

Subject: Emails - Browning Branch
From: Amie Owens <aowens@waynesvillenc.gov>
Date: 7/5/2018, 2:08 PM
To: "Monroe Miller" [REDACTED]

Email #5

SEP 26 2021



Amie Owens, MPA | Assistant Town Manager
Town of Waynesville, NC
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— ForwardedMessage.eml —

Subject: Per our discussion, wetland determination from USACE
From: Greg Wishart <gw868808@gmail.com>
Date: 5/4/2018, 3:00 PM
To: Elizabeth Teague <eteague@waynesvillenc.gov>

Please see the attached ,
Thank you,
Greg Wishart

— ForwardedMessage.eml —

Subject: Progress of review of site plan
From: Greg Wishart <gw868808@gmail.com>
Date: 5/14/2018, 6:44 AM
To: Elizabeth Teague <eteague@waynesvillenc.gov>, Marek Hevier <mhevier@gmail.com>

Good day Elizabeth,

When I met with you on Friday May 4th and presented you with the rough draft of the site plan, you had stated that you and your departments should have suggestions on revisions etc. back to me by Tuesday May 8th. I left a voicemail message on Thursday May 10th and have not heard anything back as of yet?

Could you please give me the suggestions as soon as possible?

If there is anything that I can do to make this process move along more expeditiously please let me know.

Kind regards,
Greg Wishart
828-646-1470

— ForwardedMessage.eml —

Subject: RE: [External] Re: Haywood County
From: Elizabeth Teague <eteague@waynesvillenc.gov>
Date: 3/16/2018, 11:13 AM
To: 'Greg Wishart' <gw868808@gmail.com>
CC: Byron Hickox <bhickox@waynesvillenc.gov>

Hi Greg,

Development within the floodplain requires compliance with Town Floodplain regulations. The Town's floodplain administrator is Byron Hickox. Byron's phone number to discuss with him is (828) 452-0401.

Municipalities have to assure compliance with Federal floodplain regulations for flood insurance eligibility. I've attached the regulations for your reference, Section 12.3.4 are where you will find the requirements. The floodplain permit is included in the Town of Waynesville's Land Development Permit (attached).



Elizabeth Teague, AICP, CTP, CFM | Development Services Director
Town of Waynesville, NC
9 S. Main Street | PO Box 100 | Waynesville, NC 28786
(o) 828.456.2004 | (f) 828.452.1492
eteague@waynesvillenc.gov | www.waynesvillenc.gov



From: Greg Wishart [mailto:gw868808@gmail.com]
Sent: Friday, March 16, 2018 9:10 AM
To: Elizabeth Teague; Marek Hevier
Subject: Fwd: [External] Re: Haywood County

Elizabeth,

Good day, Amy from DENR / DENQ is stating that I need to "contact the Town of Waynesville's floodplain administrator" in regards to filling the footprints of the buildings that fall into the 100 year floodplain? Is this correct? (see below in Amy's email response to me) I thought that we have to contact DENR/ DENQ for that due to the fact that the town does not have a "floodplain administrator" ? What agency is it that controls the 100 year floodplain and does the town have to sign off on that or is it totally up to the state agencies or potentially federal agencies?

Please clarify this,

Thank you,
Greg Wishart
828-646-1470

— ForwardedMessage.eml —

Subject: Re: Buchanan drive property / Mark Hevier property / PIN # 8604-94-0656
From: Greg Wishart <gw868808@gmail.com>
Date: 4/25/2018, 9:40 AM
To: Preston Gregg <pgregg@waynesvillenc.gov>, Elizabeth Teague <eteague@waynesvillenc.gov>, Marek Hevier <mhevier@gmail.com>

Preston,

How true is the layer of the property line over the water line? I would think that they put the water line exactly on the property line, unless they did a straight line?

Is there a way that water and sewer can verify exactly where that water line is?

Thank you for your help,

Greg Wishart
828.646.1470

On Tue, Apr 24, 2018 at 4:06 PM, Preston Gregg <pgregg@waynesvillenc.gov> wrote:

Ignore the first email. Attached is a better image with the parcel layer turned on.



