

Appendix IV – Preliminary Jurisdictional Determination Letter



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON, SC 29403

03 July 2019

Regulatory Division

Mr. Chris Daves
S&ME, Inc.
134 Suber Road
Columbia, South Carolina 29210

Dear Mr. Daves:

This is in response to your request for a Preliminary Jurisdictional Determination (PJD) (SAC-2019-00924) received in our office on June 12, 2019, for a 354.46-acre site located along the east and west sides of I-77 in Rock Hill, York County, South Carolina (Latitude: 34.9582°, Longitude: -80.9851°). A PJD is used to indicate the approximate location(s) and boundaries of wetlands and/or other aquatic resources presumed to be waters of the United States pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344) and/or navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. § 403).

The site in question is shown on the attached depiction entitled "Delineation Exhibit Project Inspector +/- 354.46 acres" and dated July 2, 2019, prepared by S&ME, Inc. Based upon on-site inspection, a review of aerial photography, topographic maps, National Wetlands Inventory maps, soil survey information, and Wetland Determination Data Forms, it is concluded the boundaries shown on the referenced depiction are a reasonable approximation of the aquatic resources found within the site that are presumed to be subject to regulatory jurisdiction of the Corps of Engineers. The site in question contains approximately 1.06 acres of federally defined wetlands and 8,560 linear feet of tributaries that are presumed to be waters of the United States subject to regulatory jurisdiction under Section 404 of the CWA.

You are cautioned the boundaries of the delineated wetlands and/or other aquatic resources presumed to be subject to regulatory jurisdiction of the Corps of Engineers shown on the attached depiction are approximate and subject to change.

By providing this PJD, the Corps of Engineers is making no legally binding determination of any type regarding whether jurisdiction exists over the particular aquatic resource(s) in question. This PJD is not a definitive determination of the presence or absence of areas within the Corps of Engineers' jurisdiction, and, therefore, it does not have an expiration date. A PJD is "preliminary" in the sense that a recipient of a PJD can later request and obtain an Approved Jurisdictional Determination (AJD) for a definitive, official determination of the presence or absence of jurisdictional aquatic resources on a site, including the identification of the geographic limits of the jurisdictional aquatic resources. To receive a definitive jurisdiction determination, you must submit a request for an AJD.

Be aware a permit from this office may be required for certain activities in the areas identified as wetlands and/or other aquatic resources that are presumed to be subject to regulatory

jurisdiction of the Corps of Engineers, and these areas may be subject to restrictions or requirements of other state or local government entities. A PJD may be used as the basis of a permit decision; however, for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a PJD will treat all aquatic resources affected in any way by the permitted activity as jurisdictional. If you intend to request an AJD in the future, you are advised not to commence work in these wetlands and/or other aquatic resources presumed to be jurisdictional prior to receiving the AJD. Attached is a Preliminary Jurisdictional Determination Form describing the areas in question and clarifying the option to request an AJD.

Please note that this is a PJD, and is not an appealable action under the Corps of Engineers' administrative appeal procedures defined at 33 CFR 331. If a permit application is forthcoming as a result of this PJD, a copy of this letter, as well as the depiction should be submitted as part of the application. Otherwise, a delay could occur in confirming that a PJD was performed for the proposed project area.

It should also be noted that some or all of these areas may be regulated by other state or local government entities, and you should contact the South Carolina Department of Health and Environmental Control to determine the limits of their jurisdiction.

This PJD was conducted to identify approximate location(s) of aquatic resources presumed to be subject to regulatory jurisdiction of the Corps of Engineers on the particular site identified in this request. This PJD 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.

Attached is a copy of the Preliminary Jurisdictional Determination Form signed by our office. Please sign, retain a copy for your records, and return a signed copy to this office within 30 days of receipt of this letter.

In all future correspondence, please refer to file number SAC-2019-00924. A copy of this letter is being forwarded to State and/or Federal agencies for their information. If you have any questions, please contact Richard Darden at (843) 329-8043, or by email at Richard.L.Darden@usace.army.mil.

Sincerely,



2019.07.03

08:32:28 -04'00'

Amanda L. Heath
Chief, Special Projects Branch

Attachments:

Preliminary Jurisdictional Determination Form

Notification of Appeal Options

Delineation Exhibit Project Inspector +/- 354.46 acres

Copies Furnished:

Daniel Young

Executive Director

SC Department of Commerce

1201 Main Street, Suite 1600

Columbia, South Carolina 29201-3200

dyoung@sccommerce.com

SCDHEC - Bureau of Water

2600 Bull Street

Columbia, South Carolina 29201

WQCWetlands@dhec.sc.gov

SCDHEC - OCRM

1362 McMillan Avenue, Suite 400

North Charleston, South Carolina 29405

williabn@dhec.sc.gov

Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: July 2, 2019

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:

Applicant:

Mr. Daniel Young
SC Dept. of Commerce
1201 Main Street, Suite 1600
Columbia, South Carolina 29201-3200
dyoung@sccommerce.com
(803) 413-6776

Consultant:

Mr. Chris Daves
S&ME, Inc.
134 Suber Road
Columbia, South Carolina 29210

(803) 561-9024

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: SAC-2019-00924 Project Inspector

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The project is located along the east and west ROW boundaries of I-77 in Rock Hill, SC.

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

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

Center coordinates of site (lat/long in degree decimal format):

Lat.: 34.9582° Long.: -80.9851°

Universal Transverse Mercator: NAD 83

Name of nearest waterbody: Manchester Creek (south of the site)

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

☒ Office (Desk) Determination. Date: July 2, 2019

☒ Field Determination. Date(s): July 1, 2019

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

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource “may be” subject (i.e., Section 404 Section 404
Wetland A	34.9555	-80.9834	0.21 acre	wetland	Section 404
Wetland B	34.9545	-80.9814	0.17 acre	wetland	Section 404
Wetland C	34.9534	-80.9812	0.02 acre	wetland	Section 404
Wetland D	34.9525	-80.9803	0.03 acre	wetland	Section 404
Wetland E	34.9595	-80.9835	0.18 acre	wetland	Section 404
Wetland F	34.9629	-80.9841	0.01 acre	wetland	Section 404
Wetland G	34.9634	-80.9840	0.11 acre	wetland	Section 404
Wetland H	34.9637	-80.9838	0.01 acre	wetland	Section 404
Wetland I	34.9639	-80.9832	0.13 acre	wetland	Section 404
Wetland J	34.9522	-80.9877	0.19 acre	wetland	Section 404
NWW-1 (Trib)	34.9538	-80.9814	2,429 LF/0.22 ac	wetland	Section 404
NWW-1A (Trib)	34.9507	-80.9759	425 LF/0.05 ac	wetland	Section 404
NWW-2 (Trib)	34.9590	-80.9817	1,066 LF/0.12 ac	wetland	Section 404
NWW-2A (Trib)	34.9541	-80.9769	3,177 LF/0.44 ac	wetland	Section 404
NWW-3 (Trib)	34.9585	-80.9810	189 LF/0.02 ac	wetland	Section 404
NWW-4 (Trib)	34.9636	-80.9839	679 LF/0.05 ac	wetland	Section 404
NWW-4A (Trib)	34.9644	-80.9823	46 LF/0.003 ac	wetland	Section 404
NWW-5 (Trib)	34.9528	-80.9875	2,713 LF/0.37 ac	wetland	Section 404
NWW-6 (Trib)	34.9507	-80.9870	24 LF/0.01 ac	wetland	Section 404
NWW-7 (Trib)	34.9547	-80.9883	44 LF/0.01 ac	wetland	Section 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 should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- ☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: The site is depicted on a sketch prepared by S&ME, Inc. titled “Delineation Exhibit Project Inspector +/- 354.46 acres”
- ☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - ☒ 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: SAC 1977
Navigability Study
 - ☒ U.S. Geological Survey Hydrologic Atlas: HA 730-G, 1990

- ☒ USGS NHD data. USGS 8 and 12 digit HUC maps. 03050103-06 (Fishing Creek Reservoir-Catawba River Watershed (Catawba River Basin))
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 (USGS 7.5 Minute Topographic Quadrangle Rock Hill East, SC 1968)
- ☒ Natural Resources Conservation Service Soil Survey. Citation: York County Soil Survey, 1965
- ☒ National wetlands inventory map(s). Cite name: USFWS NWI Data Rock Hill East, SC Quad
- ☐ State/local wetland inventory map(s):
- ☒ FEMA/FIRM maps: 45091C0328F, 5-16-17
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): World Imagery 2017, Google Earth (1994-2017), SCDNR York County Aerial Index (1999 and 2006)
- ☒ Other (Name & Date): Site photographs provided by S&ME, Inc.
- ☐ Previous determination(s). File no. and date of response letter:
- ☒ Other information (please specify): York County LIDAR Data

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.

DARDEN.RICHARD.L
ESTER.1283257211

Digitally signed by
DARDEN.RICHARD.LESTER.12832
57211
Date: 2019.07.03 08:15:02 -04'00'

Signature and date of
Regulatory staff member
completing PJD

Chris Daves

11-18-2019

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

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor 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.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: SC Dept of Commerce		File Number: SAC-2019-00924	Date: 03 Jul 2019
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 <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: Jason W. Steele
Administrative Appeals Review Officer
USACE South Atlantic Division
60 Forsyth St, SW
Atlanta, GA 30308-8801
(404) 562-5137

