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): 3-March-2015

| В. | DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 1 of 31; SAC 2013-00626, I-26 Mega Site |
|-----|--|
| C. | PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek |
| | Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 ☐ Field Determination. Date(s): 24-July-2013 |
| | CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION. |
| | re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew 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: |
| В. | CWA SECTION 404 DETERMINATION OF JURISDICTION. |
| The | ere 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): 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: PRPW 1=11,404 linear feet, SRPW 5=1,185 linear feet, SRPW 6=534 linear feet, SRPW 7=91 linear, PRPW 8=990 linear feet, SRPW 11=74 linear feet, and SRPW62=666 linear feet. Wetlands: Wetland A=0.041 acres, Wetland B=0.014 acres, Wetland C=0.083 acres, Wetland E=0.065 acres, Wetland |
| J=0 | .008 acres, Wetland K=0.038 acres, and Wetland Z=0.039 acres. |

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

2. Non-regulated waters/wetlands (check if applicable):³

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.

| | | | Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: |
|-----|---------------------------------|---|---|
| SEC | CTIO | N III | : CWA ANALYSIS |
| A. | TN | Ws A | AND WETLANDS ADJACENT TO TNWs |
| | Sec | tion 1 | ncies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete 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 tion III.D.1.; otherwise, see Section III.B below. |
| | 1. | TN Ide | W ntify TNW: |
| | | Sun | nmarize rationale supporting determination: |
| | 2. | | tland adjacent to TNW marize rationale supporting conclusion that wetland is "adjacent": |
| В. | СН | ARA | CTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): |
| | | | tion summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps ne whether or not the standards for jurisdiction established under <i>Rapanos</i> have been met. |
| | wat mor (per | ers" nths) renni | ncies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3. A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round ial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, section III.D.4. |
| | EP. | A reg tivel | nd that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and gions will include in the record any available information that documents the existence of a significant nexus between a y permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even a significant nexus finding is not required as a matter of law. |
| | wat con ana the the | erbo sider lytica tribu tribu | aterbody ⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the dy has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for all purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is stary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for stary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite ite. The determination whether a significant nexus exists is determined in Section III.C below. |
| | 1. | Cha | aracteristics of non-TNWs that flow directly or indirectly into TNW |
| | | (i) | General Area Conditions: Watershed size: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 Project waters are Pick List aerial (straight) miles from TNW. Project waters are 1 (or less) aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

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

| | Thouasy stream order, it known. |
|-----|--|
| (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Cother. Explain: |
| | Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have clear OHWM and distinct channels. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: . |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment down, bent, or absent leaf litter disturbed or washed away sediment deposition matter deposition multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. 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: |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: Water was observed in some tributaries at the time of the site visit. The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |

 $Identify\ flow\ route\ to\ TNW^5: \textbf{Unnamed\ Tributary\ which\ flows\ to\ Gilders\ Creek\ which\ flows\ to\ Indian\ Creek\ which\ flows\ to\ the\ Enoree\ River\ which\ flows\ to\ the\ Broad\ River\ (Traditional\ Navigable\ Water).$

(iii)

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. 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.

| | | Identify specific pollutants, if known: There is the possibilit | y of pollutants from nearby roads and railroad. |
|----|------|--|--|
| | (iv) | Biological Characteristics. Channel supports (check all the Riparian corridor. Characteristics (type, average width) Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: The tributaries Other environmentally-sensitive species. Explain findings: The tributaries Aquatic/wildlife diversity. Explain findings: The tributaries | Forested. provide breeding grounds for aquatic species. |
| 2. | Cha | naracteristics of wetlands adjacent to non-TNW that flow di | rectly or indirectly into TNW |
| | (i) | Physical Characteristics: (a) General Wetland Characteristics: Properties: Wetland size: 0.065 acres Wetland type. Explain: Forested. Wetland quality. Explain: Good. Project wetlands cross or serve as state boundaries. Explain: | ain: . |
| | | (b) General Flow Relationship with Non-TNW: Flow is: Intermittent flow. Explain: Water flows from Surface flow is: Discrete Characteristics: | n wetland to RPW after heavy rain. |
| | | 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: Water flows o | |
| | | (d) Proximity (Relationship) to TNW Project wetlands are Pick List river miles from TNW. Project waters are Pick List aerial (straight) miles from Flow is from: Wetland to navigable waters. Estimate approximate location of wetland as within the | |
| | (ii) | Chemical Characteristics: Characterize wetland system (e.g., water color is clear, brown characteristics; etc.). Explain: The watershed is 76% f barren, 0.5% scrub/shrub, and 0.2% water Identify specific pollutants, if known: There is the possibility. | orested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% |
| | (iii | ii) Biological Characteristics. Wetland supports (check all the Riparian buffer. Characteristics (type, average width): 1 Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Wetland provided the control of t | les breeding ground for aquatic species. Idings: |
| 3. | Cha | naracteristics of all wetlands adjacent to the tributary (if any All wetland(s) being considered in the cumulative analysis: Approximately (0.288) acres in total are being considered in | |

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For each wetland, specify the following:

| Directly abuts? (Y/N) | Size (in acres) | Directly abuts? (Y/N) | Size (in acres) |
|-----------------------|-----------------|-----------------------|-----------------|
| Wetland A (Y) | 0.041 | Wetland B (Y) | 0.014 |
| Wetland C (Y) | 0.083 | Wetland E (N) | 0.065 |
| Wetland J (Y) | 0.008 | Wetland K (Y) | 0.038 |
| Wetland Z (Y) | 0.039 | | |
| | | | |
| | | | |

Summarize overall biological, chemical and physical functions being performed: All wetlands evaluated in this significant nexus determination which are similarly situated and adjacent (both abutting and non-abutting) to the RPW are collectively performing biological, chemical, and physical functions. The 0.065 acre wetland that is in the review areais less than 100 feet from the RPW that flows to the TNW. All other similary situated wetlands evualted in this review directly abut the RPW. All the wetlands that are adjacent to the RPW are forested. These wetlands provide breeding ground for aquatic species and habitat for shelter and foraging for wildlife. These wetlands also help to filter pollutants from run-off and adjacent development before they travel to the downstream TNW. These wetlands also perform flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain.

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: All wetlands evaluated in this significant nexus determination which are similarly situated and adjacent (both abutting and non-abutting) to the RPW are collectively performing biological, chemical, and physical functions. The 0.065 acre wetland that is in the review areais less than 100 feet from the RPW that flows to the TNW. All other similarly situated wetlands evualted in this review directly abut the RPW. All the wetlands that are adjacent to the RPW are forested. These wetlands provide breeding ground for aquatic species and habitat for shelter and foraging for wildlife. These wetlands also help to filter pollutants from run-off and adjacent development before they travel to the downstream TNW. These wetlands also perform flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain. Based on the collective functions described above and their importance to the biological, chemical, and

physical integrity of the TNW, it has been determined that there is a significant nexus between the relevant reach of the tributary and its adjacent wetlands to the downstream TNW.

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site are collectively performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. These tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. These tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

| | TERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL AT 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: PRPW 1is shown as a blue line on the topo and shown on the soil map. PRPW 8 was observed flowing during all site visits. These tributaries have very distinct channels with clear OHWMs. Stream characteristics observed and available data led this office to conclude the tributaries have a perennial flow regime. |
| | 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: SRPW 5, SRPW 6, SRPW 7, SRPW 11, and SPRW 62 were smaller channels that fed into PRPW 1. These tributaries were not observed flowing at all site visits. SRPW 62 has a discontinuous OHWM and connects to PRPW 1 by overland flow. These tributaries are all shown on the topo as drainage features. Stream characteristics observed and available data led this office to conclude the tributaries have a seasonal flow regime. |
| line | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 1=11,404 linear feet, SRPW 5=1,185 linear feet, SRPW 6=534 linear feet, SRPW 7=91 ear feet, PRPW 8=990 linear feet, SRPW 11=74 linear feet, and SRPW62=666 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: |
| 3. | Non-RPWs ⁸ 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: Wetland A, Wetland B, Wetland C, Wetland J, and Wetland Z are abutting and have a continuous surface connection with PRPW 1. |
| | 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: |
| We | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland A=0.041 acres, Wetland B=0.014 acres, etland C=0.083 acres, Wetland J=0.008 acres, Wetland K=0.038 acres, and Wetland Z=0.039 acres. |

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 jurisidictional. Data supporting this

⁸See Footnote # 3.

conclusion is provided at Section III.C.