Preston Gregg, PE, PMP | Town Engineer | Electric Manager
Town of Waynesville, NC
129 Legion Drive | Waynesville, NC 28786
(o) 828.456.3706 | (f) 828.456.2005
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From: Preston Gregg
Sent: Tuesday, April 24, 2018 4:04 PM
To: 'Greg Wishart'; Marek Hevier; Elizabeth Teague
Subject: RE: Buchanan drive property / Mark Hevier property / PIN # 8604-94-0656

See attached. Line is a 6" cast iron.



Preston Gregg, PE, PMP | Town Engineer | Electric Manager
Town of Waynesville, NC
129 Legion Drive | Waynesville, NC 28786
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Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.

From: Greg Wishart [mailto:gw868808@gmail.com]
Sent: Tuesday, April 24, 2018 3:23 PM
To: Preston Gregg; Marek Hevier; Elizabeth Teague
Subject: Buchanan drive property / Mark Hevier property / PIN # 8604-94-0656

Preston,

We met a couple of months ago at a TRC meeting.

I spoke with Elizabeth today about a water line that I have been trying to find out details about in regards to the property. She suggested that I ask you where this water line is exactly. There is not a right of way recorded by the town but it seems like the water line runs on the property line (the southern boundary) , it also feeds a fire hydrant. The attorney, Kirk Kirkpatrick did not find an easement recorded by the town.

Long story short , I need to make sure where this water line is, so that we do not plan buildings too close to it. Also, what type of pipe it is and I believe that I was told it was a 6" line by Jeff Stines?

Thank you for your help in this matter,

Greg Wishart

828-646-1470

— Attachments: —

ForwardedMessage.eml	19.2 MB
Ross(Hevier)_Approved_JD_SAW-2018-00368.pdf	14.1 MB
ForwardedMessage.eml	3.8 KB
ForwardedMessage.eml	550 KB
Land Development Permit revised 2017.pdf	278 KB
Floodplain12.docx	34.3 KB
ForwardedMessage.eml	29.6 KB



TOWN OF WAYNESVILLE
Development Services Department

PO Box 100

9 South Main Street, Suite 110

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

www.waynesvillenc.gov

Land Development Permit

This form must be accompanied by a site plan, drawn to scale, showing all proposed development and additional information if required. For commercial or multi-family development, building elevations must also be submitted.

Development Activity: _____

Property Location: _____ PIN: _____

Zoning District: _____ Overlay District (If Applicable): _____

Property Owner(s): _____

Owner Mailing Address: _____ Telephone: _____

Building Setbacks: Front _____ Street Side _____ Side _____ Rear _____ Other _____

Development Standards (Check all that apply):

Is the building located inside a flood hazard area? (If yes, Elevation Certificate required) _____

Is 1,000 square feet or greater being disturbed? (If yes, Local Grading Permit required) _____

Is one acre or greater being disturbed? (If yes, NC Sed. and Erosion Permit required) _____

Is one acre or more of impervious surface being added? (If yes, Stormwater Permit required) _____

Is a new driveway being created or an existing one altered? (If yes, Driveway Permit required) _____

Is the building located at an elevation of 2,900 feet or more? (If yes, LDS Section 12.6 applies) _____

Is project a structure within an Historic District, a Local Landmark, or on National Register?
(If yes, LDS Section 15.11 applies and a Certificate of Appropriateness may be required) _____

Is project a Manufactured Home? (If yes, LDS Sections 3.2.6, 5.9 may apply) _____

Applicant Information (If other than owner) Name: _____

Mailing Address: _____ Telephone: _____

Office Use Only

This signature authorizes use the above property described for the land development activity described. Any deviation from the activity described above shall require resubmittal, approval, and issuance of a new Land Development Permit.

Development Services Staff Signature

Date

12.3 - Flood Damage Prevention.

12.3.1 Statutory Authorization, Findings of Fact, Purpose and Objectives.

A. Statutory Authorization: The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

B. Findings of Fact:

1. The flood prone areas within the jurisdiction of the Town of Waynesville are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

C. Statement of Purpose: It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

D. Objectives. The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;

- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

12.3.2 General Provisions.

A. Applicability.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Waynesville and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

B. Basis for Establishing the Special Flood Hazard Areas.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Haywood County dated April 3, 2012, which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

Haywood County Unincorporated Area, dated July 15, 1984

Town of Waynesville, dated November 10, 1981

C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 12.3.2.B.

D. Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under State statutes.

G. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Waynesville or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

H. Penalties for Violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Waynesville from taking such other lawful action as is necessary to prevent or remedy any violation.

12.3.3 Administration.

A. Designation of Floodplain Administrator.

The Land Development Administrator, or his or her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

B. Floodplain Development Application, Permit and Certification Requirements.

(1) Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas.

The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

(ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 12.3.2.B, or a statement that the entire lot is within the Special Flood Hazard Area;

(iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 12.3.2.B;

(iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 12.3.2.B;

(v) The Base Flood Elevation (BFE) where provided as set forth in Sections 12.3.2.B; 12.3.3.C; or 12.3.3.D;

(vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

(vii) The certification of the plot plan by a registered land surveyor or professional engineer.

(b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

(i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

(ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and

(iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

(i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

(ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 12.3.4.B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.

(e) Usage details of any enclosed areas below the lowest floor.

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

(h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 12.3.4.B, subsections (6) and (7) of this ordinance are met.

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

(a) A description of the development to be permitted under the floodplain development permit.

(b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 12.3.2.B.

(c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

(d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(g)The flood openings requirements, if in Zones A, AO, AE or A1-30.

(3) Certification Requirements.

(a) Elevation Certificates.

(i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(ii)An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(iii)A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate.

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by

or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 12.3.4.B(3)(b).

(d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

(i) Recreational Vehicles meeting requirements of Section 12.3.4.B(6)(a);

(ii) Temporary Structures meeting requirements of Section 12.3.4.B(7); and

(iii) Accessory Structures less than 150 square feet meeting requirements of Section 12.3.4.B(8).

C. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

(2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.

(3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 12.3.4.F are met.

(6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 12.3.3.B(3).

(7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 12.3.3.B(3).

(8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 12.3.3.B(3).

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 12.3.3.B(3) and Section 12.3.4.B(2).

(10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(11) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 12.3.2.B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 12.3.4.D(2)(b), in order to administer the provisions of this ordinance.

(12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 12.3.2.B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

(13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and

the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(19) Follow through with corrective procedures of Section 12.3.3.D.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 12.3.2.B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

D. Corrective Procedures.

(1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) That the building or property is in violation of the floodplain management regulations;

(b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(c) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

(3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred twenty (120) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

E. Variance Procedures.

(1) The Board of Adjustment as established by the Town of Waynesville, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.

(2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

(3) Variances may be issued for:

(a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic

structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(b) Functionally dependent facilities if determined to meet the definition as stated in Section 17.4, provided provisions of Section 12.3.3.E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(c) Any other type of development, provided it meets the requirements of this Section.

(4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(a) The danger that materials may be swept onto other lands to the injury of others;

(b) The danger to life and property due to flooding or erosion damage;

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) The importance of the services provided by the proposed facility to the community;

(e) The necessity to the facility of a waterfront location as defined under Section 17.4 as a functionally dependent facility, where applicable;

(f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) A written report addressing each of the above factors shall be submitted with the application for a variance.

(6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

(7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(9) Conditions for Variances:

(a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued prior to development permit approval.

(e) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship; and

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

(a) The use serves a critical need in the community.

(b) No feasible location exists for the use outside the Special Flood Hazard Area.

(c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.

(d) The use complies with all other applicable Federal, State and local laws.

(e) The Town of Waynesville has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

12.3.4 Provisions for Flood Hazard Reduction.

A. General Standards.

In all Special Flood Hazard Areas the following provisions are required:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.

(9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the

floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

(10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 12.3.3.E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 12.3.3.B(3).

(11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

(16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

B. Specific Standards.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 12.3.2.B, or Section 12.3.4.D, the following provisions, in addition to the provisions of Section 12.3.4.A, are required:

(1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4.

(2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4. Structures

located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section 12.3.4.G(2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 12.3.3.B(3), along with the operational plan and the inspection and maintenance plan.

(3) Manufactured Homes.

(a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section 17.4.

(b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

(c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 12.3.4.B(4).

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) Shall be constructed entirely of flood resistant materials; and

(c) Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

- (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
- (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
- (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
- (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
- (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
- (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

(a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(b) Meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

(a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

(b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(e) Accessory structures shall be firmly anchored in accordance with the provisions of Section 12.3.4.A(1);

(f) All service facilities such as electrical shall be installed in accordance with the provisions of Section 12.3.4.A(4); and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 12.3.4.B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 12.3.3.B(3).

[C. Reserved.]

D. Standards for Floodplains without Established Base Flood Elevations.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 12.3.2.B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 12.3.4.A, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

(a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections 12.3.4.A and B. (b)

When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 12.3.4.B and F.

(c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 12.3.2.B and utilized in implementing this ordinance.

(d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 17.4. All other applicable provisions of Section 12.3.4.B shall also apply.

E. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of Sections 12.3.4.A and B; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

F. Floodways and Non-Encroachment Areas.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 12.3.2.B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 12.3.4.A and B, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or

(b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(2) If Section 12.3.4.F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(a) The anchoring and the elevation standards of Section 12.3.4.B(3); and

(b) The no encroachment standard of Section 12.3.4.F(1).

G. Standards for Areas of Shallow Flooding (Zone AO).

Located within the Special Flood Hazard Areas established in Section 12.3.2.B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 12.3.4.A and B, all new construction and substantial improvements shall meet the following requirements:

(1)The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of one (1) foot, or at least four (4) feet above the highest adjacent grade if no depth number is specified.

(2)Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 12.3.4.G(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section 12.3.3.B(3) and Section 12.3.4.B(2).

(3)Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action ID: SAW-2018-00368 County: Haywood U.S.G.S. Quad: Hazelwood

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner: Neal Ross
Address: 955 Allens Creek Road
Waynesville, NC 28785
Telephone Number: 828-734-2154

Size (acres): 7.04
Nearest Waterway: UT Browning Branch and
Browning Branch
River Basin/ HUC: Pigeon (06010106)

Nearest Town: Waynesville
Coordinates: 35.45526 N, 83.00066 W

Location description: The project site is located on a tract of land (PIN 8604-94-0656) along the south side of Buchanan Drive approximately 400 feet east of the intersection of Allens Creek Road and Buchanan Drive in Waynesville, Haywood County, North Carolina.

Indicate Which of the Following Apply:

A. Preliminary Determination

- There are waters, including wetlands, on the above described project area, 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. 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 are wetlands on the above described 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 of the U.S. on your 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 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 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 waters of the U.S. including wetlands on the above described 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 of the U.S. on your 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 of the U.S. including wetlands on your property have been delineated and the delineation has been verified by the Corps. If you wish to have the delineation surveyed, the Corps can review and verify the survey upon completion. Once verified, this survey will provide an accurate depiction of all areas subject to CWA and/or RHA 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 of the U.S. including wetlands have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on _____. 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 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 to determine their requirements.

Placement of dredged or fill material within waters of the US and/or 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 David Brown at 828-271-7980, ext. 4232 or david.w.brown@usace.army.mil.

C. Basis for Determination:

See attached approved jurisdictional determination form.

D. Remarks:

The waters of the U.S., at this site, were verified on-site by the Corps on March 6, 2018, and are as approximately depicted on the attached Resources Delineation Map Buchanan Drive Site – Stream and Wetland Determination/Delineation submitted by Equinox. UT-2, noted on the figure, is not within the property boundaries and is located on the adjoining property to the east.

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: Jason Steele, 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 May 6, 2018.

