

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): August 3, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 2 of 3; SAC 2011-01083-4E Molltrak Property

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: **Sumter** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **33.930032° N**, Long. **-80.317820° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Unnamed tributary of Turkey Creek**

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

Name of watershed or Hydrologic Unit Code (HUC): **03040205-04 (Pocataligo River Watershed)**

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:

Field Determination. Date(s): **February 22, 2012; May 7, 2012**

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):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: **2610** linear feet: **11** width (ft) and/or acres.

Wetlands: **0.21 (W-2)** acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM, 1987 Delineation Manual, Pick List**

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: **Several linear features, totaling 5, 093 linear feet, are located within the review area and determined to be non-jurisdictional. These ditches are man-made and were constructed prior to 1949, according to aerials submitted by the agent, to support agricultural and recreational land uses on this site. These ditches were viewed during the site**

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.

visits and determined to have no OHWM. Portions of these ditches had terrestrial vegetation growing in the bottom with dry leaf litter and debris observed. Three separate areas within these ditches had standing water present during the site visit on Feb. 22, 2012; however, these areas were located in the upstream portions of the ditches and no indicators of flow were observed downstream. The second site visit on May 7, 2012, observed no water in these areas.

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: **171,667 acres** ; HUC **03040205-04**

Drainage area: **66 acres**

Average annual rainfall: **50** inches

Average annual snowfall: **0** inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **2** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.

Project waters are **1 (or less)** river miles from RPW.

Project waters are **25-30** aerial (straight) miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from RPW.

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

Project waters cross or serve as state boundaries. Explain: **The project waters originate within Sumter County and do not cross or serve as state boundaries.**

Identify flow route to TNW⁵: **The pRPW on site flows southwest off site into a perennial RPW named Turkey Creek. Turkey Creek flows into the Pocatigo River (pRPW), which flows into the Black River (TNW).**
Tributary stream order, if known: **The pRPW is a 1st order stream.**

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

Tributary is: Natural
 Artificial (man-made). Explain: **The pRPW is a man-made tributary that comprises the northern and western property boundary of the site.**
 Manipulated (man-altered). Explain: .

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

Average width: **11** feet
Average depth: **5** feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary appears relatively stable with no erosion or sloughing banks observed.

Presence of run/riffle/pool complexes. Explain: **No run/riffle/pool complexes were observed.**

Tributary geometry: **Relatively straight.**
Tributary gradient (approximate average slope): **0-1** %

(c) Flow:

Tributary provides for: **Perennial flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: **The tributary flows year round during normal climatic conditions.**

Other information on duration and volume: **The tributary receives flow from off-site abutting wetlands (see SAC 2011-00301-4M) and an on-site adjacent wetland via a non-jurisdictional ditch and overland sheetflow. This tributary also receives flow further downstream from an off-site tributary which was previously determined to be a seasonal RPW (SAC 2010-00396-4E). At its intersection with this offsite sRPW, the pRPW becomes a 2nd order stream and this reach is discussed on JD Form 3 of 3.**

Surface flow is: **Discrete and confined.** Characteristics: .

Subsurface flow: **Unknown.** Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: .

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

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;

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.

⁶ A 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.

- | | |
|--|--|
| <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: **The water in the tributary is consistent with other blackwater systems found in this watershed. The primary land uses in this watershed are agricultural land (43%), forested wetlands (25%), forested lands (23%), and urban land (6%). Other land uses include scrub/shrub land, non-forested wetlands and water. This site is located east and immediately adjacent to the City of Sumter and the northeastern property borders US Highway 378/76. According to the SCDHEC Watershed report, this area has a moderate to high potential for growth.**

Identify specific pollutants, if known: **This tributary receives overland sheetflow from the adjacent fallow ag. fields and forested uplands and wetlands, which have been previously clear-cut. It is also located near urban land that is highly developed. Potential pollutants include herbicides, pesticides, and pollutants found in stormwater runoff. According to SCDHEC, the downstream monitoring station located on Turkey Creek (PD-098) indicates that aquatic life uses are fully supported; however, recreational uses are not supported due to fecal coliform bacteria excursions. Decreasing trends in turbidity and fecal coliform bacteria concentrations indicate improving conditions at this site. A TMDL developed by SCDHEC for this monitoring site states that a 94% reduction in fecal coliform bacteria is necessary for this stream to meet water quality standards.**

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: **The pRPW abuts off-site wetlands.**
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: **The pRPW provides important aquatic habitat in its drainage area,**

which consists mostly of uplands, and access by water-dependant species to the downstream TNW.

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: **0.21** acres

Wetland type. Explain: **Palustrine forested.**

Wetland quality. Explain: **The vegetation, soils and hydrology do not appear to have been man-altered since the original construction of the racetrack prior to 1949.**

Project wetlands cross or serve as state boundaries. Explain: **The project wetland originates within the property boundary and does not cross or serve as state boundaries.**

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: **Flow occurs after storm events and during periods of extreme rainfall.**

Surface flow is: **Overland sheetflow**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Drainage patterns within the uplands between W-2 and the adjacent perennial RPW provide evidence of a direct hydrologic connection .

Ecological connection. Explain:

Separated by berm/barrier. Explain: Man-made berms are located at either end of the non-jurisdictional ditch .

(d) Proximity (Relationship) to TNW

Project wetlands are **30 (or more)** river miles from TNW.

Project waters are **25-30** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **100 - 500-year** 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: **Although no water was observed within the wetland during the two site visits, water marks on the trees and waterstained leaf litter were observed within the wetland. No discoloration or oily film was observed. The primary land uses in this watershed are agricultural land (43%), forested wetlands (25%), forested lands (23%), and urban land (6%). Other land uses include scrub/shrub land, non-forested wetlands and water. This site is located east and immediately adjacent to the City of Sumter and the northeastern property borders US Highway 378/76. According to the SCDHEC Watershed report, this area has a moderate to high potential for growth.**

Identify specific pollutants, if known: **The wetland labeled "W-2" on the plat receives overland sheetflow from the adjacent uplands and is located immediately northeast of an abandoned racetrack. It is located adjacent to highly developed urban land within the City of Sumter. Potential pollutants include herbicides, pesticides, and pollutants found in stormwater runoff. According to SCDHEC, the downstream monitoring station located on Turkey Creek (PD-098) indicates that aquatic life uses are fully supported; however, recreational uses are not supported due to fecal coliform bacteria excursions. Decreasing trends in turbidity and fecal coliform bacteria concentrations indicate improving conditions at this site. A TMDL developed by SCDHEC for this monitoring site states that a 94% reduction in fecal coliform bacteria is necessary for this stream to meet water quality standards.**

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: **Taxodium distichum (Bald cypress) and Populus deltoides (Eastern Cottonwood).**

Habitat for:

- Federally Listed species. Explain findings:
- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: **This wetland provides unique habitat on a property predominately consisting of uplands. The only other wetland on site (labeled W-1 on the plat) is comprised primarily of herbaceous vegetation.**

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

All wetland(s) being considered in the cumulative analysis: **3**
 Approximately (**66**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
N	0.21	Y	2.5
Y	0.2		

Summarize overall biological, chemical and physical functions being performed: **The wetlands and perennial RPW in the review area are contributing important biological, chemical, and physical functions to the downstream TNW. The wetlands and the pRPW make up an important ecological system with vital aquatic habitat that supports a variety of wildlife in an area that is immediately adjacent to highly developed urban land. Due to the prevalence of agriculture land use and urban land use in this watershed and the impacts from pre-CWA manipulation of the site as well as more recent agricultural and silvicultural activities, these waters of the US are acting as a catch basin for the adjacent uplands by filtering sediments, herbicides, and other pollutants and by reducing the amount of flood waters reaching the downstream TNW.**

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: **The on-site wetland labeled "W-2" on the plat is providing a unique habitat on property that is predominately uplands. Based on observations of waterstained leaf litter and water marks on the trees within this wetland, W-2 is providing temporarily flooded habitat for water-dependent species and acts as a filter for pollutants received via overland sheetflow from the adjacent uplands. W-2 and the off-site adjacent wetlands are serving as catch basins during and after major storm events to reduce the volume and velocity of the downstream flow. Based on the above information and a previous significant nexus determination of the RPW in the review area (SAC 2010-00396-4), the RPW and it's adjacent wetlands have been determined to have a significant nexus to the downstream TNW (Black River).**