D.

| | | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland E=0.065 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. 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: |
| Е. | SUC | CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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: |
| | Ide | ntify water body and summarize rationale supporting determination: |
| | | vide 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. | | N-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): |
| | fact | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional gment (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. |
| | | wide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such adding 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.

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.

| A. | SUPI | PORTING 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): |
| | \boxtimes | Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: S&ME . |
| | \boxtimes | Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | | Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. |
| | | Office does not concur with data sheets/delineation report. |
| | | Data sheets prepared by the Corps: . |
| | \boxtimes | Corps navigable waters' study: 1977 Navigability Study. |
| | \boxtimes | U.S. Geological Survey Hydrologic Atlas: 03050108-04. |
| | | USGS NHD data. |
| | | USGS 8 and 12 digit HUC maps. |
| | \boxtimes | U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | | USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. |
| | \boxtimes | National wetlands inventory map(s). Cite name: U42P , U21 , U41 , Open Water . |
| | | State/Local wetland inventory map(s): . |
| | | FEMA/FIRM maps: . |
| | | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | \boxtimes | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | | or 🖾 Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| | by I | USACE dated 24-July-2013. |
| | | Previous determination(s). File no. and date of response letter: |
| | Ш | Applicable/supporting case law: . |
| | | Applicable/supporting scientific literature: . |
| | $\overline{\boxtimes}$ | Other information (please specify): Site Visit. |
| | | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 2 perennial RPWs, 5 seasonal RPWs, 6 wetlands that are abutting, and 1 wetland that is adjacent, but not abutting. Some of the wetlands are non-abutting, therefore a Significant Nexus Determination was performed, which includes all wetlands on-site and those in the drainage area outside of the project limits. Based on the documentation provided in Section III, C of this form, the nexus between the RPW (and its adjacent wetlands) and the downstream TNW is significant. The RPWs and wetlands documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 2 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW2=1,907 linear feet and SRPW 3=306 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW^5 : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |
| | 1 ributary stream order, if known: |

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.

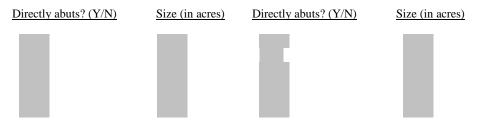
| (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural |
|--------------|--|
| | Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
| | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| Tributary is | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. connected to PRPW by overland sheetflow . |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting sediment sorting scour sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. 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: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics In tidal gauges Other (list): Mean High Water Mark indicated by: In survey to available datum; In physical markings; In vegetation lines/changes in vegetation types. |
| Cha | emical Characteristics: tracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water https://doi.org/10.1001/j.com/site/possibility.org/10.1001/j.com/site/possibi |
| (iv) Biol | logical Characteristics. Channel supports (check all that apply): |

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.

Tibid.

| | | | Riparian corridor. Characteristics (type, average width): Forested . Wetland fringe. Characteristics: Habitat for: |
|----|-------------|-------|--|
| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
| 2. | Cha | | ristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (;) | Dhya | ical Characteristics: |
| | (i) | (a) | General Wetland Characteristics: |
| | | | Properties: Wetland size: acres |
| | | | Wetland type. Explain: . |
| | | | Wetland quality. Explain: Design wetlands are so a serve as at the houndaries. Explain: |
| | | • | Project wetlands cross or serve as state boundaries. Explain: |
| | | | 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: . |
| | | | |
| | | | <u>Proximity (Relationship) to TNW</u> 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) | | mical Characteristics: |
| | | | acterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: |
| | | | ify specific pollutants, if known: |
| | (iii) | Biolo | ogical 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. | Cha | | ristics of all wetlands adjacent to the tributary (if any) |
| | | | vetland(s) being considered in the cumulative analysis: Pick List |
| | | Appr | oximately () acres in total are being considered in the cumulative analysis. |

For each wetland, specify the following:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adj | acent 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: PRPW 2 was observed flowing during all site visits. It has a very distinct channel with a clear OHWM. Stream characteristics observed and available data led this office to conclude this tributary has a perennial flow regime. |
| | 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: SRPW 3 is a smaller channel that feeds into PRPW 2. It is connected to the PRPW by overland flow and was not observed flowing at all site visits. The tributary is shown on the topo as a drainage feature. Stream characteristics observed and available data led this office to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW2=1,907 linear feet and SRPW 3=306 linear feet Other non-wetland waters: acres. Identify type(s) of waters: |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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. 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S and within jurisdiction of the Clean Water Act.

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 | L DETERMINATION (JD |): 3-March-2015 |
|----|----------------------------|-------------------------|---------------------|-----------------|
|----|----------------------------|-------------------------|---------------------|-----------------|

| В. | DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 3 of 31; SAC 2013-00626, I-26 Mega Site |
|------|--|
| С. | PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 ☐ Field Determination. Date(s): 24-July-2013 |
| | CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION. |
| revi | re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew 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: CWA SECTION 404 DETERMINATION OF JURISDICTION. |
| The | re 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): 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: PRPW 19=9,914 linear feet, SRPW 20=122 linear feet, SRPW 21=223 linear feet, SRPW 22=140 ar feet, SRPW 31=316 linear feet, SRPW 32=126 linear feet, SRPW 33=515 linear feet. Wetlands: Wetland P=0.033 acres, Wetland Q=0.014 acres, Wetland R=0.025 acres, Wetland U=0.16 acres, Wetland 0.092 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

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.

| | | | Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: |
|-----|---------------------------------|---|---|
| SEC | CTIO | N III | : CWA ANALYSIS |
| A. | TN | Ws A | AND WETLANDS ADJACENT TO TNWs |
| | Sec | tion 1 | ncies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete 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 tion III.D.1.; otherwise, see Section III.B below. |
| | 1. | TN Ide | W ntify TNW: |
| | | Sun | nmarize rationale supporting determination: |
| | 2. | | tland adjacent to TNW marize rationale supporting conclusion that wetland is "adjacent": |
| В. | СН | ARA | CTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): |
| | | | tion summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps ne whether or not the standards for jurisdiction established under <i>Rapanos</i> have been met. |
| | wat mor (per | ers" nths) renni | ncies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3. A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round ial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, section III.D.4. |
| | EP. | A reg tivel | nd that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and gions will include in the record any available information that documents the existence of a significant nexus between a y permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even a significant nexus finding is not required as a matter of law. |
| | wat con ana the the | erbo sider lytica tribu tribu | aterbody ⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the dy has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for all purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is stary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for stary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite ite. The determination whether a significant nexus exists is determined in Section III.C below. |
| | 1. | Cha | aracteristics of non-TNWs that flow directly or indirectly into TNW |
| | | (i) | General Area Conditions: Watershed size: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 Project waters are Pick List aerial (straight) miles from TNW. Project waters are 1 (or less) aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

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

| | Tributary Stream order, it known. |
|-----|--|
| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
| | 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain: |
| | Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions . |
| | Subsurface flow: Unknown. Explain findings: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings; wegetation lines/changes in vegetation types. |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |

 $Identify\ flow\ route\ to\ TNW^5: \textbf{Unnamed\ Tributary\ which\ flows\ to\ Gilders\ Creek\ which\ flows\ to\ Indian\ Creek\ which\ flows\ to\ the\ Enoree\ River\ which\ flows\ to\ the\ Broad\ River\ (Traditional\ Navigable\ Water).$

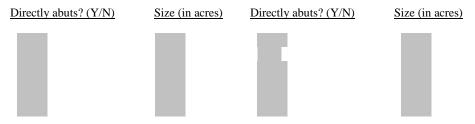
(iii)

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. 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.

(iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): **Forested**. Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: ☑ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW (i) Physical Characteristics: **General Wetland Characteristics:** Properties: Wetland size: acres Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain: 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: Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: Pick List) acres in total are being considered in the cumulative analysis. Approximately (

Identify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad.

For each wetland, specify the following:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributaries helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

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

| ı. | TNWs and Adja | acent Wetlands. | Check all that apply | and provide si | ize estimates i | n 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: PRPW 19 is shown as a blue line on the topo and on the soil map. It was observed flowing during all site visits. It has a very distinct channel with a clear OHWM. Stream characteristics observed and available data led this office to conclude this tributary has a perennial flow regime. |
| | 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: The SRPWs flow into PRPW 3. These tributaries are shown on the topo as a drainage feature. They all have clear OHWMs and disticut channels. Stream characteristics observed and available data led this offie to conclude the tributaries have a seasonal flow regime. |
| line | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 19=9,914 linear feet, SRPW 20=122 linear feet, SRPW 21=223 linear feet, SRPW 22=140 ar feet, SRPW 31=316 linear feet, SRPW 32=126 linear feet, SRPW 33=515 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: All wetlands are abutting PRPW 19 and have a continuous surface connection. |
| | ■ 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: |
| Wei | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland P=0.033 acres, Wetland Q=0.014 acres, tland R=0.025 acres, Wetland U=0.16 acres, Wetland V=0.092 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 jurisidictional. 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. | 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with 5 abutting wetlands and 6 seasonal RPWs. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 4 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 34=554 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW^5 : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |
| | 1 ributary stream order, if known: |

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.

(iii)

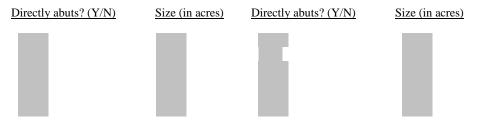
(iv)

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.

| | | □ Wetland fringe. Characteristics: □ Habitat for: □ Federally Listed species. Explain findings: □ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife |
|----|------------|---|
| 2. | Cha | racteristics 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. | Cha | racteristics 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:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and | Adjacent Wetlands. | Check all that apply | and provide | e size estimates ii | n review area: |
|----|----------|--------------------|----------------------|-------------|---------------------|----------------|
| | TNWs: | linear feet | width (ft), Or, | acres. | | |

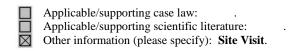
| | Wetlands adjacent to TNWs: acres. |
|----|---|
| 2. | RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: |
| | Tributaries of TNW where tributaries 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: SRPW 34 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 34=554 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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. 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: |
| DE | LATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY):10 |

E.

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| | | 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: |
|------|---|---|
| | Ide | ntify water body and summarize rationale supporting determination: |
| | | vide 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. | | N-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): |
| | fact | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR ors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional ment (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. |
| | a fir | vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading 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. |
| SEC | CTIC | ON IV: DATA SOURCES. |
| A. S | | PORTING 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. |
| | ${\displaystyle \bigsqcup_{\boxtimes}}$ | Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. |
| | | □ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: □ Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | by U | or \(\subseteq \) Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: |

 $^{^{10}}$ 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.



B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 5 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 4=791 linear feet. Wetlands: Wetland Y=2.473 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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.

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: 61,981 acres; 03050108-04 |
|------|--|
| | Drainage area: Pick List |
| | Average annual rainfall: 47.39 inches |
| | Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which |
| | flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). |
| | Tributary stream order, if known: . |
| | |

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.

| | (b) | Tributary is: |
|-------|------|--|
| | | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary haa a clear OHWM and distinct channel. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | | Subsurface flow: Unknown . Explain findings: Dye (or other) test performed: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. Intify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

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.

| | | | Wetland fringe. Characteristics: . |
|----|-------|-------------|--|
| | | \bowtie | Habitat for: ☐ Federally Listed species. Explain findings: . |
| | | | Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. |
| | | | ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
| | | | |
| 2. | Cha | aract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | rsical Characteristics: |
| | | (a) | General Wetland Characteristics: Properties: |
| | | | Wetland size: 2.473 acres |
| | | | Wetland type. Explain: forested. |
| | | | Wetland quality. Explain: good . |
| | | | Project wetlands cross or serve as state boundaries. Explain: . |
| | | (b) | |
| | | | Flow is: Ephemeral flow . Explain: Water flows from wetland to RPW after heavy rains . |
| | | | Surface flow is: Overland sheetflow |
| | | | Characteristics: Wetland is abutting RPW. |
| | | | 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: . |
| | | | 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: Wetland to navigable waters. |
| | | | Estimate approximate location of wetland as within the Pick List floodplain. |
| | (ii) | Che | emical Characteristics: |
| | (11) | | racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed |
| | | | characteristics; etc.). Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% |
| | | T.J | barren, 0.5% scrub/shrub, and 0.2% water. |
| | | idei | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| | (iii) | K 2 | logical Characteristics. Wetland supports (check all that apply): |
| | | \square | Riparian buffer. Characteristics (type, average width): forested . Vegetation type/percent cover. Explain: |
| | | \boxtimes | Habitat for: |
| | | | Federally Listed species. Explain findings: |
| | | | ☐ Fish/spawn areas. Explain findings: Wetland provides breeding grounds for aquatic species . ☐ Other environmentally-sensitive species. Explain findings: |
| | | | Aquatic/wildlife diversity. Explain findings: Wetland provides shelter and foraging areas for wildlife. |
| 3. | Cha | aract | eristics of all wetlands adjacent to the tributary (if any) |
| ٥. | CII | | wetland(s) being considered in the cumulative analysis: 1 |
| | | | proximately (2.473) acres in total are being considered in the cumulative analysis. |

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Summarize overall biological, chemical and physical functions being performed: The wetland evaluated in this significant nexus determination is performing biological, chemical, and physical functions that relate to the integrity of the TNW. The wetland in the review area is directly abutting a seasonal RPW and is less than 200 feet from the perennial RPW. This wetland is forested and provides habitat for shelter and foraging for wildlife. It also provides breeding grounds for aquatic species. This wetland helps to filter pollutants from run-off before it travels to the nearby RPW and on to the TNW. This wetland also performs flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain.

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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary and abutting wetland on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary and wetland provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary and wetland help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary and wetland also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical

integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

| | FERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL AT 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: |
| | 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: SRPW 4 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 4=791 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: |
| 3. | Non-RPWs ⁸ 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: Wetland Y is abutting and has a continuous surface connection with the seasonal RPW. |
| | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland Y=2.473 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 jurisidictional. 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 |

See Footnote # 3

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

| Explain: |
|--|
| 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. |
| 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 <u>sole</u> 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. |
| TION IV: DATA SOURCES. |
| UPPORTING 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Goffice concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. |
| |

 $^{^{10}}$ 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.

| | State/Local wetland inventory map(s): . |
|-------------|---|
| | FEMA/FIRM maps: . |
| | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| \boxtimes | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| by | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: . |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: |
| | Other information (please specify): Site Visit. |
| | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW and an abutting wetland. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 6 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 63=910 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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.

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: 61,981 acres; 03050108-04 |
|------|--|
| | Drainage area: Pick List |
| | Average annual rainfall: 47.39 inches |
| | Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which |
| | flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). |
| | Tributary stream order, if known: . |
| | |

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

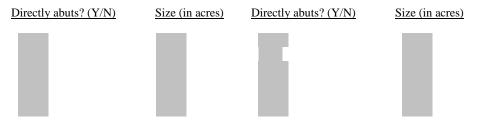
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|------|--|
| | | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary haa a clear OHWM and distinct channel. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | | Subsurface flow: Unknown . Explain findings: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation and the presence of wrack line sediment sorting sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. Intify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

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.

| | | □ Wetland fringe. Characteristics: □ Habitat for: □ Federally Listed species. Explain findings: □ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife |
|----|------------|---|
| 2. | Cha | racteristics 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. | Cha | racteristics 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. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and | Adjacent Wetlands. | Check all that apply | and provide | e size estimates ii | n review area: |
|----|----------|--------------------|----------------------|-------------|---------------------|----------------|
| | TNWs: | linear feet | width (ft), Or, | acres. | | |

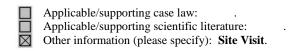
| | Wetlands adjacent to TNWs: acres. |
|-----|---|
| 2. | RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: |
| | Tributaries of TNW where tributaries 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: SRPW 63 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 63=910 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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. 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: |
| DEC | LATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): ¹⁰ |

E.

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| | 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: | | | | | |
| | rovide 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. | 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): | . | | | |
| | rovide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR actors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional adgment (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. | ıl | | | |
| | rovide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such 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. | ch | | | |
| SEC | ION IV: DATA SOURCES. | | | | |
| A. S | PPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked | d | | | |
| | nd requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. ☐ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ☐ Office does not concur with data sheets/delineation report. | | | | |
| | Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. | | | | |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ✓ Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. | | | | |
| | or \(\subseteq Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken y USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: | | | | |

 $^{^{10}}$ 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.



