

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 25, 2016

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CESAW-RG-A, 2016-00417, Drew and Kellie Prusiecki

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: NC County/parish/borough: **Transylvania** City: **Lake Toxaway**

Center coordinates of site (lat/long in degree decimal format): Latitude & Longitude in Decimal Degrees: **35.12768 N, 82.95174 W**

Universal Transverse Mercator:

Name of nearest waterbody: **Lake Toxaway (UT Deep Ford Creek)**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Lake Toxaway (UT Deep Ford Creek)**

Name of watershed or Hydrologic Unit Code (HUC): **Seneca (03060101)**

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 25, 2016**

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "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):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (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: linear feet: width (ft) and/or 0.5 acres. (**impoundment Lake Toxaway**)

Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Pick List**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**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: **Lake Toxaway (UT Deep Ford Creek).**

Summarize rationale supporting determination: **Large watershed, waterway can and has and does support navigation of non-motorized and motorized boats.**

**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 waterbody<sup>4</sup> 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 TNW<sup>5</sup>:  
Tributary stream order, if known:

**(b) General Tributary Characteristics (check all that apply):**

**Tributary is:**  Natural  
 Artificial (man-made). Explain:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> 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.



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, 0.5 acres. (impoundment, Lake Toxaway).  
 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:  
 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: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

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

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

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

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  
 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:

<sup>8</sup>See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area:          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.<sup>9</sup>**

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), **Lake Toxaway was formed by the impoundment of the Toxaway River, including the UT of Deep Ford Creek, a TNW at the project location.** 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):<sup>10</sup>**

- 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):

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.

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

<sup>10</sup> 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.



**MEMORANDUM FOR RECORD**

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

1. Applicant: **Drew and Kellie Prusiecki**

2. Project Location (*Waterway, Section, Township, Range, City, County, State*):

Nearest Waterway	<b>Lake Toxaway (UT Deep Ford Creek)</b>
Nearest Town	<b>Lake Toxaway</b>
County	<b>Transylvania</b>
State	<b>NC</b>
USGS HUC	<b>Seneca (03060101)</b>
Coordinates	<b>35.12768 N, 82.95174 W</b>

Location Description **The proposed project site is located on a tract of land (PIN 8512-84-7839-000) at 194 Red Bird Circle in Lake Toxaway, Transylvania County, North Carolina.**

3. Pre-Construction Notification Receipt Date: **February 25, 2016** Complete?  Yes  No

4. Additional Information Requested Date(s): **February 25, 2016**

5. Pre-Construction Notification Complete Date: **February 26, 2016 with receipt of comments from NCWRC**

6. Waters of the US: **Lake Toxaway (UT Deep Ford Creek)**

\*see Jurisdictional Determination form(s) and/or Preliminary JD letter(s) dated: **March 25, 2016**

7. Authority: Section  10 RHA  404 CWA

8. Project Description (*Describe activities in waters of the U.S. considered for verification*):

**This permit verification authorizes 60 linear feet of permanent open water impacts to Lake Toxaway associated with repair/replacement of a shoreline wall.**

9. Type of Permit Requested:  RGP  NWP **NWP 3**

10. Pre-construction Notification Required:  Yes  No

11. Waiver required to begin work (*see GC 31 (a)(2) as applied to appropriate NWP*s):  Yes  No

Rationale:

12. Coordination with Agencies/Tribes Needed:  Yes  No Date:

Resolution:

13. Commenting Agencies:

- a. US Fish and Wildlife Service - USFWS ESA 4(d) rule for northern long-eared bat, February 16, 2016
- b. US Environmental Protection Agency
- c. National Marine Fisheries Service
- d. State Agency (list commenting state agencies) – NCWRC e-mail dated February 26, 2016
- e. State Historic Preservation Office

f. Other:

14. Substantive Issues Raised and Corps Resolution (*Consideration of Comments*): **None**

15. Compliance with Other Federal Laws (*If specific law is not applicable write N/A*):

a. Endangered Species Act:  N/A

(1) Name of species present: **Northern long-eared bat (NLEB) (*Myotis septentrionalis*)**

(2) Effects determination: **May Affect, Not Likely to Adversely Affect**

(3) Date of Service(s) concurrence:

**As noted by the USFWS at [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html), because the project is located outside of the highlighted areas/red 12 digit HUCs, and because it does not involve prohibited incidental take, the project meets the criteria for the 4(d) rule and any associated take is exempted/excepted. Per conversations with USFWS in February 2016 citing this web site can be USFWS concurrence and it is not necessary to wait 30 days to see if USFWS objects or concurs.**

(4) Basis for "may affect, not likely to adversely affect" determination: See attached map reflecting N.C. Natural Heritage Program data on occurrences of Federally endangered/threatened species, state listed species, and natural/rare communities. No listed Federally endangered/threatened species were located in/near project site and no suitable habitat exists based upon information submitted to date. **Also, The USACE conducted a GIS review of the project and surrounding areas, reviewed the most current maps of confirmed/known hibernation and maternity (tree) sites for the NLEB at [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html).**

**This project is located outside of the highlighted areas/red 12-digit HUCs and does not require prohibited incidental take; as such, this project meets the criteria for the 4(d) rule and any associated take is exempted/excepted.**

(5) Additional information (optional): **None**

b. Magnuson-Stevens Act (Essential Fish Habitat):  N/A

(1) Name of species present:

(2) Effects determination: \_\_\_\_\_

(3) Date of Service(s) concurrence:

(4) Basis for "no effect" determination:

(5) Additional information (optional):

c. Section 106 of the National Historic Preservation Act:  N/A

(1) Known site present:  yes  no

(2) Survey required/conducted:  yes  no

(3) Effects determination: \_\_\_\_\_

(4) Rationale: **No potential to cause an effect.** See attached map reflecting locations/occurrences of historic structures and districts as listed on the National Register of Historic Places (Register). No resources listed or eligible for listing on the Register are located on/near the project site and information provided to date does not indicate that further cultural resource investigations should be conducted.

(5) Date consultation complete (if necessary): **N/A**

(6) Additional information (optional): **None**

d. Section 401 Water Quality Certification:  N/A

(1) Individual certification required:  yes  no

(2) Individual Certification:  Issued  Waived  Denied

(3) General Certification required:  yes  no

(4) Additional Information (optional):

e. Coastal Zone Management Act:  N/A

(1) Individual certification (CAMA Major) required:  yes  no

(2) Individual certification:  Issued  Waived  Denied

(3) Other CAMA permit required:  yes  no

(4) Additional information (optional): **Project site not located within NC designated coastal zone.**

f. Wild and Scenic Rivers Act:  N/A

(1) Project located on designated or "study" river:  yes  no

(2) Managing Agency:

(3) Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:

(4) Additional information (optional): **No resources designated as Wild and Scenic Rivers on/near the project site**

g. Other:  N/A

16. Special Conditions required (*include rationale for each required condition/explanation for requiring no special conditions*):  
 yes  no

a. The activity is conducted in accordance with the information submitted and meets the conditions applicable to the NWP, as described at Part C of the NWP Program and the Wilmington District NWP Regional Conditions.

17. Compensatory Mitigation Determination: The applicant has avoided and minimized impacts to the maximum extent practicable.

a. Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?

yes  no [*If "no," do not complete the rest of this section and include an explanation of why not here*] **Minimal impacts to aquatic resources associated with the project.**

b. Is the impact in the service area of an approved mitigation bank?  yes  no

(1) Does the mitigation bank have appropriate number and resource type of credits available?  yes  no

c. Is the impact in the service area of an approved in-lieu fee program?  yes  no

(a) Does the in-lieu fee program have appropriate number and resource type of credits available?  
 yes  no

d. Check the selected compensatory mitigation option(s):

Mitigation bank credits

- in-lieu fee program credits
- permittee-responsible mitigation under a watershed approach
- permittee-responsible mitigation, on-site and/or in-kind
- permittee-responsible mitigation, off-site and/or out-of-kind

e. If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

Determination (*Reference Section D. District Engineer's Decision*):

The proposed activity, with proposed mitigation (if applicable) would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest provided the special conditions and/or modifications identified in the above sections are incorporated. This project complies with all terms and conditions of RGP NWP NWP 3, including any applicable regional conditions.

PREPARED BY:

  
David Brown - Project Manager/Regulatory Specialist

Date: March 25, 2016