



REPLY TO

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

5
RECEIVED
DEC 10 2014
BME ASSOCIATES

December 8, 2014

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application No. 2014-00798

Whitetail 414, LLC
1265 Scottsville Road
Rochester, New York 14624
Attn: James McKenna

Dear Mr. McKenna:

I have reviewed the wetland delineation report and maps, submitted on your behalf by BME Associates. On September 22, 2014, I conducted a site visit to determine federal jurisdiction and confirm wetland boundaries on your property located adjacent to Route 414, Town of Tyre, Seneca County, New York.

I have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 08-02, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the U. S. Army Corps of Engineers (USACE). Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an Approved JD from this office. If an Approved JD is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the signed Preliminary JD Form with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of waters of the United States

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application
No. 2014-00798

be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, this determination has been conducted only to identify the limits of waters that may be subject to USACE jurisdiction under the Clean Water Act or Rivers and Harbors Act. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. 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 Resource Conservation Service (NRCS) prior to starting work.

Questions pertaining to this matter should be directed to me at 315-704-0255, by writing to Judy A. Robinson, U.S. Army Corps of Engineers, 7413 County House Road, Auburn, New York 14207, or at judy.a.robinson@usace.army.mil.

Sincerely,

SIGNED

Judy Robinson
Biologist

Enclosures

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): December 8, 2014

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Whitetail 414, LLC
1265 Scottsville Road
Rochester, New York 14624

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Auburn Field Office;

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State: NY County: Seneca Town: Tyre
Center coordinates of site: Lat. 42.97025 Long. -76.84199
Universal Transverse Mercator: Y=4759157.59379023 X=349787.973109833

Name of nearest waterbody: White Brook

Identify (estimate) amount of waters in the review area:

Non-wetland waters: White Brook 1140 linear feet (520 linear feet intermittent; 620 linear feet perennial)

| | | | |
|-----------|-----------|-----|-----------|
| Wetlands: | Wetland A | PFO | 2.60 acre |
| | Wetland B | PFO | 0.43 acre |
| | Wetland C | PFO | 5.10 acre |
| | Wetland D | PEM | 0.17 acre |
| | Wetland E | PEM | 0.16 acre |
| | Wetland F | PEM | 0.16 acre |

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: None

Non-Tidal: None

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

Office (Desk) Determination. Date:

Field Determination. Date(s): September 22, 2014

1. The Corps of Engineers believes that there *may be* jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this Preliminary Jurisdictional Determination (JD) is hereby advised of his or her option to request and obtain an Approved JD for that site. Nevertheless, the permit applicant or other person who requested this Preliminary JD has declined to exercise the option to obtain an Approved JD in this instance and at this time.

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 Approved JD for the activity, the permit applicant is hereby made aware of the following:

(1) the permit applicant has elected to seek a permit authorization based on a Preliminary JD, which does not make an official determination of jurisdictional waters;

(2) the applicant has the option to request an Approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an Approved JD 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 Approved JD constitutes the applicant's acceptance of the use of the Preliminary JD, but that either form of JD will be processed as soon as is practicable;

(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 Preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes 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 Approved JD or a Preliminary JD, that JD will be processed as soon as is practicable.

Further, an Approved JD, 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, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an Approved JD to accomplish that result, as soon as is practicable.

This Preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for Preliminary JD

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **BME Associates**

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report. **(Revised)**

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study:

U.S. Geological Survey Hydrologic Atlas:

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name: **Scale: 24000; Seneca Falls, New York Quad**

USDA Natural Resources Conservation Service Soil Survey. Citation: **The majority of the site is located within an area mapped as Ontario Loam. This series is described in the Seneca County Soil Survey, issued in April, 1972 (USDA in cooperation with Cornell University Agricultural Experiment Station, Geneva, New York), as deep, medium textured well-drained soils formed in strongly calcareous firm glacial till. The glacial till is derived mainly from sandstone, limestone, and some shale, and contains sufficient red sandstone or red shale to impart a pinkish or reddish hue. These soils occur on drumlins, along drumlinal hills, and in rolling and undulating upland areas in the northern part of Seneca County, mainly in the area north of the Seneca River. Slopes range from 2-25% and individual areas vary in shape and may be 5-20 acres in size. This soil is not listed as hydric.**

(Ms) Muck 0-2 percent slopes - This component is on marshes, swamps. The parent material consists of organic material. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is very poorly drained. Water movement in the most restrictive layer is moderately high. Available water to a depth of 60 inches (or restricted depth) is very high. Shrink-swell potential is low. This soil is not flooded, but is frequently ponded. A seasonal zone of water saturation is at 0 inches during January, February, March, April, May, November, December. Organic matter content in the surface horizon is about 87 percent. This soil meets hydric criteria.

(OvA) Ovid silt loam 0-3 percent slopes, (OvB), Ovid silt loam 3-8 percent slopes - This component is on reworked lake plains, till plains. The parent material consists of loamy till with a significant component of reddish shale or reddish glacio-lacustrine clays, mixed with limestone and some sandstone. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is somewhat poorly drained. Water movement in the most restrictive layer is moderately low. Available water to a depth of 60 inches (or restricted depth) is moderate. Shrink-swell potential is low. This soil is not flooded or ponded. A seasonal zone of water saturation is at 15 inches during January, February, March, April, May. Organic matter content in the surface horizon is about 5 percent. This soil does not meet hydric criteria.

- National wetlands inventory map(s). Cite name: Seneca Falls, New York Quad -- the subject wetlands (D, E, and F) are not mapped on the NWI map.
- State/Local wetland inventory map(s): Seneca Falls, New York Quad-- the subject wetlands (D, E, and F) are not mapped on the NYS FWW map.
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): on-line bingmaps.com
or Other (Name & Date): submitted with report
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

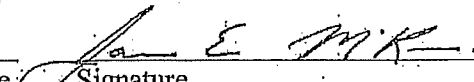
IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

ROBINSON.JUD
Y.A.1284100103

Digitally signed by
ROBINSON.JUD.Y.A.1284100103
DN: c=US, o=U.S. Government, ou=DoD,
bu=PKI, ou=USA,
cn=ROBINSON.JUD.Y.A.1284100103
Date: 2014.12.08 10:52:24 -05'00'

Signature
Regulatory Project Manager

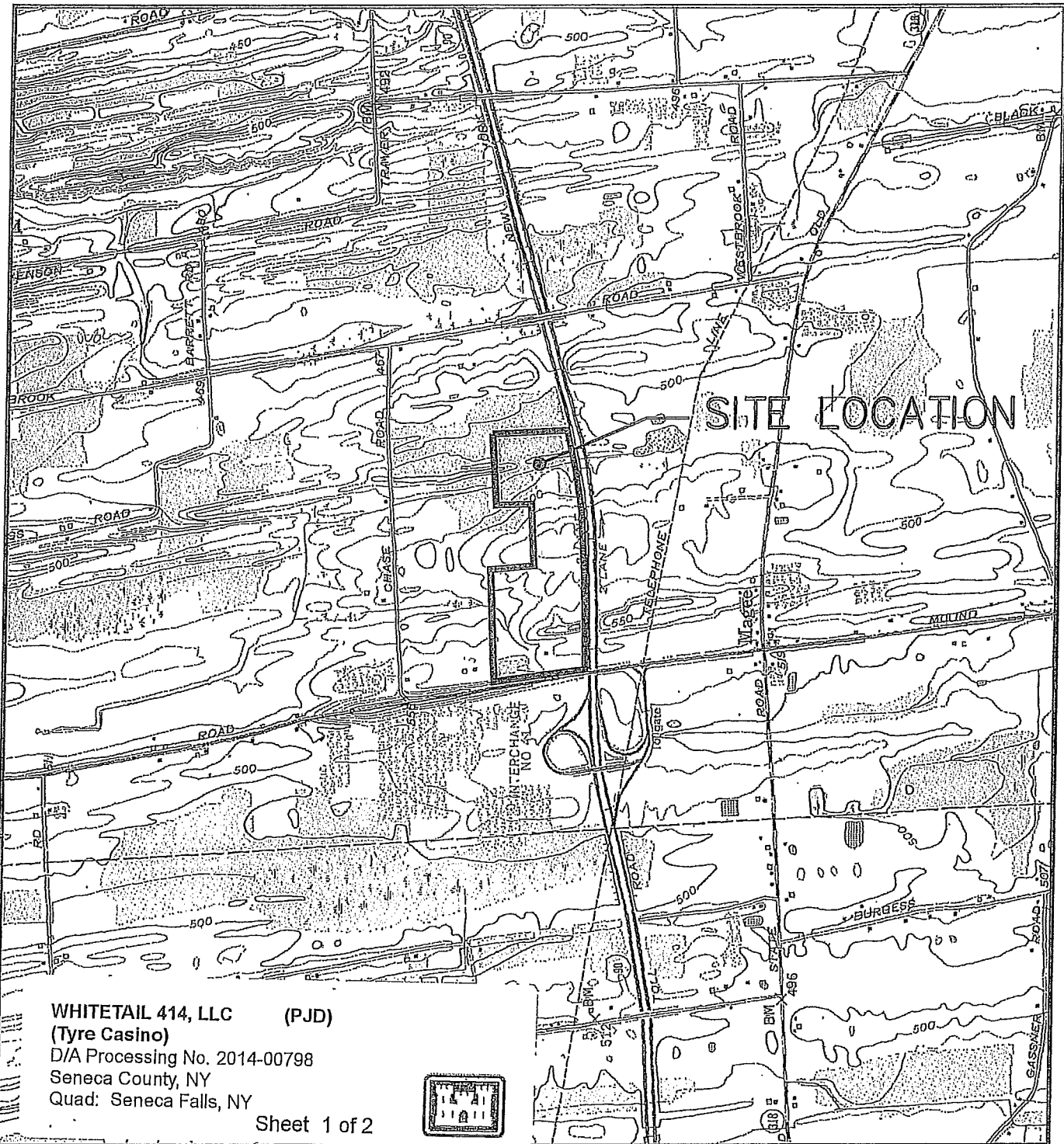
Date


Signature
Person Requesting Preliminary JD

Date

12-8-14

| Site No. | Latitude | Longitude | Cowardin Class | Estimated amount of aquatic resource in review area | Class of aquatic resource |
|---------------------------|----------|-----------|----------------------------|---|-------------------------------|
| Stream 1 (White Creek) | 42.97 | -76.846 | Intermittent/ Perennial | 520 Ephemeral 620 Perennial | Non Section 10 non wetland |
| Wetland A | 42.97 | -76.846 | PFO | 2.60 | Non Section 10 wetland |
| Wetland B | 42.97 | -76.846 | PFO | 0.43 | Non Section 10 wetland |
| Wetland C | 42.97 | -76.846 | PFO | 5.10 | Non Section 10 wetland |
| Wetland D | 42.97 | -76.837 | PEM | 0.17 | Non Section 10 wetland |
| Wetland E | 42.97 | -76.837 | PEM | 0.13 | Non Section 10 wetland |
| Wetland F | 42.97 | -76.837 | PEM | 0.16 | Non Section 10 wetland |

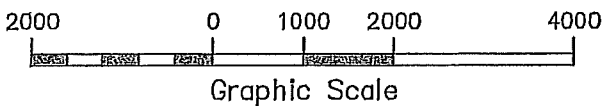


WHITETAIL 414, LLC (PJD)
 (Tyre Casino)
 D/A Processing No. 2014-00798
 Seneca County, NY
 Quad: Seneca Falls, NY

Sheet 1 of 2



 Site Boundary



Scale:
 1" = 2000'

Ridge Road Property
 Location Map
 Town of Tyre
 Seneca County, New York

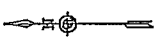
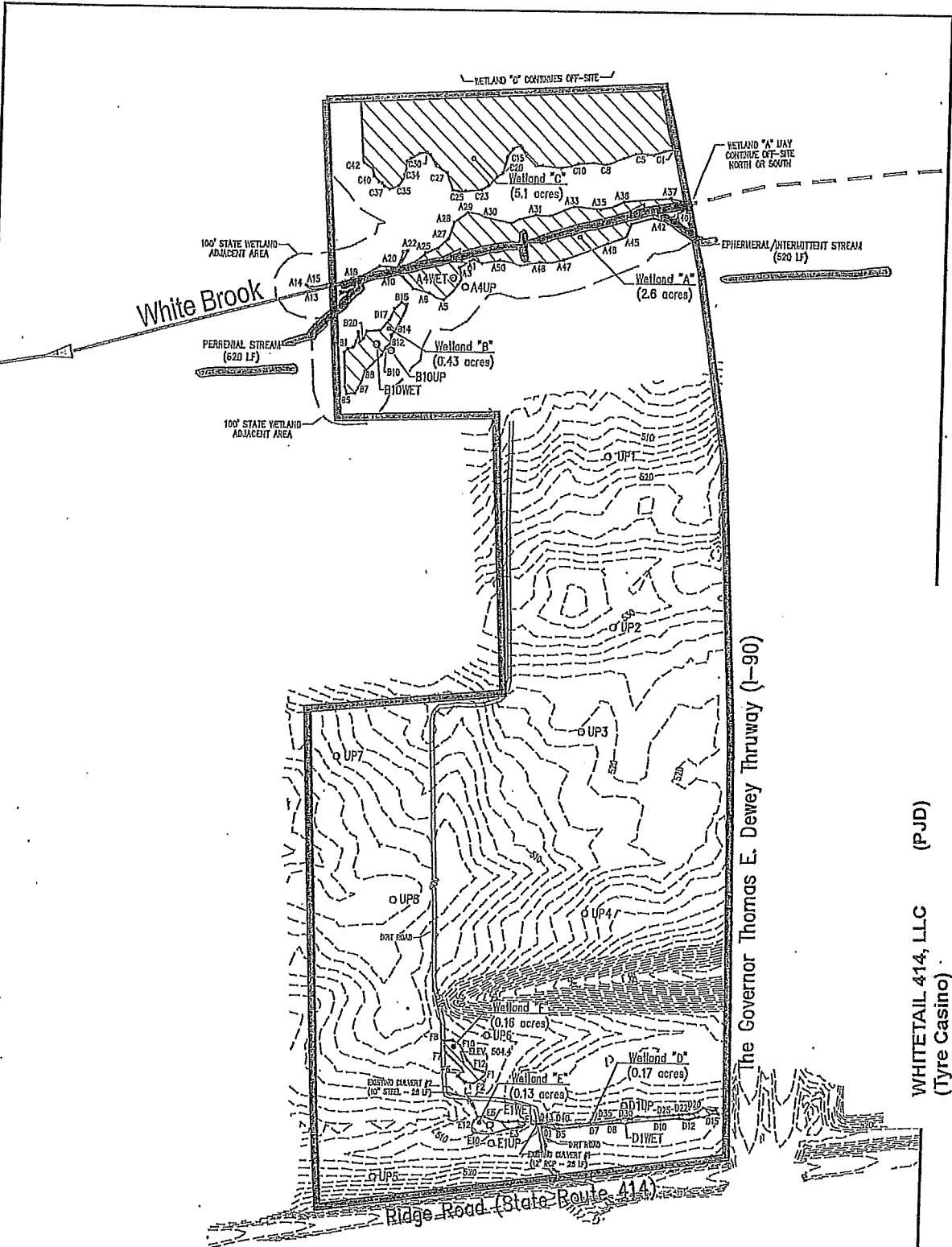


Figure 1

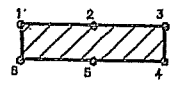


WHITETAIL 414, LLC (PJD)
 (Tyre Casino)
 D/A Processing No. 2014-00798
 Seneca County, NY
 Quad: Seneca Falls, NY

Sheet 2 of 2

LEGEND:

DELINEATED WETLANDS AND WETLAND FLAG LOCATIONS

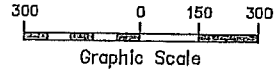


WETLAND SAMPLING POINT
 UPLAND SAMPLING POINT



100' State Wetland Adjacent Area

Site Boundary



BME ASSOCIATES
 ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS
 10 LITTLE BRIDGE LANE EAST
 FAIRPORT, NEW YORK 14450
 PHONE 813-377-7140
 WWW.BMEINC.COM

Scale:
 1"=300'

Ridge Road Property
 Wetland Delineation Map
 Town of Tyre
 Seneca County, New York

Revised: 11/03/2014

Figure 7A