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs:

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: **Based on a review of the topographic map and aerials, the tributary depicted as "PRPW" on the plat flows year-round. The aerials depict this tributary as a shaded linear feature, and the topographic map depicts a solid blue line that originates along the northern property boundary and continues west/southwest. This tributary has perennial flow based on the presence of an OHWM, disturbed leaf litter and debris, and two previous determinations. In SAC 2010-00396-4E, this tributary was determined to be a seasonal RPW that intersects with an off-site tributary which was also determined to be a seasonal RPW in the same determination. However, in SAC 2011-00301-4M, this tributary was determined to have perennial flow. Because this determination covers a larger portion of the reach of this tributary, the entire reach was determined to have perennial flow. At its intersection with this offsite sRPW, the pRPW becomes a 2nd order stream and this reach is discussed on JD Form 3 of 3channel. This PRPW is an unnamed tributary of Turkey Creek, which flows southeast into the Pocatigo River (pRPW). The Pocatigo River flows into the Black River (a TNW).**

- 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: **2410** linear feet **11** width (ft).
 - 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: .

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: .

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: **0.21 (W-2)** 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).

Explain:

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.

⁸See Footnote # 3.

⁹To 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.

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.
- 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: **Report by S&ME, Plat by Cox Surveyors.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - 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: **Sumter East.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **pg. 70.**
- National wetlands inventory map(s). Cite name: **U42P, PF01Ad.**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **99:11204:98; SC DNR 2006.**
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): **Previous determinations on adjacent properties (SAC 2011-00301-4M, letter dated June 30, 2011; SAC 2010-00396-4E, letter dated September 1, 2010).**

B. ADDITIONAL COMMENTS TO SUPPORT JD: Based on a review of the topographic map and aerials, the tributary depicted as "PRPW" on the plat flows year-round. The aerials depict this tributary as a shaded linear feature, and the topographic map depicts a solid blue line that originates along the northern property boundary and continues west/southwest. This tributary has perennial flow based on the presence of an OHWM, disturbed leaf litter and debris, and two previous determinations. In SAC 2010-00396-4E, this tributary was determined to be a seasonal RPW that intersects with an off-site tributary which was also determined to be a seasonal RPW in the same determination. However, in SAC 2011-00301-4M, this tributary was determined to have perennial flow. Because this determination covers a larger portion of the reach of this tributary, the entire reach was determined to have perennial flow. At its intersection with this offsite sRPW, the pRPW becomes a 2nd order stream and this reach is discussed on JD Form 3 of 3channel. This PRPW is an unnamed tributary of Turkey Creek, which flows southeast into the Pocatigo River (pRPW). The Pocatigo River flows into the Black River (a TNW).

The on-site wetland in the review area, labeled W-2 on the plat, was determined to be adjacent, non-abutting, to the PRPW. This wetland has a direct hydrological connection to the downstream RPW via a non-jurisdictional ditch and overland sheetflow, evidence

of which was observed during the site visits. Additionally, the non-jurisdictional ditch located between W-2 and the PRPW is disconnected via two man-made berms, which does not sever jurisdiction. During the site visits, drainage patterns were observed on these upland berms. The non-abutting wetland and its downstream PRPW were determined to have a significant nexus to the downstream TNW in Section III B&C above.

Several linear features, totaling 5,093 linear feet, are located within the review area and determined to be non-jurisdictional. These ditches are man-made and were constructed prior to 1949, according to aerials submitted by the agent, to support agricultural and recreational land uses on this site. These ditches were viewed during the site visits and determined to have no OHWM. Portions of these ditches had terrestrial vegetation growing in the bottom with dry leaf litter and debris observed. Three separate areas within these ditches had standing water present during the site visit on Feb. 22, 2012; however, these areas were located in the upstream portions of the ditches and no indicators of flow were observed downstream. The second site visit on May 7, 2012, observed no water in these areas.