From: Susan Kagel Ph.D.
To: FOIA-SPK; Vanesa Gawlik
Subject: [Non-DoD Source] FOIA Request
Date: Tuesday, March 29, 2022 10:36:26 AM
Attachments: FOIA Request Form Arive Homes.pdf

Please see the attached.

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Nationwide Wetlands, Waters & Wildlife Consulting
http://www.kagelenvironmental.com

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922
April 6, 2022

Office of Counsel

SUBJECT: Freedom of Information Act Request No. FA-22-0088; Copies of Any Correspondence Concerning the Approval of SPK-201600388 Approved on September 21, 2017

Mr. Dean Ingam
Arive Homes
733 N Main Street
Spanish Fork, Utah 84660

Dear Mr. Ingram:

On March 29, 2022, our office received your Freedom of Information Act (FOIA) request for copies of any correspondence concerning the approval of SPK-201600388 approved on September 21, 2017.

For the purpose of assessing fees, I have classified you as a commercial requester under 32 C.F.R. § 518.85(b)(2)(i). The charge for providing the requested information is as follows:

Professional Search and Review; .75 hr. @ $44 per hour $33

Ms. Andrea Vaiasicca emailed you a payment request on April 4, 2022 and suspended further processing until we received confirmation of your payment. We received confirmation of your payment through https://pay.gov on April 5, 2022. Thank you.

As requested, a redacted copies of any correspondence concerning the approval of SPK-201600388 approved on September 21, 2017, is enclosed.

Although the bulk of the requested information has been provided, names of Department of Defense (DoD) employees contained in the headers of e-mails and other similar lists of names within the records have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. In response to the terrorist attacks on the United States in the fall of 2001, DoD revised its policies which implement the Freedom of Information Act. At that time, the decision was made to withhold lists of names of all DoD employees. The court upheld this policy decision stating, “The privacy interest protected by exemption six of the Freedom of Information Act encompasses not only the addresses, but also the names of federal employees.” See Judicial Watch, Inc. v. United States, 84 Fed. Appx. 335 (4th Cir. (2004)).

Because your request has been partially denied, you are advised of your right to appeal this determination through this office to the Secretary of the Army (ATTN:

General Counsel). Your appeal must be postmarked or electronically transmitted within 90 days of the date of this letter. The envelope containing the appeal should bear the notation “Freedom of Information Act Appeal” and should be sent to U.S. Army Corps of Engineers, Sacramento District, ATTN: CESPK-OC, 1325 J Street, Room 1440, Sacramento, California 95814.

For any further assistance or to discuss any aspect of your request, you have the right to contact the U.S. Army Corps of Engineers FOIA Public Liaison. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about FOIA mediation services they offer. Contact Information:

U.S. Army Corps of Engineers
FOIA Public Liaison
441 G. Street, NW
ATTN: CECC-L (Emily Green)
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

Office of Government Information Servicers
National Archives and records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
E-Mail: ogis@nara.gov
Phone: 202-741-5770 or
Toll Free: 877-684-6448

If you have any questions regarding the provided information, please contact Ms. Andrea Vaiasicca, FOIA Specialist, at the above letterhead address or by calling (916) 557-7204.

Sincerely,

A. L. Faustino
Initial Denial Authority
District Counsel

Enclosures

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

September 21, 2017

Regulatory Division (SPK-2016-00388)

Plumbtree Estates
Attn: Mr. Walter Plumb III
90 South 400 West #360
Salt Lake City, Utah 84101

Dear Mr. Plumb III:

We are responding to your July 19, 2017 request for an approved jurisdictional determination for the Plumbtree Estates Parcel site. The approximately 37.3-acre project site is located at 1412 South Mill Road, Latitude 40.0917°, Longitude -111.6747°, Spanish Fork, Utah County, Utah (enclosure 1).

Based on available information, we concur with your aquatic resources delineation for the site, as depicted on the enclosed May 2016 Plumbtree Estates Project Area Maps 2-4 drawings, prepared by Sage Environmental (enclosure 2).

The 0.02 acre of wetlands, 0.5 acre of open water pond, 690 linear feet (0.22 acre) of pond outflow channel, 179 linear feet of overflow ditch and 70 linear feet of seep channel, as identified on the above drawings, are intrastate isolated aquatic resources with no apparent interstate or foreign commerce connection. As such, these aquatic resources are not currently regulated by the U.S. Army Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act.

