

Appendix G

**I-73 North Approved
Jurisdictional Determinations**



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

December 14, 2009

Regulatory Division

Mr. Randy Williamson, P.E.
South Carolina Department of Transportation
P.O. Box 191, 955 Park Street
Columbia, South Carolina 29201

Re: SAC 2008-01333-DJS
SCDOT PIN 36358 RD01
I-73, North Segment Highway Project
Dillon and Marlboro Counties

Dear Williamson:

This is in response to LPA Group's letter of June 17, 2008, requesting a wetland determination, on behalf of South Carolina Department of Transportation, for a proposed roadway corridor including approximately 3,716 acres, located Dillon and Marlboro Counties, South Carolina. The project area is depicted on the enclosed sketches entitled "Proposed Interstate 73, Wetland Delineation, Richmond, Scotland Counties, N.C., and Marlboro, Dillon Counties, S.C." and dated June 17, 2008.

You have requested that this office delineate the wetlands or other waters of the United States within the regulatory authority of this office. Based on an on-site inspection, a review of aerial photography, topographic maps, National Wetland Inventory maps and soil survey information, it has been concluded that the boundaries shown on the referenced sketch are a reasonable approximation of the location and boundaries of the wetlands found on this site. The property in question contains approximately 21.04 acres, including a total of approximately 22,911 linear feet of jurisdictional tributaries, of federally defined freshwater wetlands or other waters of the United States subject to the jurisdiction of this office. However, you are cautioned that this delineation is approximate, subject to change, and should be used for planning purposes only. This office should be contacted prior to performing any work in or around these approximated wetlands or other waters of the United States. In order for a more accurate delineation to be provided, these areas should be located and marked on-site, and surveyed and platted on a map (in order for the wetland line to be reproduced in the future based solely on the platted map). Upon receipt of such a plat, this office can then issue a letter verifying the accuracy of the actual jurisdictional boundaries. You should also be aware that the areas identified as wetlands or other waters of the United States may be subject to restrictions or requirements of other state or local government entities.

Please note that the actual boundary of wetlands is approximate and, therefore, is subject to change and not appealable; however, the determination of jurisdiction over these wetlands is final and this approved jurisdictional determination is an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR 331. The administrative appeal options, process and appeals request form is attached for your convenience and use. If a permit application is forthcoming as a result of this delineation, a copy of this letter, as well as the verified sketch should be submitted as part of the application. Otherwise, a delay could occur in confirming that a delineation was performed for the permit project area.

Please be advised that this determination is valid for five (5) years from the date of this letter unless new information warrants revision of the delineation before the expiration date. All actions concerning this determination must be complete within this time frame, or an additional determination and delineation must be conducted.

In future correspondence concerning this matter, please refer to SAC 2008-1333-DJS. You may still need state or local assent. If you have any questions concerning this matter, please contact Stephen A. Brumagin at 803-253-3445.

Sincerely,

Travis G. Hughes
Chief, Special Projects Branch

Enclosures:
Approved Jurisdictional Determination Form
Notification of Appeal Options
Rapanos Forms

Copy Furnished with Rapanos Forms:

The LPA Group, Incorporated
Ms. Renée Y. Flinchum-Bowles
P.O. Box 5805, 700 Huger Street
Columbia, South Carolina 29250

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

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): October 19, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Charleston District, I-73 North Jurisdictional Determination, SAC 2008-01333-DJS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: Marlboro and Dillon Counties City:
Center coordinates of site (lat/long in degree decimal format): Lat. See below ° **N**, Long. See below ° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: See below

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows:

Name of watershed or Hydrologic Unit Code (HUC): 03040201-010 Little Pee Dee and 03040201-050 Great Pee Dee Watershed

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: October 5, 2009

Field Determination. Date(s): Numerous dates for some of the below listed features

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 waters² (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: width (ft) 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:

Feature	Length (L.F.)	Lat.	Long.
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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.

S-181	1002.9 feet		34.786760	-79.658814
S-183	2157.78 feet		34.775489	-79.658110
S-184	284.66 feet		34.759922	-79.651031
S-185	640.74 feet		34.760059	-79.649989
S-186(ML-4)	857.25 feet		34.744816	-79.633857
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S-228	721.87 feet		34.448939	-79.558917
S-233	976.44 feet		34.431621	-79.549003
S-234	59.47 feet		34.431270	-79.545109
S-235	1215.07 feet		34.429038	-79.548436
S-236	962.81 feet		34.427907	-79.545049
S-237	848.96 feet		34.426026	-79.549426
S-238	1029.54 feet		34.421486	-79.541673
S-242	572.34 feet		34.406512	-79.519338
S-247	1995.92 feet		34.391991	-79.496181
S-248	647.70 feet		34.394277	-79.498459
S-250	585.96 feet		34.393903	-79.497888
S-252	481.57 feet		34.393372	-79.496729
D-66	725 feet		34.391860	-79.504850

Although these features are indicated by the consultant as blue lines on the supplied aerial and topographic mapping, these include drainage features have been created in uplands for the purpose of draining predominantly upland areas. These features provide for movement of surface waters away from agricultural fields, pine plantations, and roadways. These features are not tributaries, do not have indication of ordinary high water marks, and are not considered to be Non-Relatively Permanent Waters. .

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 waterbody⁴ 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: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

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

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.

(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):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> 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):

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

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁶A 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.

⁷Ibid.

(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 width (ft), 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 width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ 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 width (ft).

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 jurisdictional. 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: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior 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.

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

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .
- Wetlands: acres.

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):

Feature	Length (L.F.)	Lat.	Long.
S-181	1002.9 feet	34.786760	-79.658814
S-183	2157.78 feet	34.775489	-79.658110
S-184	284.66 feet	34.759922	-79.651031
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D-66	725 feet	34.391860	-79.504850

Although these features are indicated by the consultant as blue lines on the supplied aerial and topographic mapping, these include drainage features have been created in uplands for the purpose of draining predominantly upland areas. These features provide for movement of surface waters away from agricultural fields, pine plantations, and roadways. These features are not tributaries, do not have indication of ordinary high water marks, and are not considered to be Non-Relatively Permanent Waters. .

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.

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, width (ft).
- 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: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - 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: .
- 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):(1999) .
 - or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify):LIST ALL WATERS, LAT/LONG AND LF HERE. Then general statement when field viewed and why not a tributary.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Feature	Length (L.F.)	Lat.	Long.
S-181	1002.9 feet	34.786760	-79.658814
S-183	2157.78 feet	34.775489	-79.658110
S-184	284.66 feet	34.759922	-79.651031
S-185	640.74 feet	34.760059	-79.649989
S-186 (ML-4)	857.25 feet	34.744816	-79.633857
S-187(ML-4)	206.94 feet	34.742832	-79.633348
S-197	1168.42 feet	34.648605	-79.643341
S-198	1566.12 feet	34.645218	-79.645406
S-201	917.64 feet	34.627673	-79.641408
S-205 (ML-21)	1396.35 feet	34.481464	-79.571038
S-206	492.78 feet	34.622322	-79.640709
S-211	1584.72 feet	34.591457	-79.623992
S-212	195.48 feet	34.587257	-79.621790
S-214	1026.28 feet	34.565876	-79.591438
S-221 & 222 (ML-44)	1396.35 feet	34.484381	-79.571658
S-228	721.87 feet	34.448939	-79.558917
S-233	976.44 feet	34.431621	-79.549003
S-234	59.47 feet	34.431270	-79.545109
S-235	1215.07 feet	34.429038	-79.548436
S-236	962.81 feet	34.427907	-79.545049
S-237	848.96 feet	34.426026	-79.549426
S-238	1029.54 feet	34.421486	-79.541673
S-242	572.34 feet	34.406512	-79.519338
S-247	1995.92 feet	34.391991	-79.496181
S-248	647.70 feet	34.394277	-79.498459
S-250	585.96 feet	34.393903	-79.497888
S-252	481.57 feet	34.393372	-79.496729
D-66	725 feet	34.391860	-79.504850

Although these features are indicated by the consultant as blue lines on the supplied aerial and topographic mapping, these include drainage features have been created in uplands for the purpose of draining predominantly upland areas. These features provide for movement of surface waters away from agricultural fields, pine plantations, and roadways. These features are not tributaries, do not have indication of ordinary high water marks, and are not considered to be Non-Relatively Permanent Waters.

The features documented on this form include wetlands or other waters that are not jurisdictional. The features exhibit no apparent connection to Waters of the U.S., including no physical, chemical, or biological connections, and no apparent shallow subsurface flow connections to other waters.

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

Applicant:	File Number:	Date:
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
X	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://usace.army.mil/inet/functions/cw/cecwo/reg> 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 Division Engineer, South Atlantic Division, 60 Forsyth St, SW, Atlanta, GA 30308-8801. 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 the Corps biologist who signed the letter to which this notification is attached. The name and telephone number of this person is given at the end of the letter.

If you only have questions regarding the appeal process you may also contact the Coordinator for Appeals in our South Atlantic Division Office in Atlanta, Georgia at (404) 562-5136.

60 Forsyth St, SW Atlanta, GA 30308-8801

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.

Signature of appellant or agent.

Date:

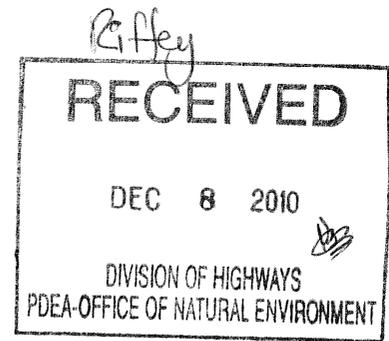
Telephone number:



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

November 30, 2010



CESAW/RG-L

Action ID: SAW-2009-02026

Dear Madam/Sir:

The US Army Corps of Engineers, Wilmington District, Regulatory Division in cooperation with the NC Department of Transportation (NC DOT) has completed a final Jurisdictional Determination (JD) on at least a portion of your property in order to fulfill planning studies for Transportation Improvement Project (TIP) I-4923 which may involve the construction of a roadway on new location from the I-74 Bypass to the North Carolina/South Carolina state line. To clarify the intent of this correspondence we have enclosed the "Property Owner JD Information Sheet" which provides additional information regarding the JD process. In accordance with our regulations, if you object to this JD, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will also 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:

District Engineer, Wilmington Regulatory Division
Attn: Ronnie Smith
69 Darlington Avenue
Wilmington, North Carolina 28403

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 District Office within 60 days of the date you received the NAP or receipt of a wetland delineation map from the NCDOT. There will be three ways for you to view the wetland delineation map, link to NCDOT's website and view the map at http://www.ncdot.org/doh/preconstruct/pe/neu/Jurisdictional_Maps.html, visit the local Division office at 902 N. Sandhills Boulevard, Aberdeen, North Carolina 28315 and view the map, or you may request a copy of the map from NCDOT by calling Mr. John Olinger at 910-944-2344. Please provide the TIP number when calling. If you do not either (1) appeal the JD within 60-days of your receipt of this notification, or (2) appeal the JD within 60-days of your receipt of the wetland delineation map, you may not appeal the JD.

It is not necessary to submit an RFA form to the District Office if you do not object to the determination in this correspondence. If you have any questions regarding this notice, please do not hesitate to contact me at 910-251-4829.

Sincerely,

A handwritten signature in black ink, appearing to be 'RS' with a long horizontal stroke extending to the right.

Ronnie Smith
Regulatory Project Manager
Wilmington Regulatory Field Office

Enclosures:

Property Owner JD Information Sheet
RFA

BCF:

CESAW-RG-L/SMITH
CESAW-RG-L/WALKER
CESAW-RG-L/McLENDON
READING FILE

Mr. Tim Johnson, P.E.
NCDOT-Division 8
Post Office Box 1067
Aberdeen, North Carolina 28315

~~Ms. Deanna Riffey~~
NCDOT-PDEA
1598 Mail Service Center
Raleigh, North Carolina 27699