B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 7 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 53=7,407 linear feet, SRPW 54=38 linear feet, and SRPW 55=232 linear feet and Pond 6=2 acres.

Non-regulated waters/wetlands (check if applicable):³
 Potentially jurisdictional waters and/or wetlands were

Elevation of established OHWM (if known):

Wetlands: Wetland OO=0.03 acres, Wetland QQ=0.122 acres, and Wetland RR=0.04 acres.

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

SECTION I: BACKGROUND INFORMATION

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

General Area Conditions:

Watershed size: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 Project waters or serve as state boundaries. Explain:

Identify flow route to TNW⁵: Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water).

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

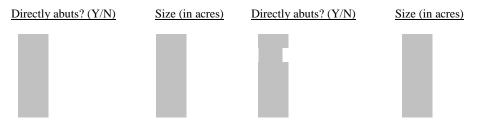
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | | Tributary stream order, if known: |
|-------|-----|---|
| | (b) | General Tributary Characteristics (check all that apply): Tributary is: ☐ Natural ☐ 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain: |
| | | Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have a clear OHWM and distinct channel. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions . |
| | | Subsurface flow: Unknown. Explain findings: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation the presence of wack line sediment sorting sediment sorting sediment deposition distributed or washed away water staining distributed or washed away 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: |
| (iii) | Cha | mical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. tify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | | ogical Characteristics. Channel supports (check all that apply): |
| | | == |

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.

| | | | Riparian corridor. Characteristics (type, average width): Forested . Wetland fringe. Characteristics: Habitat for: |
|----|-------------|-------|--|
| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
| 2. | Cha | | ristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (;) | Dhya | ical Characteristics: |
| | (i) | (a) | General Wetland Characteristics: |
| | | | Properties: Wetland size: acres |
| | | | Wetland type. Explain: . |
| | | | Wetland quality. Explain: Desirant watteneds correspondent to the boundaries. Explain: |
| | | • | Project wetlands cross or serve as state boundaries. Explain: |
| | | | 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: . |
| | | | |
| | | | <u>Proximity (Relationship) to TNW</u> 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) | | mical Characteristics: |
| | | | acterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: |
| | | | ify specific pollutants, if known: |
| | (iii) | Biolo | ogical 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. | Cha | | ristics of all wetlands adjacent to the tributary (if any) |
| | | | vetland(s) being considered in the cumulative analysis: Pick List |
| | | Appr | oximately () acres in total are being considered in the cumulative analysis. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

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

| 1. | IN WS and Adja | acent wetlands. | Cneck all that apply | and provide size | e estimates in | review area: |
|----|----------------|-----------------|----------------------|------------------|----------------|--------------|
| | TNWs: | linear feet | width (ft), Or, | 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 indirectly and available data led this office to conclude the tributary has aperennial flow regime. ☑ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) a jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that trib seasonally: SRPW 54 and 55 are shown as a drainage feature on the topo map. They ac clear OHWM is channel. Stream characteristics observed and available data led this office to conclude the tributaries have a flow regime. Provide estimates for jurisdictional waters in the review area (check all that apply): ☑ Tributary waters: PRPW 53=7,407 linear feet, SRPW 54=38 linear feet, and SRPW 55=232 linear feet flowing intensity of the stream of the stre | re ntary flows nd disticnt |
|---|---------------------------------------|
| jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tribs seasonally: SRPW 54 and 55 are shown as a drainage feature on the topo map. They have a clear OHWM a channel. Stream characteristics observed and available data led this offie to conclude the tributaries have a flow regime. Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 53=7,407 linear feet, SRPW 54=38 linear feet, and SRPW 55=232 linear feet (ft). Other non-wetland waters: Identify type(s) of waters: Non-RPWs ⁸ 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 nex 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 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: These wetlands are abutting PRPW 53 and hace a continuous surface connect. Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.1 Wetland RR=0.04 acres. Wetlands that do not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abutting an RPW that fl | tary flows nd disticnt seasonal |
| | width |
| □ Other non-wetland waters: 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 nex 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 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: These wetlands are abutting PRPW 53 and hace a continuous surface connecting the seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.12 Wetlands RR=0.04 acres. 5. Wetlands adjacent to but not directly abutting an RPW, but when considered in combination with the tributary to which they and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supp | |
| Wetlands directly abutting an RPW that flow directly or indirectly into a TNW, and it has a significant next 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 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: These wetlands are abutting PRPW 53 and hace a continuous surface connect Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.12 Wetland RR=0.04 acres. 5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs. Wetlands that do not directly abutt an RPW, but when considered in combination with the tributary to which they and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supp | |
| 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: These wetlands are abutting PRPW 53 and hace a continuous surface connect Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.12 Wetland RR=0.04 acres. 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 and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supp | us with a |
| Wetlands directly abutt 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: These wetlands are abutting PRPW 53 and hace a continuous surface connect. Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.12 Wetland RR=0.04 acres. 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 and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supp | |
| seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is abutting an RPW: Provide acreage estimates for jurisdictional wetlands in the review area: Wetland OO=0.03 acres, Wetland QQ=0.12 Wetland RR=0.04 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 and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supp | tion. |
| Wetland RR=0.04 acres. 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 and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supp | |
| Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supp | 2 acres, and |
| | are adjacent orting this |
| 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 with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting conclusion is provided at Section III.C. | |
| Provide estimates for jurisdictional wetlands in the review area: acres. | |
| 7. Impoundments of jurisdictional waters. 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: Pond 6 is an impoundment of PRPW 53 | |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| E. | OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, EGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY JCH 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): | | | | | | | | | | |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. | | | | | | | | | | |
| SEC | CTION 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: S&ME. | | | | | | | | | | |
| | Data sheets prepared/submitted by or on behalf of the applicant/consultant. □ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. □ Office does not concur with data sheets/delineation report. | | | | | | | | | | |
| | □ Data sheets prepared by the Corps: □ Corps navigable waters' study: 1977 Navigability Study. □ U.S. Geological Survey Hydrologic Atlas: 03050108-04. | | | | | | | | | | |
| | ☐ USGS NHD data. ☑ USGS 8 and 12 digit HUC maps. | | | | | | | | | | |
| | ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): | | | | | | | | | | |
| | FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. | | | | | | | | | | |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW qith 3 abutting wetlands and an impoundment and 2 seasonal RPWs. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 8 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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.

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]

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

| 1. | W | aters of the U.S. | | | | | | |
|----|---|-------------------|-----------|------|---|------------|---------|-------|
| | _ | T., 3 4 | · C · 4 · | CTLC | • | 1 1 11 | 41 4 1- | _\. 1 |

SECTION I: BACKGROUND INFORMATION

| а. | muica | te presence of waters of 0.5. In review area (check an that apply): |
|----|-------------|--|
| | | TNWs, including territorial seas |
| | | Wetlands adjacent to TNWs |
| | \boxtimes | Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs |
| | | Non-RPWs that flow directly or indirectly into TNWs |
| | \boxtimes | 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: RPW 59=1,307 linear feet, SRPW 60=378 linear feet, and PRPW 61=356 linear feet. Wetlands: Wetland SS=0.671 acres and Wetland TT=0.0009 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 | lada (al-a | -1- <u>:</u> C | .1: |
| | | | | |

| Potentially ju | urisdictional | waters and/or | wetlands we | ere assessed | within the | e 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water) . Tributary stream order, if known: |

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

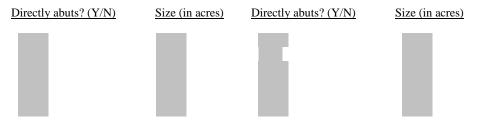
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | General Tributary Characteristics (check all that apply): Fributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|------|--|
| | | Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | Primary tributary substrate composition (check all that apply): Silts |
| | | Pributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Pributary geometry: Meandering. Pributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events . Other information on duration and volume: Tributary has a clear OHWM and distinct channel . |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions. |
| | | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | | Tributary has (check all that apply): |
| | | If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects Fine shell or debris deposits (foreshore) Physical markings/characteristics Other (list): Mean High Water Mark indicated by: Survey to available datum; Physical markings; vegetation lines/changes in vegetation types. |
| (iii) | Cha | nical Characteristics: acterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |
| (iv) | Biol | ify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. gical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

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.

| | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. |
|----|---------|--|
| 2. | Char | acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | | 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 Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain: |
| | | 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. |
| | (| 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. | | acteristics 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. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and | Adjacent Wetlands. | Check all that apply | and provide | e size estimates ii | n 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: PRPW 59 and PRPW 61 are the same tributary. PRPW 59 is above the wetland and PRPW 61 is leaving the wetland. There perennial tributaries were observed flowing at the time of flagging and during the Corps site visit. These tributaries have clear OHWMs and distinct channels. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
| | 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: SRPW 60 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offie to conclude the tributaries have a seasonal flow regime. |
| (ft) | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: RPW 59=1,307 linear feet, SRPW 60=378 linear feet, and PRPW 61=356 linear feet width |
| (ft). | Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: These wetlands are abutting PRPW 59 anf PRPW 61 and have a continuous surface connection. |
| | 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: Wetland SS=0.671 acres and Wetland TT=0.0009 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 jurisidictional. 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. 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| HE USE, NCLUDING ANY |
|--|
| |
| |
| Corps of Engineers ted based <u>solely</u> on the plain: |
| diction is the MBR using best professional |
| us" standard, where such |
| |
| file and, where checked heets. |
| a, Cecil, Car |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
|---|---|
| | |
| | or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|] | by USACE and dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: . |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| | Other information (please specify): Site Visit. |
| | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 2 perennial RPWs with 2 abutting wetlands and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 9 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: **PRPW 9=1,198** linear feet. Wetlands: Wetland D=0.218 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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:

SECTION I: BACKGROUND INFORMATION

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: 0 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:

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

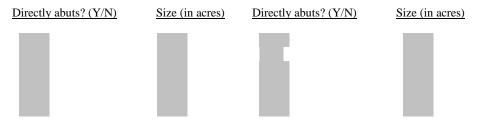
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | General Tributary Characteristics (check all that apply): |
|-------|------|--|
| | , | Tributary is: Natural 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: attify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |



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:

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

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

| 1. | TNWs and Adj | jacent Wetlands. | Check all that appl | ly and provide size estimates in review area: | |
|----|---------------|------------------|---------------------|---|--|
| | TNWs: | linear feet | width (ft), Or, | acres. | |
| | ☐ Wetlands ad | jacent 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: PRPW 9 is a perennial tributary that was observed flowing at the time of flagging and during the

| | Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime |
|----|---|
| | 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: PRPW 9=1,198 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: This wetland is abutting PRPW 9 and has a continuous surface connection. |
| | 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: Wetland D=0.218 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 jurisidictional. 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. 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: |
| DE | OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

E.

 ⁸See Footnote # 3.
 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.

| | ☐ Interstate isolated waters. Explain: ☐ Other factors. Explain: | | | | | | |
|-----------|--|--|--|--|--|--|--|
| | ntify 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. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres. | | | | | | |
| SEC | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Goffice concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Goffice does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. | | | | | | |
| | □ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. or ○ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE and dated 24-July-2013. | | | | | | |
| | Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. | | | | | | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and an abutting wetland. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 10 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 10=1,184 linear feet. Wetlands: Wetland L=0.008 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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: 0 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:

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

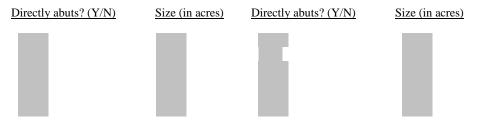
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | General Tributary Characteristics (check all that apply): |
|-------|------|--|
| | , | Tributary is: Natural 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: attify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |



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:

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

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

| 1. | TNWs and Adj | acent Wetlands. | Check all that apply | and provide size estimates in review area: |
|----|--------------|-----------------|----------------------|--|
| | TNWs: | linear feet | width (ft), Or, | acres. |
| | Wetlands ad | jacent 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: **PRPW 10** is a perennial tributary that was observed flowing at the time of the flagging and during

| | the Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
|----|---|
| | 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: PRPW 10=1,184 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: This wetland is abutting PRPW 10 and has a continuous surface connection. |
| | 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: Wetland D=0.008 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 jurisidictional. 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. 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: |
| DE | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

E.

 ⁸See Footnote # 3.
 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 the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the complete the action to Corps and EPA HQ for the corps and the corps are the corps and EPA HQ for the corps are the corps review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

| | ☐ 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 <u>sole</u> 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. |
| SE | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. |
| | ☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: 1977 Navigability Study. ☐ U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| | by USACE and dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and an abutting wetland. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 11 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 13=85 linear feet. Wetlands: Wetland I=0.043 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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.

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: 61.981 acres: 03050108-04 Drainage area: **Pick List** Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are 1 (or less) aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: first.

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.

| (b) | General Tributary Characteristics (check all that apply): |
|------|--|
| | Tributary is: Natural |
| | Artificial (man-made). Explain: |
| | Manipulated (man-altered). Explain: |
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tibutary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions. |
| | Subsurface flow: Unknown . Explain findings: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining other (list): Discontinuous OHWM. 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: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics In tidal gauges Other (list): Mean High Water Mark indicated by: In survey to available datum; In physical markings; In vegetation lines/changes in vegetation types. |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% |
| Iden | scrub/shrub, and 0.2% water. ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |
| | |

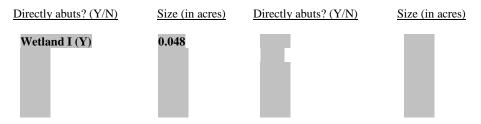
(iii)

(iv)

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.

| | | | Wetland fringe. Characteristics: . |
|----|-------|-----------|---|
| | | \bowtie | Habitat for: Federally Listed species. Explain findings: |
| | | | Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. |
| | | | ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. |
| | | | |
| 2. | Cha | aract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | vsical Characteristics: |
| | | (a) | General Wetland Characteristics: Properties: |
| | | | Wetland size: 0.043 acres |
| | | | Wetland type. Explain: Forested. |
| | | | Wetland quality. Explain: Good. |
| | | | Project wetlands cross or serve as state boundaries. Explain: . |
| | | (b) | General Flow Relationship with Non-TNW: |
| | | | Flow is: Ephemeral flow . Explain: Water flows from wetland to tributary after heavy rains . |
| | | | Surface flow is: Discrete and confined |
| | | | Characteristics: Wetland is abutting tributary. |
| | | | 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: |
| | | | 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: Wetland to navigable waters. Estimate approximate location of wetland as within the Pick List floodplain. |
| | | | |
| | (ii) | | emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed |
| | | Ciia | characteristics; etc.). Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% |
| | | | barren, 0.5% scrub/shrub, and 0.2% water. |
| | | Ider | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| | (iii) | K 2 | logical Characteristics. Wetland supports (check all that apply): |
| | | X | Riparian buffer. Characteristics (type, average width): Forested . Vegetation type/percent cover. Explain: |
| | | \square | Habitat for: |
| | | _ | Federally Listed species. Explain findings: |
| | | | Fish/spawn areas. Explain findings: The wetland provides breeding ground for aquatic species. |
| | | | □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The wetland provides shelter and foraging areas for wildlife. |
| • | C. | | |
| 3. | Cha | | eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: 1 |
| | | | proximately (0.048) acres in total are being considered in the cumulative analysis. |



Summarize overall biological, chemical and physical functions being performed: The wetland evaluated in this significant nexus determination is abutting the RPW and is collectively performing biological, chemical, and physical functions. The 0.048 acre wetland that is in the review areais less than 100 feet from the perennial RPW that flows to the TNW. This wetland is forested. The wetland provides breeding ground for aquatic species and habitat for shelter and foraging for wildlife. The wetland also helps to filter pollutants from run-off and adjacent development before they travel to the downstream TNW. The wetland also performs flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain.

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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary and its abutting wetland on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary and wetland provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary and wetland helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary and wetland also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and

physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL

| TH | AT 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: |
| | 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: SRPW 13 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 13=85 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: Wetland I is abutting SRPW 13 and has a continuous surface connection. |
| | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland I=0.043 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 jurisidictional. 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 |

See Footnote # 3.

