



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

REPLY TO
ATTENTION OF

October 20, 2011

Regulatory Division

✓ Mr. Sean Connolly
Environmental Permit Manager
South Carolina Department of Transportation
P.O. Box 191, 955 Park Street
Columbia, South Carolina 29202

Dear Connolly:

This is in response to your letter from your consultant, AECOM, requesting a wetland determination, on behalf of the South Carolina Department of Transportation, for a 33.1 acre tract associated with the S-22 (Pleasant Road) bridge replacement across Steele Creek (SCDOT PIN 39094_RD07), located along S-22 (Pleasant Road) across Steele Creek, approximately 0.85 miles southwest of the intersection of S-22 (Pleasant Road) and Carowinds Boulevard, in York County, South Carolina. The project area is depicted on the enclosed sketch prepared by AECOM, entitled "Jurisdictional Features, S-46-22 Bridge Replacement over Steele Creek, York County, South Carolina, Figure 2" as provided by AECOM to the Corps via e-mail on April 15, 2011.

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 a review of aerial photography, topographic maps, National Wetland Inventory maps and soil survey information, and the information provided by AECOM, 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 5.32 acres of federally defined freshwater wetland (Wetland 1), 0.08 acres of a jurisdictional pond (Pond 1) and a total of 2415 linear feet of two separate waters of the United States (Steele Creek: 1759 LF and Stream 1: 656 LF) subject to the jurisdiction of this office. In addition, AECOM has identified a stormwater treatment facility identified as Wetland 2 (0.33 acres) that is not subject to the jurisdiction of this office. This is due to the fact that this stormwater basin (Wetland 2) was constructed and permitted as part of an industrial development along S-22 (Pleasant Road). 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.

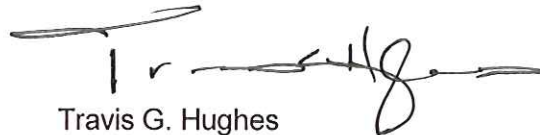
Please note that the actual boundary of wetlands is approximate and, therefore, is subject to change and not appealable; however, the determination of jurisdiction over these

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 2011-00279-DJS. If you have any questions concerning this matter, please contact Stephen A. Brumagin at 803-253-3445.

Sincerely,

A handwritten signature in black ink, appearing to read 'Travis G. Hughes', with a long horizontal flourish extending to the right.

Travis G. Hughes
Chief, Special Projects Branch

Enclosures:
Approved Jurisdictional Determination Form
Notification of Appeal Options

Copy Furnished:

Mr. Kevin Lapp, Project Biologist
AECOM
701 Corporate Center Drive, Suite 475
Raleigh, North Carolina 27607

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): September 28, 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Charleston District, Columbia Field Office, SAC2011-00297-DJS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: York Counth City: Rock Hill

Center coordinates of site (lat/long in degree decimal format): Lat. 35.089160° N, Long. -80.954450° W.

Universal Transverse Mercator:

Name of nearest waterbody: Steele Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 03050103-20 Sugar Creek 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: September 28, 2011

☒ Field Determination. Date(s): April 27, 2011

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 and are not** "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: (Steele Creek) Total 1759 linear feet, (RPW Stream 1) 652 linear feet; width Varies (ft) and/or (Pond 1 within project limits) 0.08 acres.

Wetlands: (Wetland 1 abutting Steele Creek) 5.32 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

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: Area identified as Wetland 2 is a Stormwater Basin constructed to treat stormwater from the construction of an industrial warehouse/building. Since this area was constructed and permitted as a treatment facility, it is not considered to be jurisdictional. The area identified as Wetland 2 contains 0.33 acres of non-jurisdictional waters.

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.

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: Sugar Creek Watershed 29,130 acres

Drainage area: (Stream 1) 65 acres

Average annual rainfall: based on York Co Soil Survey 46.7 inches

Average annual snowfall: based on York Co Soil Survey 2.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through 2 tributaries before entering TNW.

Project waters are 10-15 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: N/A .

Identify flow route to TNW⁵: Stream 1 to Steele Creek to Sugar Creek to Catawba River

Tributary stream order, if known: Stream 1 is First Order, Steele Creek is Third Order.

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: Some reaches of Stream 1 have been man altered due to adjacent land development and the construction of S-22 (Pleasant Road). Steele Creek is a Third Order stream that has natural appearance. This is based upon observation of stream sinuosity, stabilized banks, and absence of dredging/excavation within stream channel.