Office_Address_List

First Name	Last Name	Address Line 1	City	State	ZIP Co
John & Linda	Poole	210 Oak Ridge Church Rd	Hamlet	NC	28345
J. W.	Beane	130 Grey Fox Rd	Rockingham	NC	28379
A W Stogner	Enterprise, LLC	506 Stanley Ave	Rockingham	NC	28379
Charles & Claudia	Bryant	195 Oak Ridge Church Rd	Hamlet	NC	28345
Wincie	Downer Estate	180 NC Hwy 381	Hamlet	NC	28345
Peggy N.	Farmer	P O Box 161	Hamlet	NC	28345
Lee & Christina	Eller	P O Box 1528	Hamlet	NC	28345
Francis	Mclver	617 McDonald Ave	Hamlet	NC	28345
Gary & Effie	Steen	780 NC Hwy 381	Hamlet	NC	28345
Thomas & Dena	White	P O Box 264	Norman	NC	28367
E D Pew	Timber Co, Inc	P O Box 239	Darlington	SC	29582
Lisa Lockey	Curney & Donna Locklear	436 Old Gibson Rd	Hamlet	NC	28345
JL & Sarah	Pittman	517 Rice St	Hamlet	NC	28345
Roy M	McDonald, Sr & Jr	351 Graham Bridge Rd	Rockingham	NC	28379
Wade & Irene	Lewis	98 McLean St	Hamlet	NC	28345
Richard	Stone, Jr	301 Palm St	Hamlet	NC	28345
Dao Y.	Vang	758 Richmond Rd	Rockingham	NC	28379
Z V Pate	Inc, (LBG)	P O Box 159	Laurel Hill	NC	28351
Z V Pate	Inc., (LBG)	P O Box 160	Laurel Hill	NC	28351
Benjamin & Elaine	Fewell	P O Box 4294	Rock Hill	SC	29732
Jack	Peterson	17629 Scholl Rd	Hamlet	NC	28345
Walter & Virginia	Powell	P O Box 66	Whiteville	NC	28472
Larry	Stogner	528 Louis Breeden Ave	Hamlet	NC	28345

Property Owner JD Information Sheet

The North Carolina Department of Transportation (NCDOT) is in the process of studying a new road project near your property and as part of this planning process, NCDOT has identified a study corridor for this project. The study corridor will be evaluated with a team of resource agencies along with NCDOT to establish the least environmentally damaging but still buildable alternative that meets the project's purpose and need. Within the study corridor, NCDOT has marked or flagged wetlands and streams (delineation) that fall under either the US Army Corps of Engineers (Corps) regulatory program or the North Carolina Division of Water Quality regulatory program. This office has worked closely with NCDOT on the delineation and has verified that these resources have been accurately depicted within the landscape. You should be aware that just a portion, or all of your property may fall within this study corridor. Hence, if you review the map and only a portion of your property is depicted, this delineation does not cover the remainder of your property.

As part of the disclosure process the Corps is notifying everyone who may be affected by the delineation that this work has been completed. Again this is **not a permit decision**, it is the identification of aquatic resources (wetlands and streams) subject to the Corps permitting authority. According to our agreement with NCDOT, you should be able to view the map of resources one of three ways:

1. You can link to NCDOT's website and view the map displaying aquatic resources.
2. You may view the resource map at the local DOT Division Office
3. You may request a map of the resources from NCDOT directly.

In accordance with our regulations, if you have streams or wetlands on your property you have two options; either accept the delineation or appeal the delineation by returning the appeals form (attached) to the Corps with any new information you believe would be helpful to us in making a final determination. Before returning the form to us, we recommend that you first contact the Corp representative identified in the attached letter to discuss the appeals process. In addition, in the event that you have had wetland or stream delineations conducted on this property prior to this notification, please contact the Corps representative as soon as possible to discuss your options.

Please note that the results of this study are not forwarded to local officials for any other purposes, i.e. flood insurance, zoning restrictions, etc. However, if you wish to fill any of the identified streams or wetlands you should contact the Corps to determine if there are specific permitting requirements associated with your proposal.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Affected Property Owner		File Number: SAW-2009-02026	Date: November 30, 2010
Attached is: D			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	
X	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. 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 division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

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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:

Ronnie Smith
USAED-RG
69 Darlington Avenue
Wilmington, North Carolina 28403
910-251-4829

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

Jason Steele
Administrative Appeals Review Officer
60 Forsyth Street, SW (Room 9M10)
Atlanta, GA 30303-8801
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.

Signature of appellant or agent.

Date:

Telephone number: