

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):**

March 7, 2013

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:** Mr. Edward Rose, Martin Marietta Materials, Inc., 3325 Paddocks Parkway, Suite 350, Suwanee, Georgia 30024.

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Savannah District, Martin Marietta Tyrone Quarry, SAS-2013-00120

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:** an existing quarry site associated with the property located at 245 Rockwood Road in Tyrone, located east of Line Creek, west of Senoia Road and south of Lake Tyrone, in Fayette County, Georgia.

**(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)**

State: GA County/parish/borough: Fayette City:  
Center coordinates of site (lat/long in degree decimal format): Lat. 33.44356° N, Long. -84.62404° W.  
Universal Transverse Mercator:  
Name of nearest water body: Line Creek

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

Non-wetland waters: 160 linear feet: width (ft) and/or 0.08 acres.  
Cowardin Class: Riverine  
Stream Flow: Perennial  
Wetlands: acres.  
Cowardin Class:

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

Tidal:  
Non-Tidal:

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

- Office (Desk) Determination. Date: February 15, 2013 (CESAS-RD-P)
- Field Determination. Date(s): January 16, 2013 (Agent)

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 JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (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.

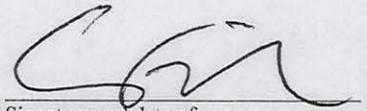
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has 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) that 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) that 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) that 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) that 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

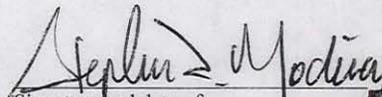
issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This expanded 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 expanded preliminary JD (check all that apply - checked items should 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:
  - Survey Signed by Registered Land Surveyor
  - GPS Survey with GPS Datasheet
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. Please see Attachment IV.
- 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:
- Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- Geological Survey map(s). Cite scale & quad name: Please see Figure 1.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Please see Figure 10.
- National wetlands inventory map(s). Cite name: Please see Figure 11.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Please see Figure 9.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Please see Figures 2, 3, 4, & 13.
  - Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify): Please see Figures 5, 6, 7, & 8.

**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.**

  
 Signature and date of  
 Regulatory Project Manager  
 (REQUIRED) 03/07/2013

  
 Signature and date of  
 person requesting expanded preliminary JD  
 (REQUIRED, unless obtaining the signature  
 impracticable) 03/07/2013



**Appendix E (Addendum to Appendix D)**  
**(Revised January 4, 2013)**

**APPROVED JURISDICTIONAL DETERMINATION FORM FOR ISOLATED AND OTHER NON-  
JURISDICTIONAL WATERS**

**SECTION I: SUMMARY OF FINDINGS**

**A. INTRASTATE AND NON-NAVIGABLE WATERS, INCLUDING WETLANDS:**

(If **both** boxes under Section I.A are not checked then this form does not apply; use Appendix B)

■ If potential waters were assessed within the review area, these aquatic features exist or occur within the boundaries of a single state and are thus intrastate. Basis for decision (explain intrastate designation):

The sludge pit is located on fenced and security patrolled private property. The sludge pit was created between 1942 and 1958 contemporaneously with opening of Tyrone Quarry (Figures 1, 2, 3 & 4). Internal to the mining process the sludge pit serves as a secondary settling pond/basin. The primary settling pond(s) is located due east of the sludge pit (Figure 2). The sludge pit is subject to frequent hydrological variation (e.g., artificially flooded, irregularly exposed, temporarily flooded, etc.) due varying water flows, that are entirely dependent on factors such as the economy, market demands, specific project demands, etc. Thus, said waters are intrastate.

■ If potential waters were assessed within the review area, these areas are non-navigable. Basis for decision (explain non-navigable designation):

The sludge pit is wholly contained within a secured and privately owned property. Additionally, the sludge pit does not maintain the necessary hydrologic regime and it is separated from Lake Tyrone by pipework. The sludge pit is approximately (~) 19.5 line-of-sight and 27.5 stream miles from the Flint River, a TNW. As such, the sludge pit is non-navigable (Figure 12).

**B. ISOLATED, NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:** (If **one** of the two boxes under Section I.B is not checked then this form does not apply; use Appendix B)

**1. Non-Wetland Waters**

■ If potential non-wetland waters were assessed within the review area, these areas have a bed and bank or display indicators of an Ordinary High Water Mark (See 33 CFR 328.3(e) and RGL 05-05).

a. Summarize rationale supporting conclusion that waters, including wetlands, are isolated:

■ No hydrologic connectivity connecting isolated water(s), including wetland(s), to downstream traditional navigable water. Basis for decision (factors to consider but not limited to landscape position, location within the watershed, proximity to a TNW):

The sludge pit is wholly contained within a secured and privately owned mining property. Additionally, the sludge pit does not maintain the necessary hydrologic regime; it is separated from Lake Tyrone by pipework; the sludge pit is ~19.5 line-of-sight and 27.5 stream miles from the Flint River, a TNW. As such, the sludge pit is non-navigable (Figure 12).

■ No ecological connectivity connecting isolated water(s), including wetland(s), to downstream navigable traditional water. Basis for decision (factors to consider but not limited to habitat and lifecycle support functions for fish and other aquatic species):

As discussed, the sludge pit has an anthropogenically controlled, variable hydrology. The "headwater" of the sludge pit is an offsite detention facility located on Shamrock Industrial Park property (Figure 2). At times, the sludge pit is inhabited by beavers (*Castor canadensis*), which creates temporarily impounded conditions and/or irregular settling patterns within the sludge pit; that is the case as of this writing. At times, the sludge pit is essentially devoid of water and/or intermittently exposed. With the exceptions of rainfall events, the volume of water entering/exiting the sludge pit is entirely controlled by mine operations.

b. Summarize rationale supporting conclusion that waters, including wetlands, have no substantial nexus to interstate (or foreign) commerce:

■ Water(s), including wetland(s), are not and could not be used by interstate or foreign travelers for recreational or other purposes.

Explain: As previously discussed, the sludge pit is wholly contained within a secured and privately owned mining property. Additionally, the sludge pit does not maintain the necessary hydrologic regime for navigation; it is separated from Lake Tyrone by pipework and a two-track road; and the sludge pit is ~19.5 and 27.5 stream miles from the Flint River, a TNW. As such, the sludge pit is non-navigable and cannot be used by interstate or foreign travelers for recreational or other purposes (Figure 12).

■ Water(s), including wetland(s), are not and could not be used for fish or shellfish production, taken and sold in interstate or foreign commerce.

Explain: The sludge pit is a fresh water settling cell enveloped within a surface mining process. The sludge pit and any wetlands located in the sludge pit are not and could not be used for fish or shellfish production, taken and sold in interstate or foreign commerce (Figure 1).

■ Water(s), including wetland(s), are not and could not be used for industrial purposes by industries in interstate commerce.

Explain: The sludge pit is used for mining purposes. However, finished product (e.g., aggregate rock, etc.) is only sold to customers in the State of Georgia. Because of other operating quarries in the region, costs associated with fuel, and haulage pricing, truck traffic from the quarry services clientele within a 30 mile range. Thus the sludge pit is not used for industrial purposes by industries in interstate commerce.

Other substantial nexus to interstate (or foreign) commerce.

Explain:

Basis for decision (explain):

## 2. Wetlands

If potential wetlands were assessed within the review area, these areas meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

a. Summarize rationale supporting conclusion that waters, including wetlands, are isolated:

No hydrologic connectivity connecting isolated water(s), including wetland(s), to downstream traditional navigable water. Basis for decision (factors to consider but not limited to landscape position, location within the watershed, proximity to a TNW):

No ecological connectivity connecting isolated water(s), including wetland(s), to downstream navigable traditional water. Basis for decision (factors to consider but not limited to habitat and lifecycle support functions for fish and other aquatic species):

b. Summarize rationale supporting conclusion that waters, including wetlands, have no substantial nexus to interstate (or foreign) commerce:

Water(s), including wetland(s), are not and could not be used by interstate or foreign travelers for recreational or other purposes. Explain:

Water(s), including wetland(s), are not and could not be used for fish or shellfish production, taken and sold in interstate or foreign commerce. Explain:

Water(s), including wetland(s), are not and could not be used for industrial purposes by industries in interstate commerce. Explain:

Other substantial nexus to interstate (or foreign) commerce. Explain:

Basis for decision (explain):

### 3. Summary

Provide acreage estimates for non-jurisdictional waters in the review area using best professional judgment (check all that apply):

Non-wetland waters (i.e., rivers, streams): \_\_\_\_\_ linear feet, \_\_\_\_\_ width (ft).

Lakes/ponds: \_\_\_\_\_ acres

Other non-wetland waters: ~8.6 acres. List type of aquatic resource: sludge pit.

Wetlands: \_\_\_\_\_ acres

### C. ISOLATED, NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS POTENTIALLY REGULATED BY THE "MIGRATORY BIRD RULE":

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).

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): \_\_\_\_\_ linear feet, \_\_\_\_\_ width (ft).

Lakes/ponds: \_\_\_\_\_ acres

Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_

Wetlands: \_\_\_\_\_ acres

**SECTION II: DATA SOURCES**

**A. SUPPORTING DATA.** Data reviewed for expanded preliminary JD (check all that apply - checked items should 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:
  - Survey Signed by Registered Land Surveyor
  - GPS Survey with GPS Datasheet
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  - Geological Survey Hydrologic Atlas:
    - USGS NHD data.
    - USGS 8 and 12 digit HUC maps.
- Geological Survey map(s). Cite scale & quad name: Please see Figure 1.
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 Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify): Please see Figures 5, 7, & 8.

**A. ADDITIONAL COMMENTS TO SUPPORT JD:**

Please see Figure 6 & 12.

*Handwritten signature and date: 1/21/2013*