Tributary properties with respect to top of bank (estimate): for Stream 1

Average width: 3-6 feet

Average depth: 1-3 feet

Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

☒ Silts

☒ Sands

☐ Concrete

☐ Cobbles

☒ Gravel

☐ Muck

☐ Bedrock

☐ Vegetation. Type/% cover:

☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Banks are fairly stable and are mostly vegetated.

Presence of run/riffle/pool complexes. Explain: None observed.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: Based upon information provided and observation made during the field view, Stream 1 is a tributary with an established bed and bank with an ordinary high water mark. However, based on the tributary's drainage area and adjacent development, it does not appear that this tributary would have continuous flow throughout an average year. Quite likely this tributary would have continuous flow for more than three consecutive months each year. This is based upon the adjacent stormwater treatment facilities and wetlands would provide a seasonal baseline hydrology to the Stream 1 that would include continuous flow for greater than three months. Therefore the Corps determines that this tributary (Stream 1) is a Seasonal-RPW.

Steele Creek (at this location) is a third order stream that flows from North Carolina into South Carolina outside (and upstream) of the project area. During the field view the following were observed, defined bed and bank, ordinary high water mark, evidence of sediment sorting/deposition, wrack lines, and a perennial flow regime. Therefore the Corps finds that Steele Creek is not only an RPW, but is also an Interstate Water since it flows into South Carolina from North Carolina.

Other information on duration and volume: N/A.

Surface flow is: **Discrete and confined**. Characteristics: Flow for both of these tributaries are contained within the establish bed and banks.

Subsurface flow: **Unknown**. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM⁶ (check all indicators that apply):

☒ clear, natural line impressed on the bank

☐ changes in the character of soil

☐ shelving

☐ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☒ sediment deposition

☐ water staining

☐ other (list):

☐ Discontinuous OHWM.⁷ Explain:

☒ the presence of litter and debris

☐ destruction of terrestrial vegetation

☒ the presence of wrack line

☒ sediment sorting

☐ scour

☐ multiple observed or predicted flow events

☐ abrupt change in plant community

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.

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

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input 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: No discoloration or presences of pollutants were observed during the field views.

Identify specific pollutants, if known: Unknown.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☒ Wetland fringe. Characteristics: A portion of SRPW Stream 1 is abutting and flows through Wetland 1. In addition, Wetland 1 surrounds the main channel of Steele Creek.
- ☐ 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: 5.32 acres

Wetland type. Palustrine Emergent/Forested Explain: Wetlands within the project limits include areas of Palustrine Emergent wetlands and Palustrine Forested wetlands.

Wetland quality. Wetland Good Quality Explain: Wetlands appear to be located within the flood plain of Steele Creek and have only been impacted by former placement of utilities.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Wetland 1 has intermittent overland flow to SRPW Stream 1. In addition it appears that Wetland 1 receives out of bank flows from Steele Creek so flow is from Steele Creek into Wetland 1 during high flows and then flows are from Wetland 1 into Steele Creek once flows return within the banks of Steele Creek.

Surface flow is: **Overland sheetflow**

Characteristics: Flow is generally overland, however there are some natural drainage ways from former stream channels within the floodplain of Steele Creek.

Subsurface flow: **Unknown**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting Wetland 1 directly abuts Seasonal RPW (Stream 1) and Steele Creek
- ☐ Not directly abutting
- ☐ Discrete wetland hydrologic connection. Explain: .
 - ☐ Ecological connection. Explain: .
 - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **5 - 10-year** 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: Water appears to be clear and free of film.

Identify specific pollutants, if known: N/A.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☒ Vegetation type/percent cover. Explain: 50 % forested and 50% emergent within project limits.
- ☐ 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: **1**

Approximately (5.32) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
(Wetland 1) Yes	5.32 acres		

Wetland 1 is a jurisdictional wetland which has been delineated within the project limits. This wetland experiences flow overland/within ditches/watercourses both from Steele Creek and from SRPW Stream 1 not only within the project limits but in many areas along Steele Creek. Steele Creek is a tributary to Sugar Creek which flows to Catawba River (TNW). This wetland provides functions that assist or maintain the chemical and physical integrity of the TNW. Wetlands (like Wetland 1) have been shown to provide floodwater attenuation which reduces peak discharge rate and volume therefore protecting downstream streams and rivers. This attenuation also protects the receiving streams from accelerated erosion and sedimentation associated with stream scour. In addition these wetland have been shown to provide an attenuating function for the maintenance of seasonal and base flows within associated streams and rivers. Wetlands (like Wetland 1) have also been shown to provide water quality improvement to receiving stream through sediment and nutrient retention/uptake. These wetlands provide a sink for nutrient runoff and play an important role in nutrient cycling for nutrients such as nitrogen and phosphorus. In addition, wetlands provide an area where sediments can be captured and prevented from entering receiving streams. The identified wetland, Wetland 1 is providing these functions and is providing a significant nexus to the Catawba River by providing an important contribution to the chemical, physical, and biological integrity of Steele Creek, Sugar Creek, and Catawba River