 $^{^{9}\,\}mathrm{To}$ complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| Explain: |
|--|
| 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. |
| 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 <u>sole</u> 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. |
| TION IV: DATA SOURCES. |
| UPPORTING 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Goffice concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. |
| |

 $^{^{10}}$ 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.

| State/Local wetland inventory map(s): . |
|---|
| FEMA/FIRM maps: . |
| 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| USACE dated 24-July-2013. |
| Previous determination(s). File no. and date of response letter: . |
| Applicable/supporting case law: |
| Applicable/supporting scientific literature: |
| Other information (please specify): Site Visit. |
| |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW and an abutting wetland. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 12 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 12=973 linear feet. Wetlands: Wetland F=0.023 acres, Wetland G=0.01 acres, and Wetland H=0.034 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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:

SECTION I: BACKGROUND INFORMATION

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:

| | Wat | tershed size: | Pick List | ; |
|------|-----|--|---------------------|--|
| | Dra | inage area: | Pick List | |
| | Ave | rage annual rainfall | : in | ches |
| | Ave | rage annual snowfa | ll: 0 inche | s |
| | | | | |
| (ii) | Phy | sical Characteristi | cs: | |
| | (a) | Relationship with | TNW: | |
| | | ☐ Tributary flows | directly i | nto TNW. |
| | | Tributary flows | s through l | 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 cros | ss or serve | as state boundaries. Explain: . |
| | | , | | r |
| | | Identify flow route | to TNW ⁵ | : . |
| | | Tributary stream o | | |
| | | in the second se | , 11 1111 | • |

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

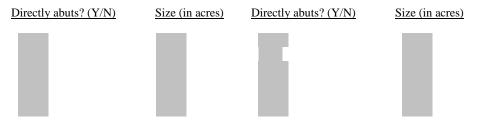
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition sediment deposition water staining 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: artify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | rsical Characteristics: 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) | Cha | emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List proximately () acres in total are being considered in the cumulative analysis. |



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:

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

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

| 1. | TNWs and Ad | jacent Wetlands. | Check all that apply | and provide size estimates in review area: |
|----|---------------|------------------|----------------------|--|
| | TNWs: | linear feet | width (ft), Or, | acres. |
| | ☐ Wetlands ac | ljacent 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: **PRPW 12** is a perennial tributary that was observed flowing at the time of flagging and during the

| | available data led this office to conclude the tributary has a perennial flow regime. | |
|----|---|------|
| | 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 flow seasonally: | /S |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 12=973 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: | |
| 3. | Non-RPWs ⁸ 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: These wetlands are abutting PRPW 12 and have a continuous surface connection. | |
| | ■ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributar seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: | y is |
| We | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland F=0.023 acres, Wetland G=0.01 acres, and teland H=0.034 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 with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. 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 with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C. | anc |
| | Provide estimates for jurisdictional wetlands in the review area: acres. | |
| 7. | Impoundments of jurisdictional waters. 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: | |
| DE | OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. | |

Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and

E.

 ⁸See Footnote # 3.
 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.

| | 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 <u>sole</u> 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. |
| SE | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s): State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE dated 24. July-2013 |
| | by USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and three abutting wetlands. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 13 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 14=4,627 linear feet, SRPW 16=438 linear feet, and SRPW 17=269 linear feet. Wetlands: Wetland O=0.234 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 inches |
|------------|---|
| (ii) | Physical Characteristics: |
| (11) | (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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |

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.

| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
|------|---|
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions . |
| | Subsurface flow: Unknown. Explain findings: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types. |
| Cha | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |
| Iden | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| Biol | ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |
| | |

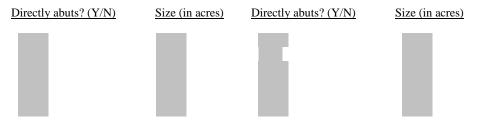
(iii)

(iv)

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.

| | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. |
|----|---------|--|
| 2. | Char | acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | | 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 Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain: |
| | | 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. |
| | (| 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. | | acteristics 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. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site are performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

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

| ı. | INWS and A | ajacent wetlands. | Check all that apply | y and provide size estimates in revi | iew 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: PRPW 14 was observed flowing at the time of all site visits. This tributary has a clear OHWM and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
| | 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: SRPW 16 and 17 are shown as drainage features on the topo map. They have a clear OHWM and distinct channel. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| (ft) | Provide estimates for jurisdictional waters in the review area (check all that apply): ☑ Tributary waters: PRPW 14=4,627 linear feet, SRPW 16=438 linear feet, and SRPW 17=269 linear feet width |
| (ft). | Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: Wetland O is abutting PRPW 14 and has a continuous surface connection. |
| | 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: Wetland O=0.234 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 jurisidictional. 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. 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| E. | SOLATED [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): | | | |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. | | | |
| SEC | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. | | | |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. | | | |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. | | | |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. | | | |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. | | | |
| | USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): | | | |
| | FEMA/FIRM maps: | | | |
| | □ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) □ Photographs: □ Aerial (Name & Date): 11188:189 & 11188:187, 1999. | | | |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: . |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with an abutting wetland and 2 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 14 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 27=899 linear feet and SRPW 30=299 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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.

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: 61,981 acres; 03050108-04 |
|------|--|
| | Drainage area: Pick List |
| | Average annual rainfall: 47.39 inches |
| | Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which |
| | flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). |
| | Tributary stream order, if known: |
| | |

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

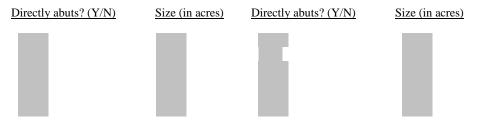
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: | | | | |
|---|--|--|--|--|
| | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. | | | |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % | | | |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. | | | |
| is connected | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. SRPW 27 to PRPW by overland sheetflow . | | | |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: | | | |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events 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: | | | |
| Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. | | | |
| (iv) Biol | logical Characteristics. Channel supports (check all that apply): | | | |

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.

| | | | Riparian corridor. Characteristics (type, average width): Forested . Wetland fringe. Characteristics: Habitat for: |
|----|-------------|-------|--|
| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
| 2. | Cha | | ristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (;) | Dhya | ical Characteristics: |
| | (i) | (a) | General Wetland Characteristics: |
| | | | Properties: Wetland size: acres |
| | | | Wetland type. Explain: . |
| | | | Wetland quality. Explain: Design wetlands are so a serve as at the houndaries. Explain: |
| | | • | Project wetlands cross or serve as state boundaries. Explain: |
| | | | 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: . |
| | | | |
| | | | <u>Proximity (Relationship) to TNW</u> 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) | | mical Characteristics: |
| | | | acterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: |
| | | | ify specific pollutants, if known: |
| | (iii) | Biolo | ogical 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. | Cha | | ristics of all wetlands adjacent to the tributary (if any) |
| | | | vetland(s) being considered in the cumulative analysis: Pick List |
| | | Appr | oximately () acres in total are being considered in the cumulative analysis. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site are performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

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

| 1. | INWS and Adja | acent wetlands. | Cneck all that apply | and provide siz | te estimates i | n review area: |
|----|---------------|-----------------|----------------------|-----------------|----------------|----------------|
| | TNWs: | linear feet | width (ft), Or, | acres. | | |

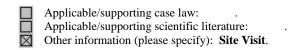
| | ■ Wetlands adjacent to TNWs: acres. |
|----|--|
| 2. | RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: |
| | Tributaries of TNW where tributaries 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: SRPW 27 feeds into SRPW 30 and is connected by overland sheetflow. They were not observed flowing at all site visits. The tributaries are shown on the topo as a drainage feature. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 27=899 linear feet and SRPW 30=299 linear feet Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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. | 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: |
| DE | OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 |

E.

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| | 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 <u>sole</u> 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. |
| | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability. U.S. Geological Survey Hydrologic Atlas: 03050108-04. |
| | USGS NHD data. □ USGS 8 and 12 digit HUC maps. □ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. □ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: □ Aerial (Name & Date): 11188:189 & 11188:187, 1999. or □ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE dated 24-July-2013. □ Previous determination(s). File no. and date of response letter: |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$



B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 2 seasonal RPWs. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 15 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 26=781 linear feet. Wetlands: Wetland W=0.2 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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.

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: 0 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:

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.