We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 3).

This approved jurisdictional determination is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331.

A *Notification of Appeal Process (NAP) and Request for Appeal (RFA) Form* is enclosed (enclosure 4). If you request to appeal this determination, you must submit a completed Request for Appeal form to the South Pacific Division Office at the following address: Administrative Appeal Review Officer, Army Corps of Engineers, South Pacific Division, CESPD-PDO, 1455 Market Street, 2052B, San Francisco, California 94103-1399, Telephone: 415-503-6574, FAX: 415-503-6646.

In order for a Request for Appeal to be accepted by the Corps, we must determine that the form is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that the form was received by the Division Office within 60 days of the date of the Notification of Appeal Process. It is not necessary to submit an RFA form to the Division Office unless you object to the determination in this letter.

We recommend that you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

This approved jurisdictional determination has been conducted to identify the limits of aquatic resources subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act for the particular site identified in this request.

We appreciate feedback, especially about interaction with our staff and our processes. For program information or to complete our Customer Survey, visit our website at *www.spk.usace.army.mil/Missions/Regulatory.aspx*.

Please refer to identification number SPK-2016-00388 in any correspondence concerning this project. If you have any questions, please contact (b) (6) at the Bountiful Regulatory Office, 533 West 2600 South, Suite 150, Bountiful, Utah 84010, by email at (b) (6) @*usace.army.mil*, or telephone at (801) 295-8380, ext. 15.

Sincerely,

for (b) (6)

Chief, Nevada-Utah Section

Enclosures

cc:

Cindy Johnson, Sage Environmental (nrcon@comcast.net)

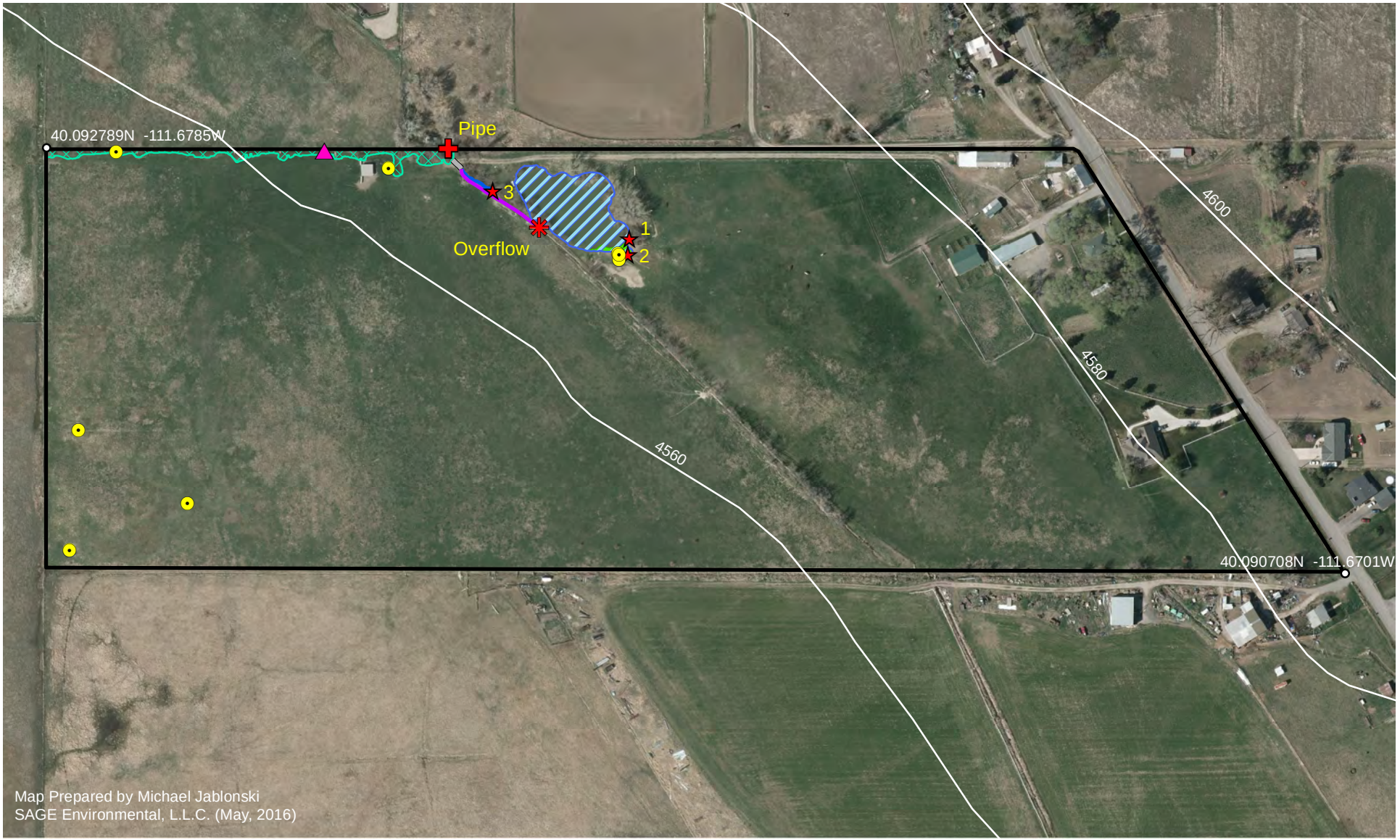
Map 1. Plumbtree Estates Location
Utah County, Utah
T8S R2E Sections 25, 26

