# U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. **200901062** County: **Mecklenburg** U.S.G.S. Quad: **Charlotte East**

## NOTIFICATION OF JURISDICTIONAL DETERMINATION

RECEIVED
OCT 23 2009
By

Property Owner/Agent: **City of Charlotte - Charlotte Area Transit System**
Address: **600 East Fourth St.**
**Charlotte, NC 28202**

Telephone No.: _____

Property description:
Size (acres) **514 acres (study corridor)** Nearest Town **Charlotte**
Nearest Waterway **Little Sugar Cr./Toby Cr./Mallard Cr.** River Basin **Catawba/Yadkin**
USGS HUC _____ Coordinates N **35.2900** W **-80.7570**
Location description **CATS LYNX BLE Northeast Corridor Light Rail project located from the intersection of East 6th Street and the existing rail line and extending to the intersection of N. Tryon St. and University Blvd.**

## Indicate Which of the Following Apply:

### A. Preliminary Determination

_ Based on preliminary information, there may be wetlands on the above described property. We strongly suggest you have this property inspected to determine the extent of Department of the Army (DA) jurisdiction. To be considered final, a jurisdictional determination must be verified by the Corps. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process ( Reference 33 CFR Part 331).

### 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 and Section 404 of the Clean Water Act. 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.

X There are waters of the U.S. including wetlands on the above described project area 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 strongly suggest you have the wetlands on your property delineated. Due to the size of your property and/or our present workload, the Corps may not be able to accomplish this wetland delineation in a timely manner. For a more timely delineation, you may wish to obtain a consultant. To be considered final, any delineation must be verified by the Corps.

X The waters of the U.S. including wetland on your project area have been delineated and the delineation has been verified by the Corps. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.

_ The 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 property which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

- The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 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). If you have any questions regarding this determination and/or the Corps regulatory program, please contact **Steve Chapin** at **(828) 271-7980 x224**.

## C. Basis For Determination

**Mallard Creek>Rocky River>Yadkin River which is navigable-in-fact at Blewett Falls dam. Little Sugar Creek>Sugar Creek>Catawba River which is navigable-in-fact at Lake Wylie.**

## D. Remarks

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## E. 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:

District Engineer, Wilmington Regulatory Division
Attn:Steve Chapin, Project Manager,
Asheville Regulatory Field Office
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the District Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **12/21/09**.

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

Corps Regulatory Official: Steve Chapin

Date **10/21/2009** Expiration Date **10/21/2014**

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete the attached customer Satisfaction Survey or visit http://www.saw.usace.army.mil/WETLANDS/index.html to complete the survey online.

| NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL | | |
|---|---|---|
| Applicant: City of Charlotte - Charlotte Area Transit System | File Number: 2009-01062 | Date: 10/21/09 |
| Attached is: | | See Section below |
| ☐ INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | | A |
| ☐ PROFFERED PERMIT (Standard Permit or Letter of permission) | | B |
| ☐ PERMIT DENIAL | | C |
| ☒ APPROVED JURISDICTIONAL DETERMINATION | | D |
| ☐ PRELIMINARY JURISDICTIONAL DETERMINATION | | E |

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

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

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

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

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

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

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

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

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| If you have questions regarding this decision and/or the appeal process you may contact:<br>Steve Chapin<br>USACE<br>151 Patton Avenue, Room 208<br>Asheville, NC 28801-5006 | If you only have questions regarding the appeal process you may also contact:<br>Mr. Mike Bell, Administrative Appeal Review Officer<br>CESAD-ET-CO-R<br>U.S. Army Corps of Engineers, South Atlantic Division<br>60 Forsyth Street, Room 9M15<br>Atlanta, Georgia 30303-8801 |

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

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| _____<br>Signature of appellant or agent. | Date: | Telephone number: |

**For appeals on Initial Proffered Permits and approved Jurisdictional Determinations send this form to:**

**District Engineer, Wilmington Regulatory Division, Attn:Steve Chapin, Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006**

**For Permit denials and Proffered Permits send this form to:**

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Mike Bell, Administrative Appeal Officer, CESAD-ET-CO-R, 60 Forsyth Street, Room 9M15, Atlanta, Georgia 30303-8801**