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

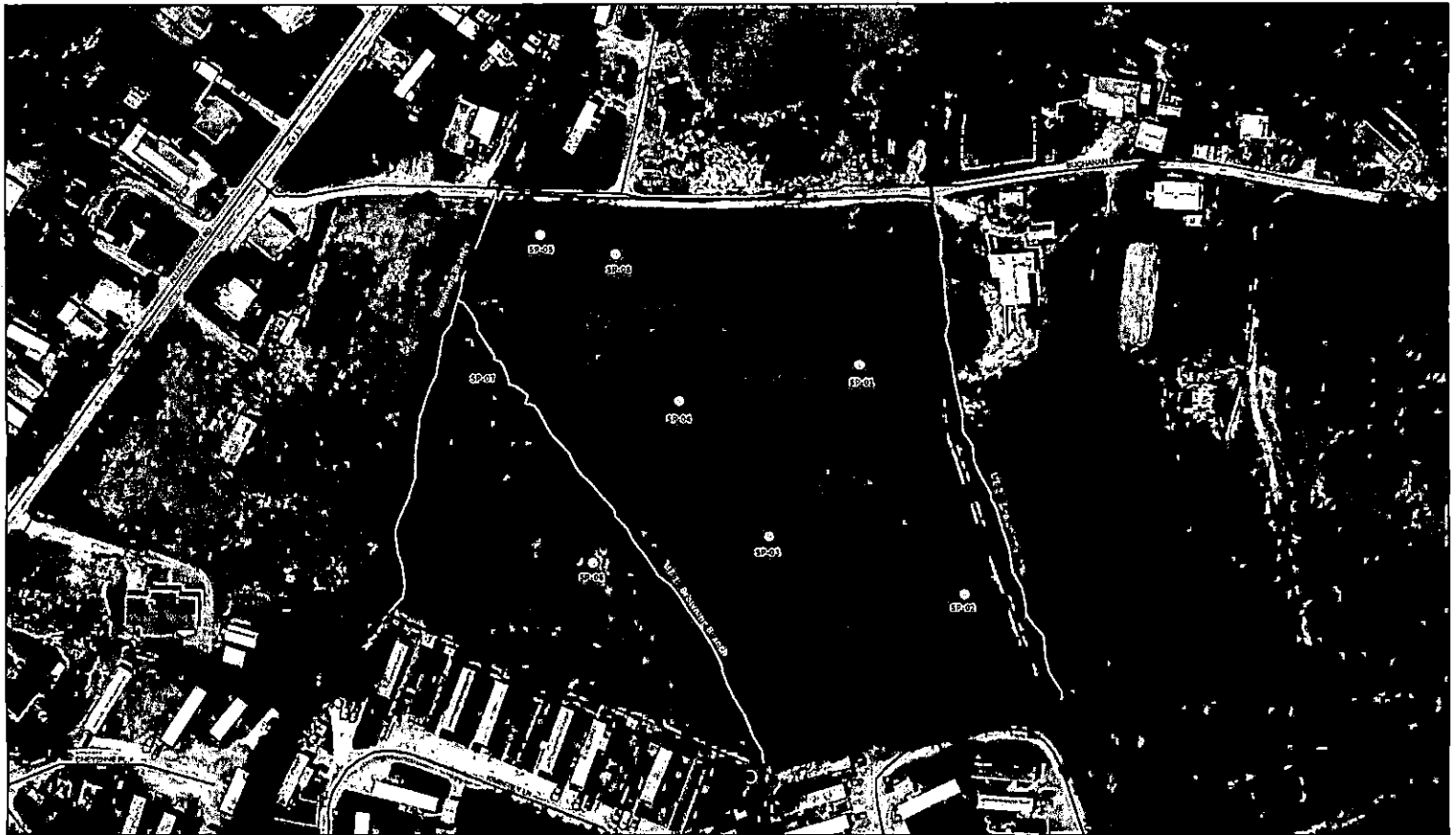
Corps Regulatory Official: 
David Brown

Issue Date of JD: March 7, 2018

Expiration Date: Five years from *Issue Date*

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 our Customer Satisfaction Survey, located online at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

Copy furnished:
Equinox Environmental, Owen Carson, 37 Haywood Street, Suite 100, Asheville, NC 28801



RESOURCES DELINEATION MAP
BUCHANAN DRIVE SITE - STREAM & WETLAND DETERMINATION / DELINEATION



- | | | |
|----------------|-------------------|-------------------|
| Subject Parcel | Delineated Stream | Upland Datapoint |
| Parcels | LIDAR Streams | Wetland Datapoint |
| Wetland Area | Streets | |

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

Applicant: Neal Ross	File Number: SAW-2018-00368	Date: March 7, 2018
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 checked="" type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D	
<input type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	E	

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

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: David Brown
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006
828-271-7980, ext. 4232

If you only have questions regarding the appeal process you may also contact:
Mr. Jason Steele, 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.: David Brown, 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. Jason Steele, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801 Phone: (404) 562-5137

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): March 7, 2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAW-RG-A, SAW-2018-00368, Buchanan Drive Development

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: NC County/parish/borough: Haywood City: Waynesville

Center coordinates of site (lat/long in degree decimal format): Latitude & Longitude in Decimal Degrees: 35.45526 N, 83.00066 W

Universal Transverse Mercator:

Name of nearest waterbody: UT Browning Branch and Browning Branch

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

Name of watershed or Hydrologic Unit Code (HUC): Pigeon (06010106)

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: March 6, 2018

Field Determination. Date(s): March 7, 2018

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There ~~Are~~^{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~~^{Are} "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: 1,081 linear feet: 3-15 width (ft) and/or acres.