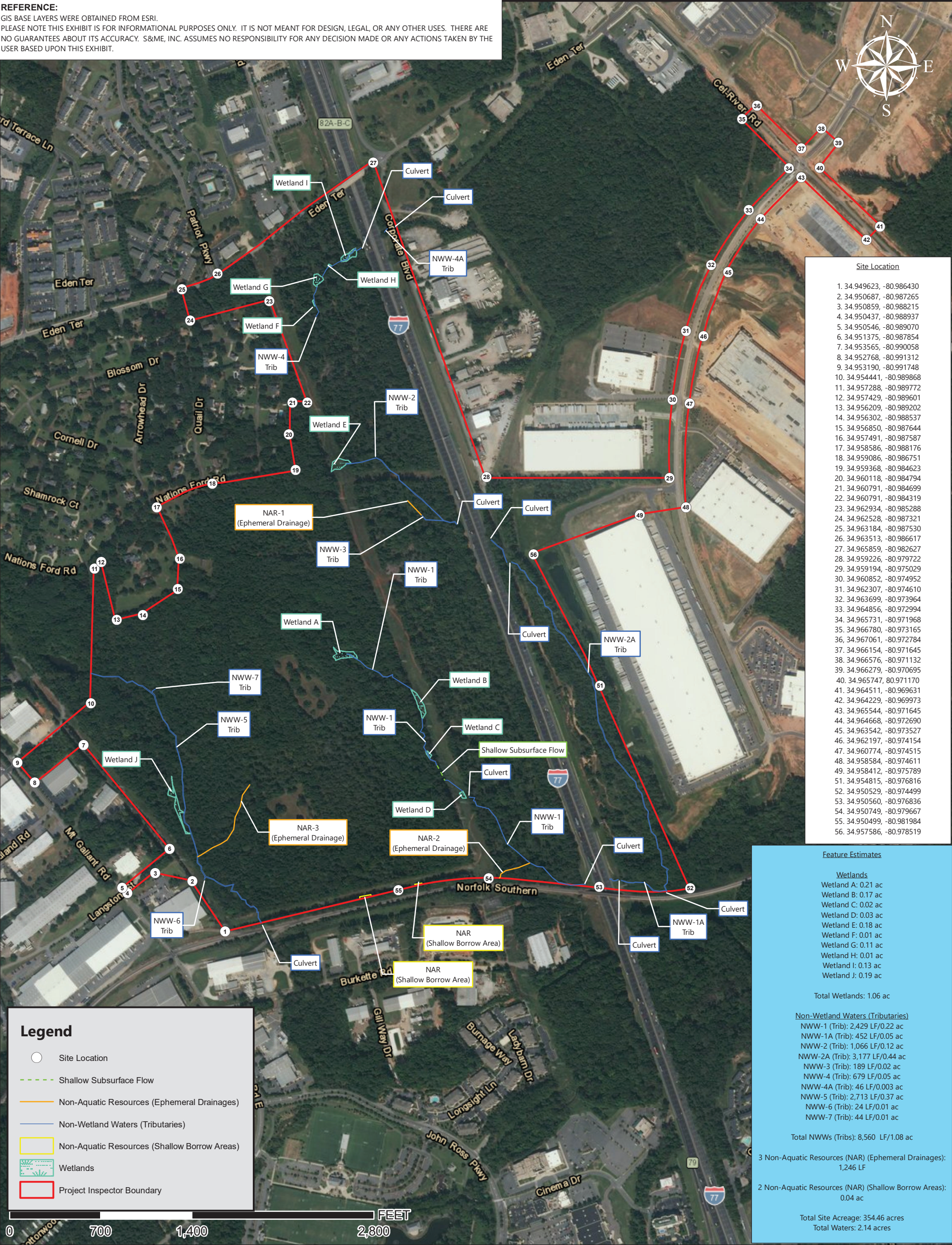
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity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

Signature of appellant or agent.

Date:

Telephone number:

REFERENCE:
GIS BASE LAYERS WERE OBTAINED FROM ESRI.
PLEASE NOTE THIS EXHIBIT IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT MEANT FOR DESIGN, LEGAL, OR ANY OTHER USES. THERE ARE NO GUARANTEES ABOUT ITS ACCURACY. S&ME, INC. ASSUMES NO RESPONSIBILITY FOR ANY DECISION MADE OR ANY ACTIONS TAKEN BY THE USER BASED UPON THIS EXHIBIT.



SCALE: 1 inch = 700 feet

DATE: 7/2/2019

DRAWN BY: CCH

PROJECT NO: 4261-19-077

Delineation Exhibit

Project Inspector +/- 354.46 Acres

Rock Hill, York County, South Carolina

Source: World Imagery 2017

EXHIBIT NO. 3

Drawing Path: T:\Projects\2019\ENV\4261-19-077_SCD\OC_Project_Inspector_Rock Hill\GIS\mxds\Revised Maps East and West\Delineation Exhibit for Corps Post Site Visit 7-2-19-1.mxd plotted by chandley 07-02-2019