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:

Significant nexus finding for seasonal RPW and abutting wetland. Explain findings of presence or absence of significant nexus below, based on the tributary, then go to Section III.D: Based upon information provided and observation made during the field view, SRPW Stream 1 is a tributary with an established bed and bank with an ordinary high water mark. However, based on the tributary's drainage area and adjacent development, it does not appear that this tributary would have continuous flow throughout an average year. It is quite likely this tributary would have continuous flow for more than three consecutive months each year. This is based upon the adjacent stormwater treatment facilities and wetlands would provide a seasonal baseline

hydrology to the Stream 1 that would include continuous flow for greater than three months. Therefore the Corps determines that this tributary (RPW Stream 1) is a Seasonal-RPW.

Wetland 1 is a jurisdictional wetland which has been delineated within the project limits. This wetland experiences flow overland/within ditches/watercourses both from Steele Creek and from SRPW Stream 1 not only within the project limits but in many areas along Steele Creek. Steele Creek is a tributary to Sugar Creek which flows to Catawba River (TNW). This wetland provides functions that assist or maintain the chemical and physical integrity of the TNW. Wetlands (like Wetland 1) have been shown to provide floodwater attenuation which reduces peak discharge rate and volume therefore protecting downstream streams and rivers. This attenuation also protects the receiving streams from accelerated erosion and sedimentation associated with stream scour. In addition these wetland have been shown to provide an attenuating function for the maintenance of seasonal and base flows within associated streams and rivers. Wetlands (like Wetland 1) have also been shown to provide water quality improvement to receiving stream through sediment and nutrient retention/uptake. These wetlands provide a sink for nutrient runoff and play an important role in nutrient cycling for nutrients such as nitrogen and phosphorus. In addition, wetlands provide an area where sediments can be captured and prevented from entering receiving streams. The identified wetland, Wetland 1 is providing these functions and is providing a significant nexus to the Catawba River by providing an important contribution to the chemical, physical, and biological integrity of Steele Creek, Sugar Creek, and Catawba River.

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: Steele Creek (at this location) is a third order stream that flows from North Carolina into South Carolina outside (and upstream) of the project area. During the field view the following were observed, defined bed and bank, ordinary high water mark, evidence of sediment sorting/deposition, wrack lines, and a perennial flow regime. Therefore the Corps finds that Steele Creek is not only an RPW, but is also an Interstate Water since it flows into South Carolina from North Carolina.

Pond 1 is adjacent to Steele Creek and has a direct connection (through Wetland 1) to RPW, Steele Creek. Pond 1 has an established bed and bank with an ordinary high water. In addition, it appears that at least a portion of Pond 1 was constructed in an area that was jurisdictional wetland. This is based on the extent and location of the wetlands that are abutting this impoundment. Therefore the Corps finds that Pond 1 is a Relatively Permanent Water.

☒ 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

Based upon information provided and observation made during the field view, Stream 1 is a tributary with an established bed and bank with an ordinary high water mark. However, based on the tributary's drainage area and adjacent development, it does not appear that this tributary would have continuous flow throughout an average year. Quite likely this tributary would have continuous flow for more than three consecutive months each year. This is based upon the adjacent stormwater treatment facilities and wetlands would provide a seasonal baseline hydrology to the Stream 1 that would include continuous flow for greater than three months. Therefore the Corps determines that this tributary (Stream 1) is a Seasonal-RPW.

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

- ☒ Tributary waters: (Steele Creek) 1759 linear feet and (Seasonal RPW Stream 1) 656 linear feet: width Varies (ft).
☒ Other non-wetland waters: (Pond 1 within project limits) 0.08 acres.

Identify type(s) of waters: Pond 1 area within project limits.

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

⁸See Footnote # 3.

directly abutting an RPW: Steele Creek as established above has been determined to be a Relatively Permanent Water. Wetland 1 is a large area of jurisdictional wetlands that directly abuts and surrounds Steele Creek and is abutting Stream 1. Based upon the fact that these wetlands directly abut Steele Creek (RPW) the wetland are jurisdictional and does not require a significant nexus determination to TNW.

