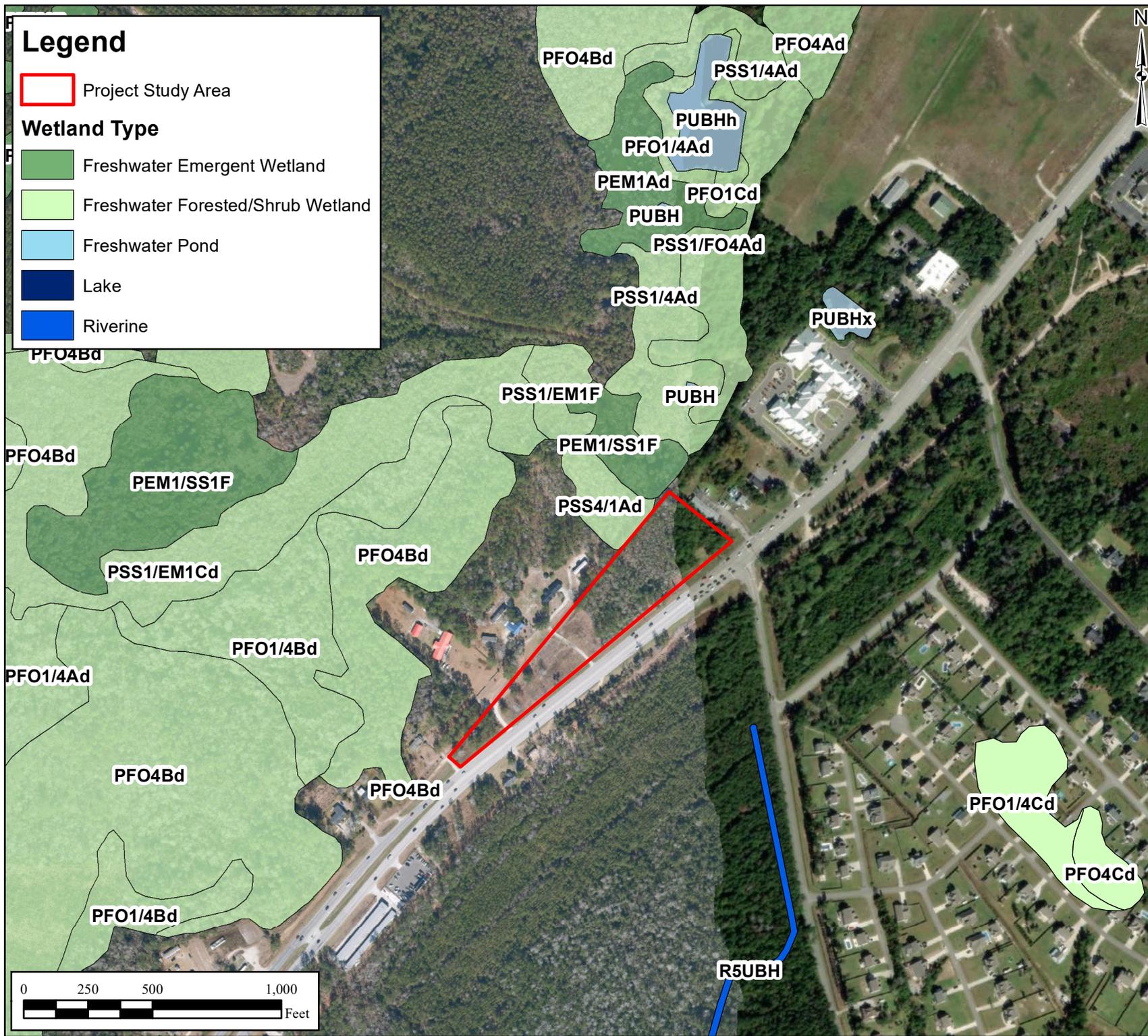


# Legend

 Project Study Area

## Wetland Type

-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond
-  Lake
-  Riverine



Client:

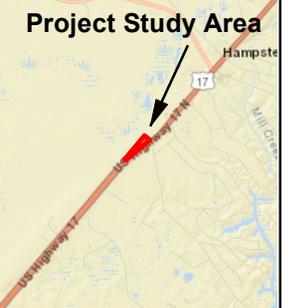


Project:

**WASHINGTON ACRES SITE**  
  
HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA

Title:

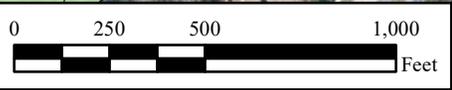
**NATIONAL WETLANDS  
INVENTORY MAP**



Drawn By: KMC	Scale: 1 in = 500 ft
Approved By: WBF	Date: 01/06/2023

ECS Project No.  
**49: 19299**

**FIGURE 4**



**Legend**

-  Project Study Area
-  FIRM Panels
-  1% Annual Chance Flood Hazard
-  Regulatory Floodway
-  Special Floodway
-  Area of Undetermined Flood Hazard
-  0.2% Annual Chance Flood Hazard
-  Future Conditions 1% Annual Chance Flood Hazard
-  Area with Reduced Risk Due to Levee
-  Water Areas



Client:



Project:

**WASHINGTON ACRES SITE**  
  
**HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA**

Title:

**NATIONAL  
FLOOD HAZARD  
ZONE MAP**

**PANEL:3720328200J  
DATE:02/16/2007**



Drawn By:

**KMC**

Scale:

**1 in = 200 ft**

Approved By:

**WBF**

Date:

**01/06/2023**

ECS Project No.

**49:19299**

**FIGURE 5**



**Legend**

 Project Study Area

**NOAA Elevation Data**

**Value**

 High : 54.7217

 Low : 29.3852



Client:



Project:

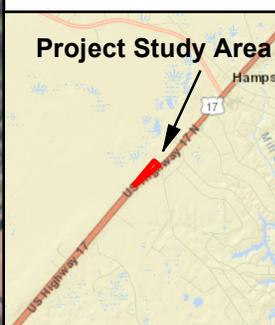
**WASHINGTON ACRES SITE**

**HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA**

Title:

**NOAA LIDAR  
ELEVATION DATA**

**Project Study Area**



Drawn By:

KMC

Scale:

1 in = 200 ft

Approved By:

WBF

Date:

01/05/2023

ECS Project No.

**49:19299**

**FIGURE 6**



**Legend**

 PSAWashingtonAcres2



Client:



Project:

**WASHINGTON ACRES SITE**

**HWY 17 &  
WASHINGTON ACRES RD,  
HAMPSTEAD,  
PENDER COUNTY,  
NORTH CAROLINA**

Title:

**POTENTIAL WATERS  
OF THE US MAP**

NOTES:

1. NO WATERS OF THE US WERE OBSERVED BY ECS ON JANUARY 6, 2023.
2. OUR FINDINGS HAVE NOT BEEN VERIFIED BY THE USACE AND NCDWR. THE DELINEATION FINDINGS ARE SUBJECT TO CHANGE BASED ON AGENCY VERIFICATION.
3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

Drawn By:	Scale:
KMC	1 in = 200 ft

Approved By:	Date:
WBF	01/09/2023

ECS Project No.  
**49: 19299**

**FIGURE 7**



# **Appendix II: Photographic Log**



1 - Typical view of the woods on site.