N

0 0.375 0.75 1.5 Miles

Project Area (37.3 acres)

USGS 7.5 Minute Quadrangle: Spanish Fork



Map 2. Plumbtree Estates Project Area

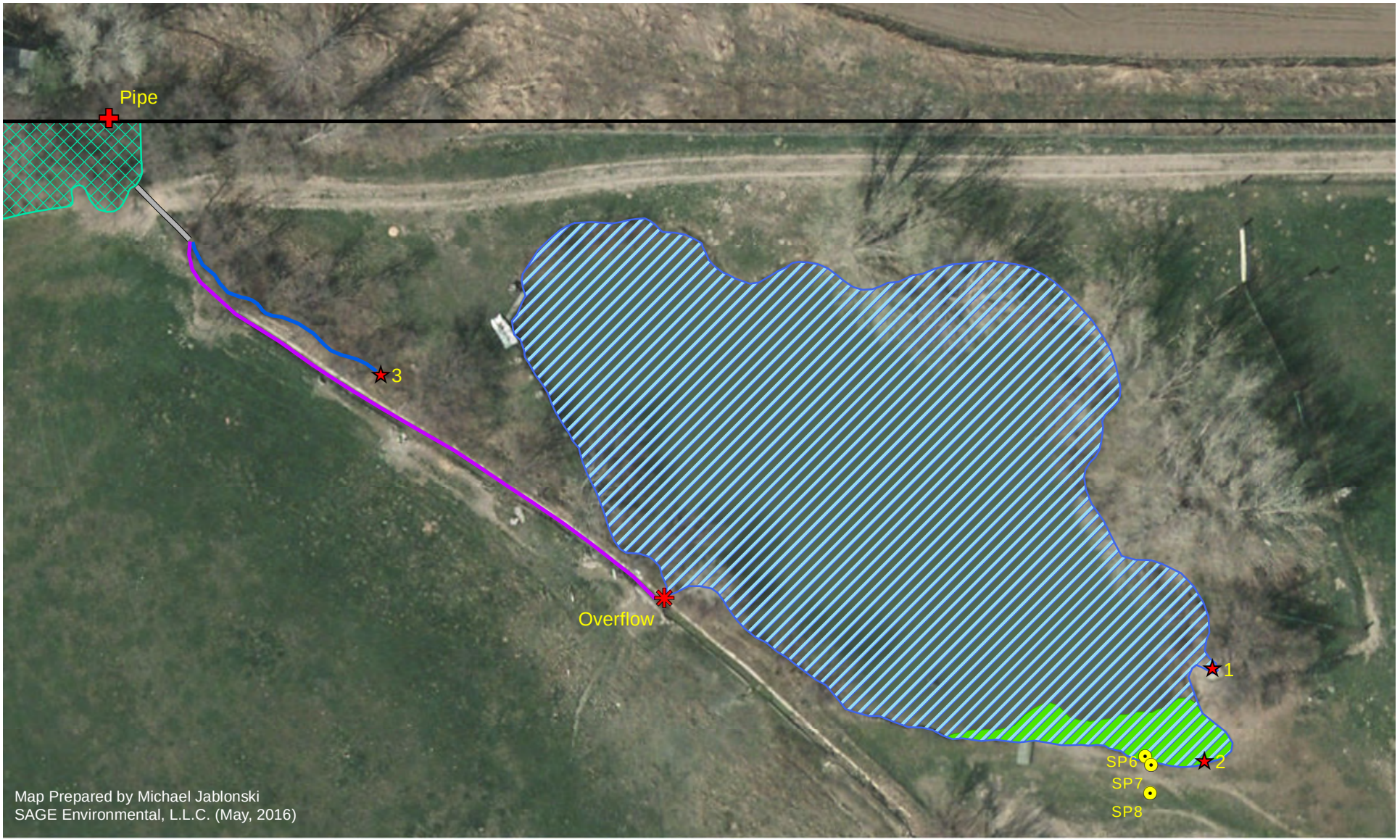
1 inch = 254 feet Contour Interval = 20 feet