- ☐ 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: (Wetland 1) 5.32 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:

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): Area identified as Wetland 2 is a Stormwater Basin constructed to treat stormwater from the construction of the Black and Decker warehouse/building. Since this area was constructed and permitted as a treatment facility, it is not considered to be jurisdictional. The area identified as Wetland 2 contains 0.33 acres of non-jurisdictional waters.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

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: Fort Mill, SC.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Page 17, Chewacla and Mecklenburg series.
- ☒ National wetlands inventory map(s). Cite name: U21, PFO1A.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): (1999) 11209:49.
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): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Based upon the information provided by the applicant and information available to the Corps, Stream 1 (unnamed tributary to Steele Creek), Steele Creek, wetlands (Wetland 1) that is directly abutting both Steele Creek and Stream 1, and an adjacent pond (Pond 1) are all jurisdictional waters of the U.S.

Steele Creek is a solid blue line on the USGS quadrangle, has a defined bed and bank, a clearly defined ordinary high water mark, and a perennial flow regime. Therefore the Corps finds that Steele Creek is a Relatively Permanent Water. In addition, Wetland 1 is a large area of jurisdictional wetlands that directly abuts both Steele Creek and Stream 1. Based upon the fact that these wetlands directly abut Steele Creek (RPW) the wetland are jurisdictional do not require a significant nexus determination to TNW.

Pond 1 is adjacent to Steele Creek and has a direct connection (through Wetland 1) to RPW, Steele Creek. Pond 1 has an establish bed and bank with an ordinary high water. In addition, it appears that at least a portion of Pond 1 was constructed in an area that was jurisdictional wetland. This is based on the extent and location of the wetlands that are abutting this impoundment. Therefore the Corps finds that Pond 1 is a Relatively Permanent Water.

SRPW Stream 1 is performing a variety of functions that relate to the physical, chemical, and biological integrity of the downstream TNW (Catawba River). SRPW Stream 1 flows directly to Steele Creek which is tributary to Sugar Creek and ultimately to the Catawba River. The physical characteristics of the tributary (SRPW Stream 1) and the abutting wetland (Wetland 1) include performing flow management functions such as retaining runoff from the adjacent residential/commercial developments and storing rainwater temporarily after storm events. Flow maintenance results in the reduction of downstream peak flows, which help to maintain seasonal flow volumes. Functions of the tributary (SRPW Stream 1) and Wetland 1 that impact the chemical integrity of the TNW (Catawba River) downstream include the filtering of excess nutrients contributed by runoff from the surrounding uplands due to residential/commercial developments which reduces nitrogen and phosphorus loading downstream. A variety of biological functions are being performed by the Seasonal RPW-Stream 1 and

abutting Wetland 1, which include providing breeding grounds and shelter for aquatic wildlife and foraging areas for water dependant species and other wildlife. This tributary and its abutting wetlands provide diversity through vegetation changes, and the tributary's upstream connection to adjacent uplands provides a riparian connection between upstream areas and the larger downstream riparian corridor. It is based upon these functions that SRPW Stream 1 and abutting Wetland 1 have a significant nexus to Catawba River by providing a substantial contribution to the integrity of the physical, chemical, and biological features of Steele Creek (RPW), Sugar Creek (RPW) and the Catawba River (TNW). Therefore the Corps finds the following jurisdictional waters documented on this form to include; two perennial RPWs (Steele Creek and SRPW Stream 1), wetlands abutting perennial RPW (Steele Creek), and a pond (direct connection to RPW-Steele Creek).

Based on guidance in RGL 07-01, perennial RPW's are subject to jurisdiction under the Clean Water Act. Seasonal RPW's are also jurisdictional under CWA, but agency policy is to provide any information in support of a Significant Nexus Determination for these tributary and their adjacent wetlands. Therefore, this office has made the determination that the waters documented on this form are jurisdictional Waters of the U.S.

In addition, area identified as Wetland 2 is a Stormwater Basin constructed to treat stormwater from the construction of adjacent industrial/commercial facilities (Black and Decker warehouse/building, etc.). Since this area was constructed and permitted as a treatment facility and were not built in an area that was formerly wetlands, this area is not considered to be jurisdictional. The area identified as Wetland 2 contains 0.33 acres of non-jurisdictional waters.

The feature Wetland 2 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: