

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID: SAW-2019-01635 County: Jackson U.S.G.S. Quad: Sylva South

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner: University Property Group, LLC / Attn.: Emily Dimitris
Address: 1944 Hendersonville Road, Suite E1
Asheville, NC 28803
Telephone Number: 828-712-9440

Size (acres): 24 Nearest Town: Cullowhee
Nearest Waterway: UTs Cullowhee Creek and
Cullowhee Creek Coordinates: 35.2961 N, 83.1828 W
River Basin/ HUC: Tuckasegee (06010203)

Location description: The site is located on a tract of land (PINs 7558-28-2984 and 7558-18-8604) along Lyle Wilson Road, south and west of the intersection Lyle Wilson Road and Wisdom Drive, in Cullowhee, Jackson County, North Carolina.

Indicate Which of the Following Apply:

A. Preliminary Determination

- There are waters, including wetlands, on the above described property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). The waters, including wetlands, have been delineated, and the delineation has been verified by the Corps to be sufficiently accurate and reliable. Therefore this preliminary jurisdiction determination may be used in the permit evaluation process, including determining compensatory mitigation. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). However, you may request an approved JD, which is an appealable action, by contacting the Corps district for further instruction.
- There are wetlands on the above described property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). However, since the waters, including wetlands, have not been properly delineated, this preliminary jurisdiction determination may not be used in the permit evaluation process. Without a verified wetland delineation, this preliminary determination is merely an effective presumption of CWA/RHA jurisdiction over all of the waters, including wetlands, at the project area, which is not sufficiently accurate and reliable to support an enforceable permit decision. We recommend that you have the waters of the U.S. on your property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

B. Approved Determination

- There are Navigable Waters of the United States within the above described property subject to the permit requirements of Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403) and Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are waters of the U.S. including wetlands on the above described property subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- We recommend you have the waters of the U.S. on your property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.
- The waters of the U.S. including wetlands on your project area have been delineated and the delineation has been verified by the Corps. If you wish to have the delineation surveyed, the Corps can review and verify the survey upon

completion. Once verified, this survey will provide an accurate depiction of all areas subject to CWA and/or RHA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.

- The waters of the U.S. including wetlands have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on _____. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are no waters of the U.S., to include wetlands, present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management to determine their requirements.

Placement of dredged or fill material within waters of the US and/or wetlands without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). Placement of dredged or fill material, construction or placement of structures, or work within navigable waters of the United States without a Department of the Army permit may constitute a violation of Sections 9 and/or 10 of the Rivers and Harbors Act (33 USC § 401 and/or 403). If you have any questions regarding this determination and/or the Corps regulatory program, please contact **David Brown** at **828-271-7980, ext. 4232** or **david.w.brown@usace.army.mil**.

C. Basis for Determination:

See attached preliminary jurisdictional determination form.

D. Remarks:

The potential waters of the U.S., at this site, were previously verified on-site by the Corps in August 2017 and are as approximately depicted on the attached *Delineation Map, Figure 5*, submitted by ClearWater Environmental Consultants, Inc.

E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

F. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B. above)

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers
South Atlantic Division
Attn: Jason Steele, Review Officer
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by, N/A (Preliminary-JD).

****It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.****

Corps Regulatory Official: _____
David Brown

Issue Date of JD: **September 9, 2019**

Expiration Date: N/A Preliminary JD

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our Customer Satisfaction Survey, located online at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Copy furnished:
David B. Ward, P.O. Box 2782, Cullowhee, NC 28723 (by email)

ClearWater Environmental Consultants, Inc., Alea Tuttle, 32 Clayton Street, Asheville, NC 28801 (by email)

McCall Tract (+/- 24 AC)