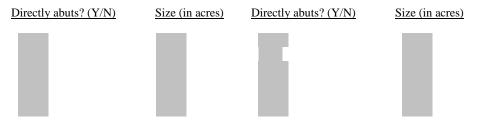
| | (b) | General Tributary Characteristics (check all that apply): |
|-------|------|--|
| | , | Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
| | | Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List. |
| | | Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: attify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |

For each wetland, specify the following:



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:

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

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

| ı. | TNWs and Adja | acent Wetlands. | Check all that apply | y and provide size es | timates in review area: |
|----|----------------|-----------------|----------------------|-----------------------|-------------------------|
| | TNWs: | linear feet | width (ft), Or, | acres. | |
| | ☐ Wetlands adj | acent 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: **PRPW 26** is a perennial tributary that was observed flowing at the time of flagging and during the

| | Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
|----|---|
| | ☐ 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: PRPW 26=781 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: This wetland is abutting PRPW 26 and has a continuous surface connection. |
| | 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: Wetland W=0.2 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 jurisidictional. 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. 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: |
| DE | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

E.

 ⁸See Footnote # 3.
 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 the complete of th review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

| | ☐ Interstate isolated waters. 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 <u>sole</u> 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. | | | |
| SEC | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. | | | |
| | ☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: 1977 Navigability Study. ☐ U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. | | | |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken | | | |
| | by USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. | | | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and an abutting wetland. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 16 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 25=1,879 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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.

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: 0 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: . |
| | 1 To jobb Wales 61 000 01 001 to all blade 6 0 and all 10 11 2 Inplant. |
| | Identify flow route to TNW ⁵ : . |
| | Tributary stream order, if known: |
| | Thousany stream order, it known. |

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.

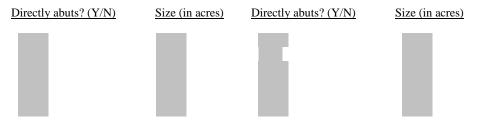
| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|------|---|
| | | Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List. |
| | | Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |

For each wetland, specify the following:



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:

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

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

| ı. | TNWs and Adj | acent Wetlands. | Check all that apply | y and provide size estimates in review area: |
|----|--------------|-----------------|----------------------|--|
| | TNWs: | linear feet | width (ft), Or, | acres. |
| | Wetlands ad | jacent 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: **PRPW 25** is a perennial tributary that was observed flowing at the time of flagging and during the

| | available data led this office to conclude the tributary has a perennial flow regime. |
|----|---|
| | 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: PRPW 25=1,879 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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). Explain: |
| DE | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and

E.

 ⁸See Footnote # 3.
 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 the complete of th review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

| | ☐ 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. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres. |
| SEC | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. |
| | ☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: 1977 Navigability Study. ☐ U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken byS&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE dated 24-July-2013. □ Previous determination(s). File no. and date of response letter: □ Applicable/supporting case law: □ Applicable/supporting scientific literature: □ Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW. Based on guidance in RGL 07-01, perennial RPWs are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 17 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 28=3,825 linear feet and SRPW 29=375 linear feet. Wetlands: Wetland X=0.363 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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.

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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 inches |
|------------|---|
| (ii) | Physical Characteristics: |
| (11) | (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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |

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.

| (b) | General Tributary Characteristics (check all that apply): Tributary is: | | | | | |
|------|--|--|--|--|--|--|
| | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. | | | | | |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % | | | | | |
| (c) | Flow: Tibutary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. | | | | | |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions . | | | | | |
| | Subsurface flow: Unknown. Explain findings: | | | | | |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: Oil or scum line along shore objects In fine shell or debris deposits (foreshore) In physical markings/characteristics In tidal gauges Other (list): Mean High Water Mark indicated by: In survey to available datum; In physical markings; In vegetation lines/changes in vegetation types. | | | | | |
| Cha | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. | | | | | |
| Iden | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. | | | | | |
| Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. | | | | | |
| | | | | | | |

(iii)

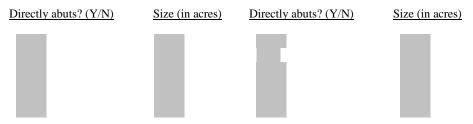
(iv)

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.

| | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. |
|----|---------|--|
| 2. | Char | acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | | 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 Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain: |
| | | 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. |
| | (| 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. | | acteristics 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:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adja | icent wetlands. | Cneck all that apply | y and provide size estimates in review area | ı: |
|----|---------------|-----------------|----------------------|---|----|
| | 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: PRPW 28 was observed flowing at the time of flagging and the Corps site visit. This tributary has a clear OHWM and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
| | | 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: SRPW 29 is shown as drainage features on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a seasonal flow regime. |
| | | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 28=3,825 linear feet and SRPW 29=375 linear feet Other non-wetland waters: acres. Identify type(s) of waters: . |
| | 3. | Non-RPWs ⁸ 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: Wetland X is abutting PRPW 28 and has a continuous surface connection. |
| | | 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: Wetland X=0.363 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 jurisidictional. 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. 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: |
| Е. | DE | OLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10 |

⁸See Footnote # 3

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

| | 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: | |
|------|---|---|
| | dentify 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 <u>sole</u> 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 udgment (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. | l |
| | Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such 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. | h |
| SE(| TION IV: DATA SOURCES. | |
| A. S | UPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked | i |
| | nd requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. | |
| | □ Data sheets prepared by the Corps: □ Corps navigable waters' study: 1977 Navigability Study. □ U.S. Geological Survey Hydrologic Atlas: 03050108-04. □ USGS NHD data. | |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. | |
| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE dated 24-July-2013. ☐ Previous determination(s). File no. and date of response letter: | |

 $^{^{10}}$ 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.

| | Applicable/supporting case law: . | |
|-------------|---|--|
| | Applicable/supporting scientific literature: | |
| \boxtimes | Other information (please specify): Site Visit. | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with an abutting wetland and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 18 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: **3-March-2015** Field Determination. Date(s): 24-July-2013 **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. 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: SRPW 58=168 linear feet. Wetlands: Wetland PP=0.085 acres. c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, Established by OHWM., Pick List Elevation of established OHWM (if known): 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.

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

| General Area Conditions: Watershed size: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 inches |
|--|
| 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 1 (or less) river miles from RPW. |
| Project waters are Pick List aerial (straight) miles from TNW. |
| Project waters are 1 (or less) aerial (straight) miles from RPW. |
| Project waters cross or serve as state boundaries. Explain: |
| Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water) . Tributary stream order, if known: |
| |

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.

| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|-----|--|
| | | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have clear OHWM and distinct channels. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions . |
| | | Subsurface flow: Unknown . Explain findings: Dye (or other) test performed: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: Oil or scum line along shore objects Fine shell or debris deposits (foreshore) Physical markings/characteristics Other (list): Mean High Water Mark indicated by: Survey to available datum; Physical markings; Vegetation lines/changes in vegetation types. |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: Water was observed in some tributaries at the time of the site visit. The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | Bio | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

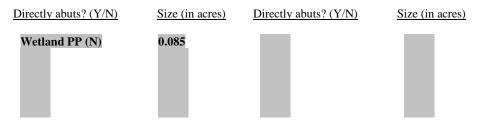
⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (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.

| | | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
|----|------|-------|--|
| 2. | Cha | aract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: 0.085 acres Wetland type. Explain: Forested. Wetland quality. Explain: Good. Project wetlands cross or serve as state boundaries. Explain: |
| | | (b) | General Flow Relationship with Non-TNW: Flow is: Intermittent flow. Explain: Water flows from wetland to RPW after heavy rain. |
| | | | Surface flow is: Discrete 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: ☐ Ecological connection. Explain: Water flows over land during heavy rain events. ☐ 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: Wetland to navigable waters. Estimate approximate location of wetland as within the Pick List floodplain. |
| | (ii) | Cha | emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water attify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| | (iii | | logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): forested. Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Wetland provides breeding ground for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: Wetland provides habitat and foraging areas for wildlife. |
| 3. | Cha | | eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: 1 |

Approximately (0.085) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:



Summarize overall biological, chemical and physical functions being performed: The wetland evaluated in this significant nexus determination which is adjacent to the RPW are collectively performing biological, chemical, and physical functions. The 0.085 acre wetland that is in the review area is approximately 200 feet from the RPW that flows to the TNW. The wetland that is adjacent to the RPW is forested. This wetland provides breeding ground for aquatic species and habitat for shelter and foraging for wildlife. This wetland also helps to filter pollutants from run-off and adjacent development before they travel to the downstream TNW. This wetland also performs flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain.

