Regulatory Program

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 9/28/2015

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): **CESAW-RG-A, 2015-02040, Duke Energy Progress, LLC / Steve Cahoon**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:NC County/parish/borough: Buncombe City: Asheville

Center coordinates of site (lat/long in degree decimal format): Lat. 35.457222, Long.-82.543333.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☒ attached ☐ in report/map titled .

☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

☒ Office (Desk) Determination Only. Date: 9-28-2015.

☐ Office (Desk) and Field Determination. Office/Desk Date(s): Field Date(s): .

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this JD form and/or references/citations in the administrative record, as appropriate.

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: .

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report.. Title/Date: .

☐ Office does not concur with data sheets/delineation report. Summarize rationale and include information on revised data sheets/delineation report that this JD form has relied upon: . Revised Title/Date: .

☐ Data sheets prepared by the Corps. Title/Date: .

☐ Corps navigable waters study. Title/Date: .

☐ CorpsMap ORM map layers. Title/Date: .

☐ USGS Hydrologic Atlas. Title/Date: .

☐ USGS, NHD, or WBD data/maps. Title/Date: .

☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

☒ USGS maps. Scale & quad name and date: NC- Skyland quad 1:24,000

☒ USDA NRCS Soil Survey. Citation: NRCS web soil survey, Buncombe County, NC

☐ USFWS National Wetlands Inventory maps. Citation: .

☐ State/Local wetland inventory maps. Citation: .

☐ FEMA/FIRM maps. Citation: .

☒ Photographs: ☒ Aerial. Citation: Google earth image. or ☒ Other. Citation: provided by applicant.

☐ LiDAR data/maps. Citation: .

☐ Previous determinations. File no. and date of jurisdictional determination letter: .

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

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SECTION III: SUMMARY OF FINDINGS

Complete Spreadsheet Tab "Aquatic Resources" – Required for All AJDs

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

☐ "*navigable waters of the U.S.*" within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **List water(s) and area/length within review area – Required:**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "*waters of the U.S.*" within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters or TNW).

- **Complete Spreadsheet Tab "(a)(1)" - Required**

☐ This JD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

☐ (a)(2): All interstate waters, including interstate wetlands.

- **Complete Spreadsheet Tab "(a)(2)" - Required**

☐ (a)(3): The territorial seas.

- **Complete Spreadsheet Tab "(a)(3)" - Required**

☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(4)" - Required**

☒ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(5)" - Required**

☐ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Spreadsheet Tab "(a)(6)" - Required**

☐ Bordering/Contiguous.

Neighboring:

☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(7)" for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. – Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(8)" for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. – Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

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C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

☐ The review area is comprised entirely of dry land.

☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3)

- **Complete Spreadsheet Tab "NonWaters-No SigNex". Attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. – Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

- **Complete Spreadsheet Tab "NonWaters-No SigNex". Attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. – Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Spreadsheet Tab "NonWaters-Excluded" - Required**

☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

☐ (b)(2): Prior converted cropland.

☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.[1]

☐ (b)(4)(iv): Small ornamental waters created in dry land.[1]

☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.[1]

☐ (b)(4)(vii): Puddles.[1]

☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.[1]

☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.[1]

☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Spreadsheet Tab "NonWaters-Other" - Required**

D. ADDITIONAL COMMENTS TO SUPPORT JD:

The stream channel on the property is an unnamed tributary (UT) to the French Broad River. The French Broad River is located within the French Broad-Holston watershed and eventually drains to the Gulf of Mexico. Specifically, the French Broad River merges with the Holston River to form the Tennessee River. The Tennessee River then drains to the Ohio River and then on to the Mississippi River before entering the Gulf of Mexico.

[1] In many cases these excluded features will not be specifically identified on the approved JD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Aquatic Resources

Waters_Name	Cowardin_Code	HGM_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude	Local_Waterway
Stream 1	R3	RIVERINE	Linear	20	FOOT	A5	35.457222	-82.543333	ut to French Broad River

WATERS OF THE U.S.					
(a)(5) Waters Name	**Flow Regime**	**Limits (boundaries) of Jurisdiction (use indicator(s) to the right)**	**(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows**	**Tributary Breaks**	**Rationale for (a)(5) Designation and Additional Discussion. (Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath, explain any breaks or flow through excluded/NJD features, etc.)**
Waters Name					
ut to French Broad River	Perennial	10. OHWM Bed and Banks	French Broad River (Section 10)	NO	The French Broad River is located within the French Broad-Holston watershed and eventually drains to the Gulf of Mexico. Specifically, the French Broad River merges with the Holston River to form the Tennessee River. The Tennessee River then drains to the Ohio River and then on to the Mississippi River before entering the Gulf of Mexico.
		15. OHWM Line Impressed on Bank			