Wetlands: 0.015 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: .

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: Pick/List
Drainage area: Pick/List
Average annual rainfall: inches
Average annual snowfall: inches
 - (ii) Physical Characteristics:
 - (a) Relationship with TNW:
 Tributary flows directly into TNW.
 Tributary flows through Pick/List tributaries before entering TNW.

Project waters are Pick/List river miles from TNW.
Project waters are Pick/List river miles from RPW.
Project waters are Pick/List aerial (straight) miles from TNW.
Project waters are Pick/List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .
Tributary stream order, if known: .
 - (b) General Tributary Characteristics (check all that apply):
Tributary is: Natural

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.

- Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: .

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

Average width: feet
 Average depth: feet
 Average side slopes: Pick/List.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain: .
 Tributary geometry: Pick/List
 Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick/List
 Estimate average number of flow events in review area/year: Pick/List
 Describe flow regime:
 Other information on duration and volume: .

Surface flow is: Pick/List. Characteristics: .

Subsurface flow: Pick/List. Explain findings:

- Dye (or other) test performed: .

Tributary has (check all that apply):

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

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

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

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
 Explain:
 Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): .
 Wetland fringe. Characteristics:
 Habitat for:
 Federally Listed species. Explain findings: .

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.

- Fish/spawn areas. Explain findings: .
- Other environmentally-sensitive species. Explain findings: .
- Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: Pick/List. Explain: .

Surface flow is: Pick/List

Characteristics: .

Subsurface flow: Pick/List. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are Pick/List river miles from TNW.

Project waters are Pick/List aerial (straight) miles from TNW.

Flow is from: Pick/List.

Estimate approximate location of wetland as within the Pick/List floodplain. .

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: Pick/List

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

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow

of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **UT Browning Branch and Browning Branch exhibits indicators of ordinary high water marks (OHWM) including developed bed and bank, scour, presence of aquatic life, presence of litter and debris, destruction of terrestrial vegetation, sediment sorting and deposition, and leaf litter washed away. UT Browning Branch and Browning Branch are depicted as a solid blue lines on the USGS 7.5 minute quadrangle map Hazelwood and the most current Natural Resource Conservation Service Soil Survey for Haywood County. Solid blue line features on these mapping conventions typically represent perennial streams. Perennial flow has been observed by Corps representatives during visits to the Waynesville, North Carolina vicinity.**

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

Tributary waters: 1, 081 linear feet 3-15 width (ft). **Browning Branch and UT Browning Branch (UT-1)**
 Other non-wetland waters: acres.
Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

⁸See Footnote # 3.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Flows directly into associated tributary. Wetlands are contiguous to RPWs that flow directly or indirectly into TNWs. Wetland hydrology is enhanced with abutting RPWs via normal down gradient flows and periods of high water.
- 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: 0.015 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):

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: **Equinox Environmental.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. **Equinox Environmental.**
 - 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: **Hazelwood.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Haywood County, NC** .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: **Map No. 3700860400J, effective date April 3, 2012**
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **Google Earth Pro, Nov. 2017, Oct. 2015, Mar. 2013, May 2009, Jun. 2006, Apr. 1998, and Mar. 1995**
 - 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: The stream channels at the property are UT Browning Branch (UT-1) and Browning Branch, both are RPWs. UT Browning Branch flows into Browning Branch, which flows into Richland Creek, and then flows into the Pigeon River, a traditionally navigable water (TNW) and a Section 10 River below Waterville Dam,. The Pigeon River flows into the French Broad River and merges with the Holston River to form the Tennessee River. The Tennessee River drains into the Mississippi River before entering the Gulf of Mexico.