0 150 300 600 Feet

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

- Project Area (37.3 acres)
- Pond (0.5 acres)
- Pond Outflow Channel (0.22 acres)
- Wetland (0.02 acres)
- Seeps/Springs
- Seep Channel (70 feet)
- Pond Overflow
- Overflow Ditch (179 feet)
- Pipe
- Culvert
- Sample Points
- Channel Cross Section



Map 3. Plumbtree Estates Pond Area

1 inch = 42 feet

0 25 50 100 Feet

N

Project Area (37.3 acres)

Pond (0.5 acres)

Pond Outflow Channel (0.22 acres)

Wetland (0.02 acres)

Seeps/Springs

Seep Channel (70 feet)

Pond Overflow

Overflow Ditch (179 feet)

Pipe

Culvert

Sample Points

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

Map 4. Plumbtree Estates Pond Outflow Channel Area

1 inch = 135 feet

Contour Interval = 20 feet

0 80 160 320 Feet

N

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

- Project Area (37.3 acres)
- Pond (0.5 acres)
- Pond Outflow Channel (0.22 acres)
- Wetland (0.02 acres)
- Seeps/Springs
- Seep Channel (70 feet)
- Pond Overflow
- Overflow Ditch (179 feet)
- Pipe
- Culvert
- Sample Points
- Channel Cross Section

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers
IF THE RIGHT-CLICK OPERATED DROPDOWNS ARE NOT FUNCTIONING, CTRL+CLICK HERE
This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): August 29, 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, **Mill Road, 62-Acre Parcel**, **SPK-2016-00388**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: **Utah** County/parish/borough: **Utah County** City: **Spanish Fork**
Center coordinates of site (lat/long in degree decimal format): Lat. **40.09170865998**°, Long. **-111.674754289935**°
Universal Transverse Mercator: **12 442480.07 4438154.19**
Name of nearest waterbody: Spanish Fork River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**
Name of watershed or Hydrologic Unit Code (HUC): **Spanish Fork, 16020202**
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form:

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): June 28, 2016

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are no** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet, wide, and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
      Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The study area consists primarily of agricultural operations and contains seeps that support an open water pond, a fringe wetland feature abutting the pond, an overflow ditch and two channels. Water flows through the pond, out the overflow channel, and flows west through the outflow channel where it co-mingles with tail water from fields to the north and west during the wet season. Flow turns generally south at the western property boundary and eventually dissipates into agricultural fields. A recent delineation and Approved Jurisdictional Determination (SPK-2017-00113) was completed for the parcels northwest of the study area and all features identified in that delineation were determined to be isolated. A site visit by Corps personnel verified that

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

the water on the subject property does not flow into another jurisdictional feature down gradient and that all aquatic features on site are isolated. The Corps has determined that the Pond, Wetland, Overflow Ditch, Seep Channel, and Pond Outflow Channel are intrastate, isolated waters with no interstate or foreign commerce connection.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW[5]:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:

Surface flow is: **Pick List.** Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
☐ oil or scum line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):
☐ Mean High Water Mark indicated by:
☐ survey to available datum;
☐ physical markings;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:
Identify specific pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):
☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is**:** **Pick List**
Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain:
☐ Ecological connection. Explain:
☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet, wide, Or acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet wide.
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

3. Non-RPWs[8] that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

☐ Tributary waters: linear feet, wide.
☐ Other non-wetland waters: acres.
Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet, wide.
☐ Other non-wetland waters: acres.
Identify type(s) of waters:
☐ Wetlands: acres.