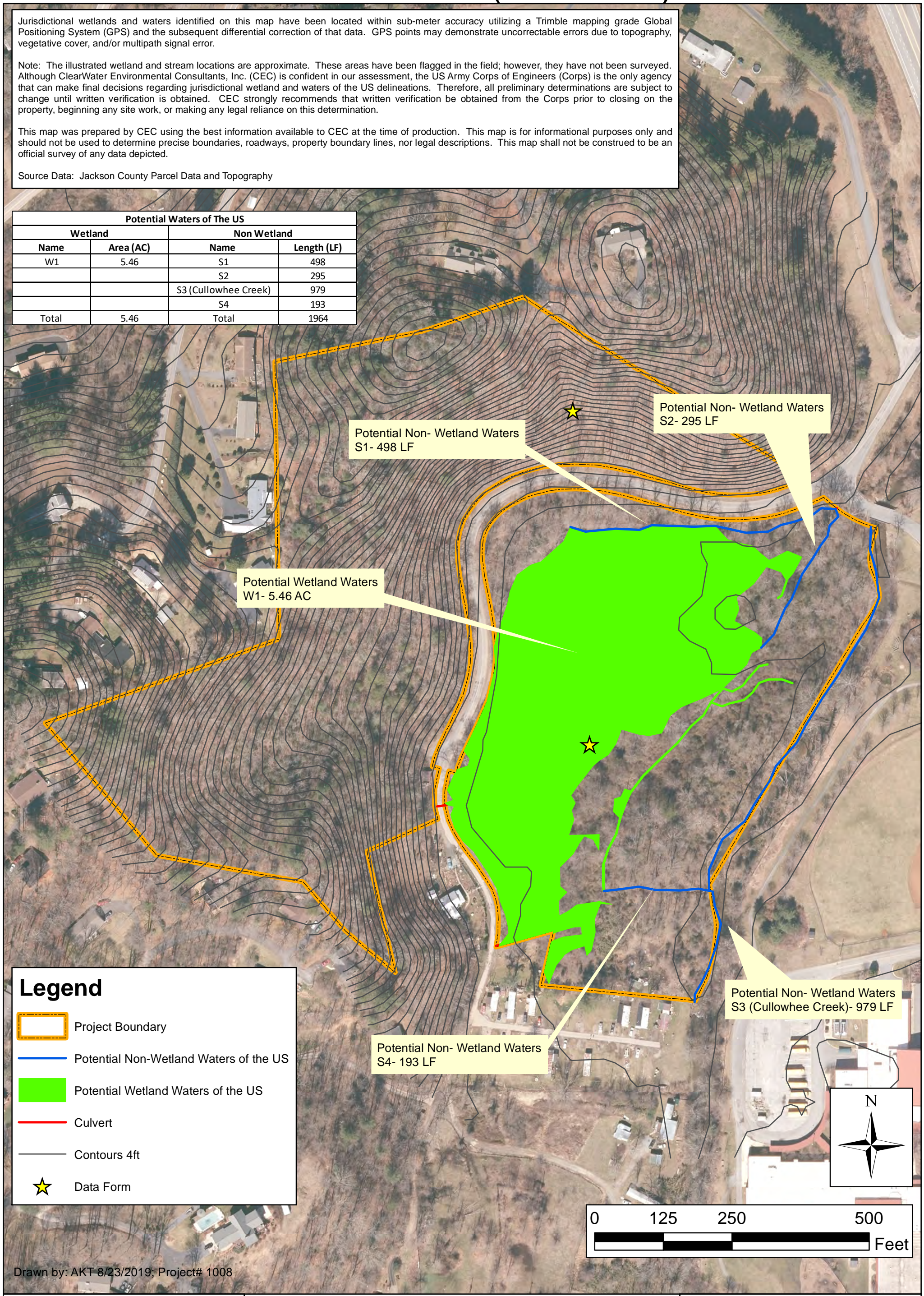
Jurisdictional wetlands and waters identified on this map have been located within sub-meter accuracy utilizing a Trimble mapping grade Global Positioning System (GPS) and the subsequent differential correction of that data. GPS points may demonstrate uncorrectable errors due to topography, vegetative cover, and/or multipath signal error.

Note: The illustrated wetland and stream locations are approximate. These areas have been flagged in the field; however, they have not been surveyed. Although ClearWater Environmental Consultants, Inc. (CEC) is confident in our assessment, the US Army Corps of Engineers (Corps) is the only agency that can make final decisions regarding jurisdictional wetland and waters of the US delineations. Therefore, all preliminary determinations are subject to change until written verification is obtained. CEC strongly recommends that written verification be obtained from the Corps prior to closing on the property, beginning any site work, or making any legal reliance on this determination.

This map was prepared by CEC using the best information available to CEC at the time of production. This map is for informational purposes only and should not be used to determine precise boundaries, roadways, property boundary lines, nor legal descriptions. This map shall not be construed to be an official survey of any data depicted.

Source Data: Jackson County Parcel Data and Topography

Potential Waters of The US			
Wetland		Non Wetland	
Name	Area (AC)	Name	Length (LF)
W1	5.46	S1	498
		S2	295
		S3 (Cullowhee Creek)	979
		S4	193
Total	5.46	Total	1964



Legend

- Project Boundary
- Potential Non-Wetland Waters of the US
- Potential Wetland Waters of the US
- Culvert
- Contours 4ft
- Data Form

Drawn by: AKT 8/23/2019; Project# 1008

Jackson County,
North Carolina

32 Clayton Street
Asheville, North Carolina 28801

Delineation Map
Delineated January 15
& July 12, 2019
Figure 5

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**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: University Property Group, LLC / Attn.: Emily Dimitris	File Number: SAW-2019-01635	Date: September 9, 2019
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Attached is:	See Section below
<input type="checkbox"/> INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/> PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/> PERMIT DENIAL	C
<input type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

**District Engineer, Wilmington Regulatory Division,
Attn: David Brown
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006
828-271-7980, ext. 4232**

If you only have questions regarding the appeal process you may also contact:

Mr. Jason Steele, Administrative Appeal Review Officer
CESAD-PDO
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street, Room 10M15
Atlanta, Georgia 30303-8801
Phone: (404) 562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<p>_____</p> <p>Signature of appellant or agent.</p>	<p>Date:</p>	<p>Telephone number:</p>
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For appeals on Initial Proffered Permits send this form to:

District Engineer, Wilmington Regulatory Division, Attn.: David Brown, 69 Darlington Avenue, Wilmington, North Carolina 28403

For Permit denials, Proffered Permits and approved Jurisdictional Determinations send this form to:

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Jason Steele, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801
Phone: (404) 562-5137**

**PRELIMINARY JURISDICTIONAL DETERMINATION (JD) FORM
U.S. Army Corps of Engineers**

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JD: September 9, 2019

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

University Property Group, LLC / Attn.: Emily Dimitris
1944 Hendersonville Road, Suite E1
Asheville, NC 28803

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

CESAW-RG-A, SAW-2019-01635, McCall Tract

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

The site is located on a tract of land (PINs 7558-28-2984 and 7558-18-8604) along Lyle Wilson Road, south and west of the intersection Lyle Wilson Road and Wisdom Drive, in Cullowhee, Jackson County, North Carolina.

State: NC County/parish/borough: **Jackson** City: **Cullowhee**
Center coordinates of site (lat/long in degree decimal format): **35.2961 N, 83.1828 W**
Universal Transverse Mercator: N/A
Name of nearest waterbody: **UTs Cullowhee Creek and Cullowhee Creek**

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: **September 9, 2019**
- Field Determination. Date(s): **August 2017**

Use the table below to document aquatic resources and/or aquatic resources at different sites