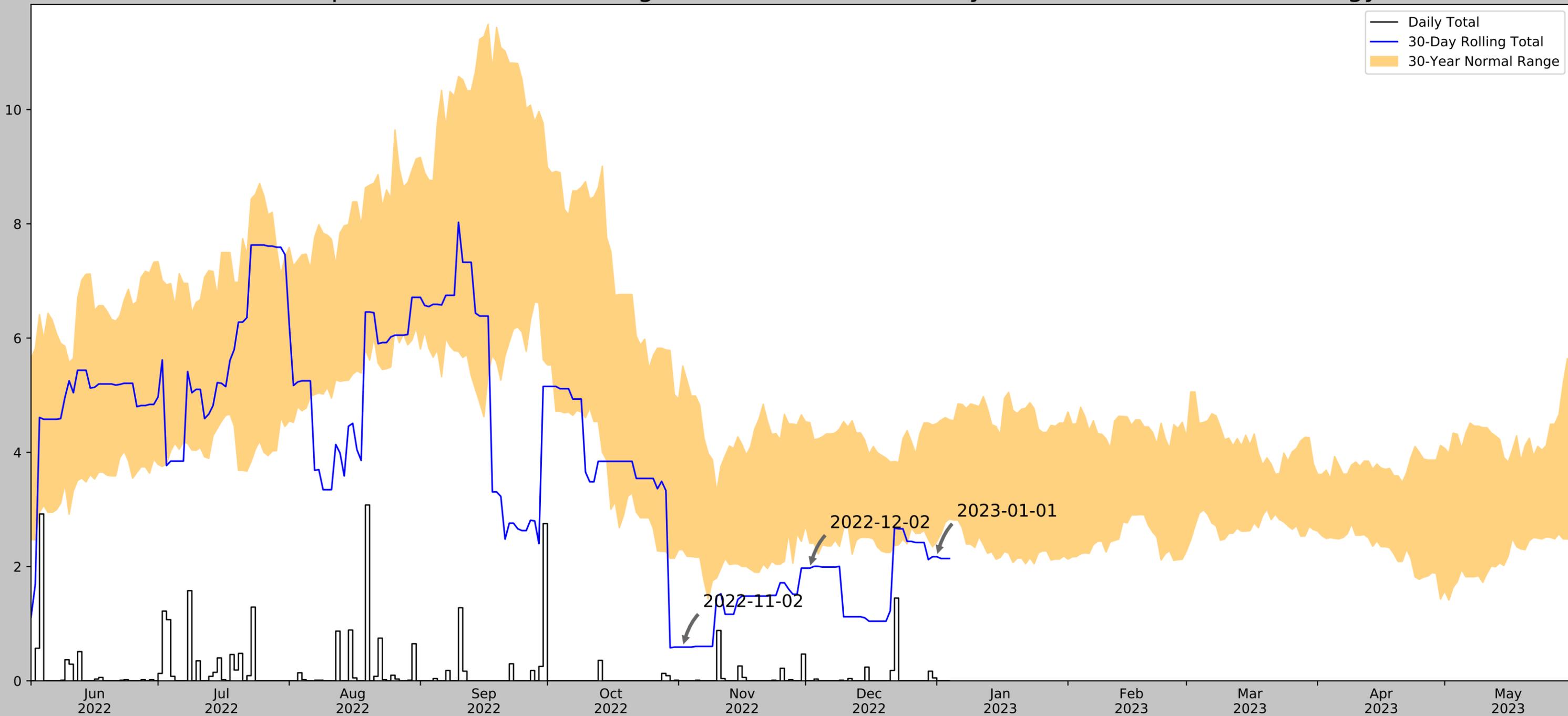


2 - Additional view of the upland woods on site.

# **Appendix III: Precipitation Data**

# Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network

Rainfall (Inches)



Coordinates	34.357, -77.722
Observation Date	2023-01-01
Elevation (ft)	52.61
Drought Index (PDSI)	Not available
WebWIMP H <sub>2</sub> O Balance	Wet Season

30 Days Ending	30 <sup>th</sup> %ile (in)	70 <sup>th</sup> %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2023-01-01	2.438583	4.504331	2.173228	Dry	1	3	3
2022-12-02	2.408268	4.522441	1.972441	Dry	1	2	2
2022-11-02	2.294488	5.512599	0.590551	Dry	1	1	1
Result							Drier than Normal - 6



Figure and tables made by the  
**Antecedent Precipitation Tool**  
Version 1.0

Written by Jason Deters  
U.S. Army Corps of Engineers

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days Normal	Days Antecedent
WILMINGTON INTL AP	34.2675, -77.8997	33.136	11.878	19.474	5.576	11353	90

# **ATTACHMENT 2: Wetland Map**

-  Wetland\_clipped2
-  19299 PSA Hampstead



Client:



Project:

**Hampstead Site**  
  
**13821 US-17**  
**HAMPSTEAD,**  
**PENDER COUNTY,**  
**NORTH CAROLINA**

Title:

**POTENTIAL WATERS**  
**OF THE US MAP**

NOTES:  
 1. WATERS OF THE US WERE OBSERVED BY ECS ON NOVEMBER 15, 2022.  
 2. FEATURES DEPICTED ON THIS MAP HAVE NOT BEEN VERIFIED BY THE USACE OR NCDWR. THE DELINEATION FINDINGS ARE SUBJECT TO CHANGE BASED ON AGENCY VERIFICATION.  
 3. THIS MAP SHOULD BE USED FOR PRELIMINARY PLANNING PURPOSES.

Drawn By:	Scale:
KMH	1 in = 48 ft
Approved By:	Date:
	10/04/2023

ECS Project No.  
**49: 19299-B**

**FIGURE 7**



Potential Jurisdictional Wetland  
 Approx. 0.07 acres

