

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. SAW-2020-01089 County: Mecklenburg U.S.G.S. Quad: NC- Derita

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Requestor: City of Charlotte
Sharon Buchanan
Address: 600 East Fourth Street
Charlotte, NC 28202
Telephone Number: 704-336-7926
E-mail: sdbuchanan@ci.charlotte.nc.us

Size (acres)	<u>30</u>	Nearest Town	<u>Charlotte</u>
Nearest Waterway	<u>Toby Creek</u>	River Basin	<u>Upper Pee Dee</u>
USGS HUC	<u>03040105</u>	Coordinates	Latitude: <u>35.273051</u> Longitude: <u>-80.750794</u>

Location description: The review area consists of a 2.4-mile long corridor from Orr Road to Rocky River Road. Reference review area description shown in Jurisdictional Determination Request package entitled "Figure 1, Vicinity Map".

Indicate Which of the Following Apply:

A. Preliminary Determination

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

B. Approved Determination

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

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

- ☐ The **waters, including wetlands** have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on **DATE**. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- ☐ There are no waters of the U.S., to include wetlands, present on the above described project area/property which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- ☐ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in **Morehead City, NC, at (252) 808-2808** to determine their requirements.

Placement of dredged or fill material within waters of the US, including wetlands, without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). Placement of dredged or fill material, construction or placement of structures, or work within navigable waters of the United States without a Department of the Army permit may constitute a violation of Sections 9 and/or 10 of the Rivers and Harbors Act (33 USC § 401 and/or 403). If you have any questions regarding this determination and/or the Corps regulatory program, please contact **Bryan Roden-Reynolds at 704-510-1440 or bryan.roden-reynolds@usace.army.mil.**

C. Basis For Determination: Basis For Determination: See the preliminary jurisdictional determination form dated 06/25/2020.

D. Remarks: None.

E. Attention USDA Program Participants

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

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

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

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

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **Not applicable**.

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

Corps Regulatory Official: RODEN REYNOLDS.BRYAN.KENNETH.1263385574 Digitally signed by RODEN REYNOLDS.BRYAN.KENNETH.1263385574
Date: 2020.06.25 13:34:56 -04'00'

Date of JD: **06/25/2020** Expiration Date of JD: **Not applicable**

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

Copy furnished:

Agent:	<u>Kimley-Horn Associates</u>
	<u>Chris Tinklenberg</u>
Address:	<u>200 South Tryon Street, Suite 200</u>
	<u>Charlotte, NC 28202</u>
Telephone Number:	<u>704-319-7689</u>
E-mail:	<u>chris.tinklenberg@kimley-horn.com</u>

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: City of Charlotte, Sharon Buchanan	File Number: SAW-2020-01089	Date: 06/25/2020
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

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

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

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

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

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

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

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

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

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

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

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

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

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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

District Engineer, Wilmington Regulatory Division
Attn: Bryan Roden-Reynolds
Charlotte Regulatory Office
U.S Army Corps of Engineers
8430 University Executive Park Drive, Suite 615
Charlotte, North Carolina 28262

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

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

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

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

District Engineer, Wilmington Regulatory Division, Attn: Bryan Roden-Reynolds, 69 Darlington Avenue, Wilmington, North Carolina 28403

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

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

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

- A. REPORT COMPLETION DATE FOR PJD:** 06/25/2020
- B. NAME AND ADDRESS OF PERSON REQUESTING PJD:** City of Charlotte, Sharon Buchanan, 600 East Fourth Street, Charlotte, NC 28202
- C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Wilmington District, Cross-Charlotte Trail (Orr Road to Rocky River Road), SAW-2020-01089
- D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:** The review area consists of a 2.4-mile long corridor from Orr Road to Rocky River Road. Reference review area description shown in Jurisdictional Determination Request package entitled "Figure 1, Vicinity Map".

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: NC County: Mecklenburg City: Charlotte
Center coordinates of site (lat/long in degree decimal format): Latitude: 35.273051 Longitude: -80.750794

Universal Transverse Mercator:

Name of nearest waterbody: Toby Creek

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

☒ Office (Desk) Determination. Date: **06/25/2020**

☐ Field Determination. Date(s):

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

Feature	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resources in review area (acreage and linear feet, if applicable)	Type of aquatic resources (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Toby Creek	35.273987	-80.750067	4,595 linear feet	Non-wetland	404
Tributary 2	35.278933	-80.750346	128 linear feet	Non-wetland	404
Tributary 3	35.274401	-80.749517	264 linear feet	Non-wetland	404
Tributary 4	35.268194	-80.757400	76 linear feet	Non-wetland	404
Tributary 5	35.270876	-80.754107	161 linear feet	Non-wetland	404
Tributary 6	35.272099	-80.752307	37 linear feet	Non-wetland	404
Wetland 1	35.270360	-80.754486	0.1 acre	Wetland	404

1. The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of

jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply) Checked items are included in the administrative record and are appropriately cited:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:

Map: **Figures 1-5**

☒ Data sheets prepared/submitted by or on behalf of the PJD requestor. Datasheets:

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report. Rationale: _____

☐ 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: **Figure 2, USGS Topo Map (1:24,000 Derita and Harrisburg, NC)**

☒ Natural Resources Conservation Service Soil Survey. Citation: **Figure 3, SSURGO Soils (Web Soil Survey of Mecklenburg County)**

☐ National wetlands inventory map(s). Cite name:

☐ State/local wetland inventory map(s): _____

☐ FEMA/FIRM maps:

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

☒ Photographs: ☒ Aerial (Name & Date): **Figure 1, Vicinity Map (undated) and Figure 4, Preliminary JD Field Sketch (undated)**

or ☒ Other (Name & Date): **Photographs 1-10 (Dated 06/19/2020)**

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

☒ Other information (please specify): **Figure 5, Preliminary JD Field Sketch- LiDAR (undated) and NCDWQ Stream Identification Forms (Version 4.11) Dated 02/03/2020)**

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.

RODEN

REYNOLDS.BRYAN.KE

NNETH.1263385574

Digitally signed by RODEN
REYNOLDS.BRYAN.KENNETH

.1263385574

Date: 2020.06.25 13:34:32

-04'00'

Signature and date of Regulatory
staff member completing PJD
06/25/2020

Signature and date of person requesting PJD
(REQUIRED, unless obtaining the signature is
impracticable)¹

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