---

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  ☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
☐ Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☒ Non-wetland waters (i.e., rivers, streams): **939** linear feet, **1-10** wide.
☒ Lakes/ponds: **0.5** acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☒ Wetlands: **0.02** acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

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: Sage Environmental
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant. Sage Environmental
  ☒ Office concurs with data sheets/delineation report.
  ☐ 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: **1:24K; Spanish Fork**
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name:
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth
  or ☒ Other (Name & Date): Sage Environmental
☒ Previous determination(s). File no. and date of response letter: SPK-2017-00113 (June 28, 2017); SPK-2016-00388, PJD (August 26, 2016)
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Wetland= 0.02 ac
Pond= 0.5 ac
Pond Outflow Channel= 690 linear feet (0.22 ac)
Overflow Ditch= 179 linear feet
Seep Channel= 70 linear feet

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Plumbtree Estates (Walter Plumb), 37.3-acre project site, Spanish Fork, Utah	File No.: SPK-2016-00388	Date: September 21, 2017

Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
→	APPROVED JURISDICTIONAL DETERMINATION	D
	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/cecw/pages/reg_materials.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 (address on reverse). 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 (address on reverse). 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 division engineer (address on reverse). 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:

(b) (6)
Project Manager, Nevada-Utah Section
U.S. Army Corps of Engineers
Bountiful Regulatory Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010
Phone: (801) 295-8380, FAX 801-295-8842
Email: (b) (6) @usace.army.mil

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

(b) (6)
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX 415-503-6646
Email: (b) (6) @usace.army.mil

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.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

REQUEST FOR AQUATIC RESOURCES DELINEATION VERIFICATION

OR JURISDICTIONAL DETERMINATION

A separate jurisdictional determination (JD) is not necessary to process a permit. An Approved Jurisdictional Determination (AJD) is required to definitively determine the extent of waters of the U.S. and is generally used to disclaim jurisdiction over aquatic resources that are not waters of the U.S., in cases where the review area contains no aquatic resources, and in cases when the recipient wishes to challenge the water of the U.S. determination on appeal. Either an Aquatic Resources Delineation Verification or a Preliminary Jurisdictional Determination (PJD) may be used when the recipient wishes to assume that aquatic resources are waters of the U.S. for the purposes of permitting. In some circumstances an AJD may require more information, a greater level of effort, and more time to produce. If you are unsure which product to request, please speak with your project manager or call the Sacramento District's general information line at (916) 557-5250.

I am requesting the product indicated below from the U.S. Army Corps of Engineers, Sacramento District, for the review area located at:

Street Address: 1412 South Mill Road City: Spanish Fork County: Utah
State: Utah Zip: 84660 Section: 25, 26 Township: 8 South Range: 2 East
Latitude (decimal degrees): 40.0917 Longitude (decimal degrees): -111.6747
The approximate size of the review area for the JD is 37.3 acres. **(Please attach location map)**

Choose one:
- (•) I own the review area
- ( ) I hold an easement or development rights over the review area
- ( ) I lease the review area
- ( ) I plan to purchase the review area
- ( ) I am an agent/consultant acting on behalf of the requestor
- ( ) Other: _____

Choose one product:
- ( ) I am requesting an Aquatic Resources Delineation Verification
- (•) I am requesting an Approved JD
- ( ) I am requesting a Preliminary JD
- ( ) I am requesting additional information to inform my decision about which product to request

Reason for request: (check all that apply)
- [ ] I need information concerning aquatic resources within the review area for planning purposes.
- [ ] I intend to construct/develop a project or perform activities in this review area which would be designed to avoid all aquatic resources.
- [ ] I intend to construct/develop a project or perform activities in this review area which would be designed to avoid those aquatic resources determined to be waters of the U.S.
- [ ] I intend to construct/develop a project or perform activities in this review area which may require authorization from the Corps; this request is accompanied by my permit application.
- [ ] I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district's list of navigable waters under Section 10 of the Rivers and Harbors Act of 1899 and/or is subject to the ebb and flow of the tide.
- [ ] My lender, insurer, investors, local unit of government, etc. has indicated that an aquatic resources delineation verification is inadequate and is requiring a jurisdictional determination.
- [x] I intend to contest jurisdiction over particular aquatic resources and request the Corps confirm that these aquatic resources are or are not waters of the U.S.
- [ ] I believe that the review area may be comprised entirely of dry land.
- [ ] Other: _____

Attached Information:
- [x] Maps depicting the general location and aquatic resources within the review area consistent with Map and Drawing Standards for the South Pacific Division Regulatory Program (Public Notice February 2016, http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/)
- [ ] Aquatic Resources Delineation Report, if available, consistent with the Sacramento District's Minimum Standards for Acceptance (Public Notice January 2016, http://1.usa.gov/1V68lYa)

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the review area. Your signature shall be an affirmation that you possess the requisite property rights for this request on the subject property.

*Signature: _____ Date: July 18th 2017
Name: Walter J. Plumb III Company name: Plumb Holdings
Address: 201 South Main Suite 2000
Salt Lake City, Utah 84111
Telephone: 801-456-4143 Email: drwjplumb@gmail.com

***Authorities:** Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332.
Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.
Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.
Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

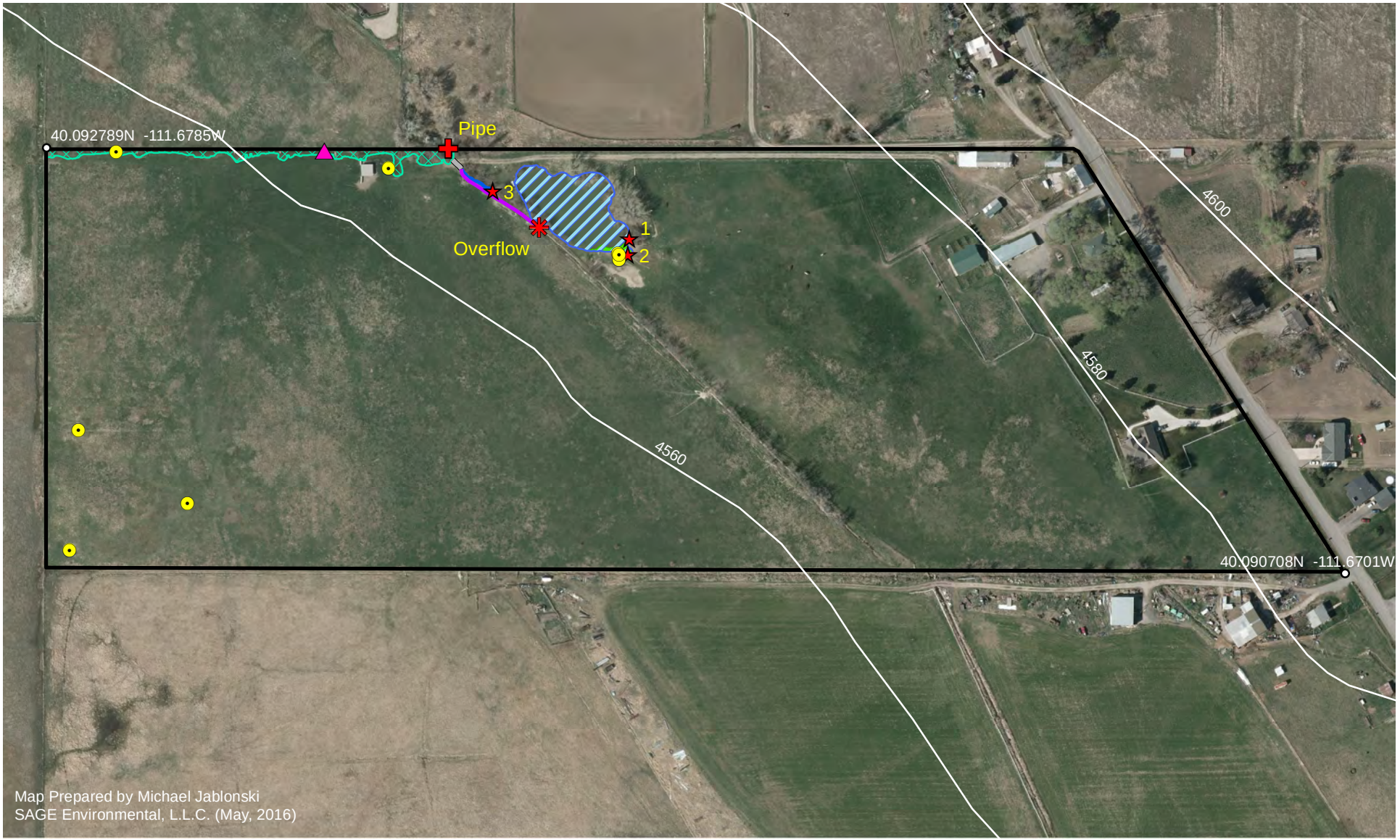
Map 1. Plumbtree Estates Location
Utah County, Utah
T8S R2E Sections 25, 26

N

0 0.375 0.75 1.5 Miles

Project Area (37.3 acres)

USGS 7.5 Minute Quadrangle: Spanish Fork



Map 2. Plumbtree Estates Project Area

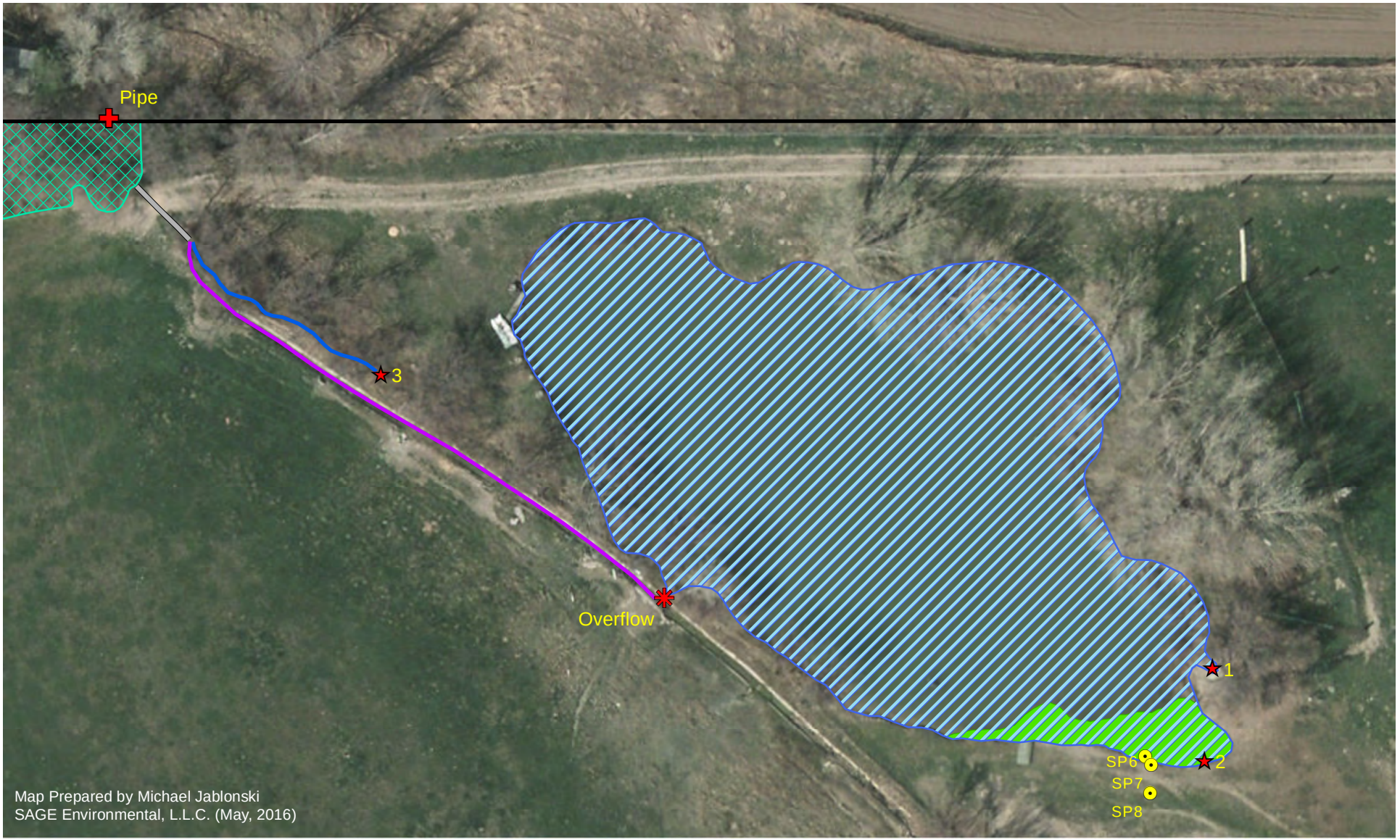
1 inch = 254 feet Contour Interval = 20 feet

0 150 300 600 Feet

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

- Project Area (37.3 acres)
- Pond (0.5 acres)
- Pond Outflow Channel (0.22 acres)
- Wetland (0.02 acres)
- Seeps/Springs
- Seep Channel (70 feet)
- Pond Overflow
- Overflow Ditch (179 feet)
- Pipe
- Culvert
- Sample Points
- Channel Cross Section



Map 3. Plumbtree Estates Pond Area

1 inch = 42 feet

0 25 50 100 Feet

N

Project Area (37.3 acres)

Pond (0.5 acres)

Pond Outflow Channel (0.22 acres)

Wetland (0.02 acres)

Seeps/Springs

Seep Channel (70 feet)

Pond Overflow

Overflow Ditch (179 feet)

Pipe

Culvert

Sample Points

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

Map 4. Plumbtree Estates Pond Outflow Channel Area

1 inch = 135 feet

Contour Interval = 20 feet

0 80 160 320 Feet

N

Imagery Source: USDA National Agriculture Inventory Program (NAIP) 2012

Coordinate System: UTM Zone 12N Datum: North American 1983

- Project Area (37.3 acres)
- Pond (0.5 acres)
- Pond Outflow Channel (0.22 acres)
- Wetland (0.02 acres)
- Seeps/Springs
- Seep Channel (70 feet)
- Pond Overflow
- Overflow Ditch (179 feet)
- Pipe
- Culvert
- Sample Points
- Channel Cross Section

SAGE environmental

phase I • site investigation • risk assessment • remediation
NEPA • permitting • hazardous materials • UST

July 19, 2017

(b) (6)
U.S.Army Corps of Engineers
Bountiful Field Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010

RE: Request for Approved Jurisdictional Determination for Plumbtree Estates project area

Dear (b) (6):

As we have discussed via email, my client would like to request an Approved Jurisdictional Determination for the Plumbtree Estates project area. The aquatic resources delineation for this area has already been submitted and a Preliminary Jurisdictional Determination has been issued.

The aquatic resources delineation report for the Plumbtree Estates project area described a connection for the aquatic resources within the project area to waters of the U.S. downstream via surface flows over the property adjacent to the west. This property is part of the Creer Parcels project area for which an Approved Jurisdictional Determination has been issued. The Approved JD for the Creer Parcels project area found the aquatic resources within that project area to be "isolated" from other waters of the U.S.

Since the Plumbtree Estates aquatic resources are only connected to other waters of the U.S. via the Creer Parcels project area and no connection was found for the aquatic resources within the Creer Parcels to other waters of the U.S., it is apparent that there is also no connection between the aquatic resources within the Plumbtree Estates and other waters of the U.S. Thus, the aquatic resources within the Plumbtree Estates are also "isolated". We are requesting an Approved JD for the Plumbtree Estates project area in order to verify this status.

Attached to this letter is a completed Request for Aquatic Resources Delineation Verification or Jurisdictional Determination form. If you have any questions or need any additional information from me, please let me know.

Sincerely,
SAGE Environmental, L.L.C.

Cindy Johnson

Cindy Johnson
Senior Wetland Ecologist