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION

Site Number	Centered Coordinates (decimal degrees)		Estimated Amount of Aquatic Resource in Review Area (linear feet or acre)	Type of Aquatic Resources	Geographic Authority to Which Aquatic Resource "May Be" Subject
	Latitude	Longitude			
S1 (UT Cullowhee Creek)	35.2965	-83.1823	498 lf	<input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Non-wetland Waters	<input checked="" type="checkbox"/> Section 404 <input type="checkbox"/> Section 10/404
S2 (UT Cullowhee Creek)	35.2963	-83.1817	295 lf	<input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Non-wetland Waters	<input checked="" type="checkbox"/> Section 404 <input type="checkbox"/> Section 10/404
S3 (Cullowhee Creek)	35.2954	-83.1823	979 lf	<input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Non-wetland Waters	<input checked="" type="checkbox"/> Section 404 <input type="checkbox"/> Section 10/404
S4 (UT Cullowhee Creek)	35.2947	-83.1823	193 lf	<input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Non-wetland Waters	<input checked="" type="checkbox"/> Section 404 <input type="checkbox"/> Section 10/404
W1	35.2961	-83.1828	5.46 ac	<input checked="" type="checkbox"/> Wetland <input type="checkbox"/> Non-wetland Waters	<input checked="" type="checkbox"/> Section 404 <input type="checkbox"/> Section 10/404

1. The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre- construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA

Data reviewed for preliminary JD (check all that apply) - Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of preliminary JD requester: **ClearWater Environmental Consultants, Inc.**
- Data sheets prepared/submitted by or on behalf of preliminary JD requester. **ClearWater Environmental Consultants, Inc.**
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rational:
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey (USGS) Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- USGS map(s). Cite scale & quad name: **Sylva South.**
- Natural Resources Conservation Service (NRCS) Soil Survey.
 - Citation: **Jackson County, NC**
- National wetlands inventory (NWI) map(s). Cite name:
- State/Local wetland inventory map(s):

Federal Emergency Management Agency (FEMA) / Flood Insurance Rate Map (FIRM) maps: **Map No. 3700755800J, effective date Apr. 19, 2010**

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date): **Google Earth Pro, Oct. 2015, Mar. 2013, Jun. 2008, Apr. 1998, and Apr. 1993**

or Other (Name & Date): **SAW Regulatory Viewers 3DEPElevation Hillshade and DEM**

Previous determination(s). File no. and date of response letter:

Applicable/supporting scientific literature:

Other information (please specify): **The site contains wetlands as determined by the 1987 Corps of Engineers Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Eastern Mountain and Piedmont Region (Version 2.0). These wetlands are abutting to stream channels located at the site and flow into the channels. Wetland hydrology is enhanced with the abutting stream channels via normal down gradient flows and periods of high water.**

The streams on the property are UTs of Cullowhee Creek and Cullowhee Creek, which all exhibit physical ordinary high water mark (OHWM) indicators including, break in slope; developed bed and bank; changes in sediment texture and soil character; natural line impressed on the bank; shelving; absence of vegetation; leaf litter washed away; sediment deposition and sorting; presence of aquatic life; water staining; presence of debris; and scour. Cullowhee Creek is depicted as a solid blue line on the USGS 7.5 minute quadrangle map Sylva South and the most current Natural Resource Conservation Service Soil Survey for Jackson County. Solid blue line features on these mapping conventions typically represent perennial streams.

The UTs of Cullowhee Creek flow into Cullowhee Creek, which flows into the Tuckasegee River, a traditional navigable water, and then into the Little Tennessee River. The Little Tennessee River flows into the Tennessee River, which drains into the Ohio River then to the Mississippi River before entering the Gulf of Mexico.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

David Brown, September 9, 2019
Signature and date of Regulatory
staff member completing
preliminary JD

University Property Group, LLC / Attn.: Emily
Dimitris
OR
ClearWater Environmental Consultants, Inc.
(per Agent Authorization)
Signature and date of person requesting
preliminary JD (REQUIRED, unless obtaining the
signature is impracticable)

Two copies of this Preliminary JD Form have been provided. Please sign both copies. Keep one signed copy for your record and return a signed copy to the Asheville Regulatory Field Office by mail or e-mail.

*US Army Corps of Engineers-Wilmington District
Asheville Regulatory Field Office
151 Patton Avenue, Room 208
Asheville, NC 28801-5006*

¹ Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.