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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary and adjacnet wetland on-site are collectively performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. This tributary and wetland provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary and wetland help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. The tributary and wetland also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological,

chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

| | TERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL IAT 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: |
| | 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: SRPW 58 is a smaller channel that feeds into PRPW 53. The tributary was not observed flowing at the time of flagging and during the Corps site visit. This tributary is shown on the topo as drainage features. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 58=168 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. Data supporting this conclusion is provided at Section III.C. |
| | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland PP=0.085 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. 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 |

D.

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| Explain: |
|--|
| 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. |
| 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 <u>sole</u> 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. |
| TION IV: DATA SOURCES. |
| UPPORTING 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Goffice concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. |
| |

 $^{^{10}}$ 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.

| | State/Local wetland inventory map(s): . |
|-------------|---|
| | FEMA/FIRM maps: |
| | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| \boxtimes | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| by | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: |
| | Applicable/supporting scientific literature: |
| \boxtimes | Other information (please specify): Site Visit. |
| | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW and an adjacent, but not abutting wetland. A Significant Nexus Determination was performed, which includes all wetlands on-site and those in the drainage area outside of the project limits. Based on the documentation provided in Section III, C of this form, the nexus between the RPW (and its adjacent wetlands) and the downstream TNW is significant. The RPW and wetland documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 19 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 56=1,633 linear feet and SRPW 57=81 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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.

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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW^5 : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |
| | 1 ributary stream order, if known: |

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.

| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
|------|---|
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions . |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types. |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% corub(chrub, and 0.2% water |
| Iden | scrub/shrub, and 0.2% water tify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| Biol | ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

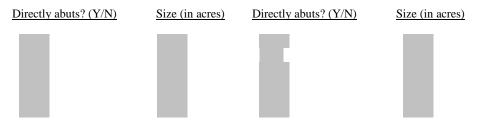
(iii)

(iv)

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.

| | | □ Wetland fringe. Characteristics: □ Habitat for: □ Federally Listed species. Explain findings: □ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife |
|----|------------|---|
| 2. | Cha | racteristics 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. | Cha | racteristics 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. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adj | acent wetlands. | Check all that apply | and provide size | estimates in review area: |
|----|--------------|-----------------|----------------------|------------------|---------------------------|
| | TNWs: | linear feet | width (ft), Or, | 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: PRPW 56 was observed flowing at the time of flagging and during the Corps site visit. It has a very distinct channel with a clear OHWM. Stream characteristics observed and available data led this office to conclude this tributary has a perennial flow regime. |
|----|---|
| | 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: SRPW 57 is a smaller channel that flows directly into PRPW 56. It was not observed flowing at the time of flagging and during the Corps site visit. The tributary is shown on the topo as a drainage feature. Stream characteristics observed and available data led this offic to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 56=1,633 linear feet and SRPW 57=81 linear feet Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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). Explain: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: . |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 20 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 15=820 linear feet. Wetlands: Wetland M=0.059 acres and Wetland N=0.14 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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: 0 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: . |
| | 1 To jobb Wales 61 000 01 001 to all blade 6 0 and all 10 11 2 Inplant. |
| | Identify flow route to TNW ⁵ : . |
| | Tributary stream order, if known: |
| | Thousany stream order, it known. |

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

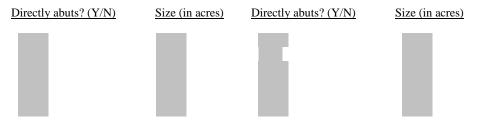
⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation shelving the presence of wrack line sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: .tify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |



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:

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

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

| 1. | TNWs and Adja | acent Wetlands. | Check all that apply a | and provide size estimates in review area: |
|----|----------------|-----------------|------------------------|--|
| | TNWs: | linear feet | width (ft), Or, | acres. |
| | ☐ Wetlands adj | acent 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: **PRPW 15** is a perennial tributary that was observed flowing at the time of flagging and during the

| | available data led this office to conclude the tributary has a perennial flow regime. |
|--------|---|
| | 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: PRPW 15=820 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: These wetlands are abutting PRPW 15 and have a continuous surface connection. ■ |
| | 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: Wetland M=0.059 acres and Wetland N=0.14 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 jurisidictional. 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. 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: |
| DE SUC | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and

E.

 ⁸See Footnote # 3.
 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.

| | ☐ 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 <u>sole</u> 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. | | | | | |
| <u>SE(</u> | CTION IV: DATA SOURCES. | | | | | |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. ☐ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ☐ Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: ☐ Corps navigable waters' study: 1977 Navigability Study. | | | | | |
| | U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. ☐ USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☐ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☐ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☐ Photographs: ☐ Aerial (Name & Date): 11188:189 & 11188:187, 1999. ☐ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken | | | | | |
| | by USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. | | | | | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and 2 abutting wetlands. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 21 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 35=916 linear feet and SRPW 36=159 linear feet. Wetlands: Wetland AA=0.017 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 inches |
|------------|---|
| (ii) | Physical Characteristics: |
| (11) | (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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |

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.

| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
|------|---|
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions . |
| | Subsurface flow: Unknown. Explain findings: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types. |
| Cha | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |
| Iden | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| Biol | ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |
| | |

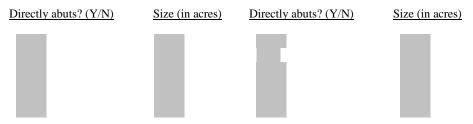
(iii)

(iv)

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.

| | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. | |
|--|---------|--|--|
| 2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW | | | |
| | | 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 Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain: | |
| | | 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. | |
| | (| 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. | | acteristics 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. | |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adja | icent wetlands. | Cneck all that apply | y and provide size estimates in review area | ı: |
|----|---------------|-----------------|----------------------|---|----|
| | 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: PRPW 35 was observed flowing at the time of flagging and during the Corps site visit. This tributary has a clear OHWM and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
| | 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: SRPW 36 is shown as drainage features on the topo map and flows directly into PRPW 35. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 35=916 linear feet and SRPW 36=159 linear feet Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: Wetland AA is abutting PRPW 35 and has a continuous surface connection. |
| | 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: Wetland AA=0.017 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 jurisidictional. 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. 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: |
| | |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| E. | SOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, EGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY UCH 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): | | | |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. | | | |
| SEC | CTION IV: DATA SOURCES. | | | |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. | | | |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. | | | |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. | | | |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. | | | |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. | | | |
| | ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): | | | |
| | FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) | | | |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. | | | |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|---|---|
| ŀ | by USACE dated 24-July-2013. |
| [| Previous determination(s). File no. and date of response letter: |
| [| Applicable/supporting case law: |
| [| Applicable/supporting scientific literature: |
| | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with an abutting wetland and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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): 3-March-2015

| В. | DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 22 of 31; SAC 2013-00626, I-26 Mega Site |
|-----------|--|
| c. | PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek |
| | Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 ☐ Field Determination. Date(s): 24-July-2013 |
| SEC A. | CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION. |
| revi | we 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: CHACCEMENT 404 DETERMENT AND CHARDES ACT (RHA) jurisdiction (as defined by 33 CFR part 329) in the sew 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: |
| В. | CWA SECTION 404 DETERMINATION OF JURISDICTION. |
| The | re Are no "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): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (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. Wetlands: acres. |
| | c. Limits (boundaries) of jurisdiction based on: Pick List, Pick List, Pick List Elevation of established OHWM (if known): |
| | 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: Pond 3 is 0.97 acres and is upland dug. This pond has no features coming into it and no features leaving it. The

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.

only water it is near is an isolated wetland documented on form 31 of 31. This pond has no connection to any water (jurisdictional or not jurisdictional). This pond is not an impoundment of a Water of the US and is not jurisdictional.

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

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:

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

| | | Identify flow route to TNW ⁵ : Tributary stream order, if known: | | | | |
|-------|-----|--|--|--|--|--|
| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural 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): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics physical markings/characteristics tidal gauges other (list): | | | | |
| (iii) | Cha | emical Characteristics: cracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: https://example.com/restate-st | | | | |

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. 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.

| | (iv) | | ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: |
|----|-------|-------|--|
| 2. | Cha | racte | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | (a) | sical Characteristics: 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) | Chai | mical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: tify specific pollutants, if known: |
| | (iii) | | ogical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): forested. 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. | Cha | All v | eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Pick List roximately () acres in total are being considered in the cumulative analysis. |



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:

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

| 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: |

| | ☐ 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 ⁸ 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 jurisidictional. 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. 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: |
| SU | CLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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: |

E.

⁸See Footnote # 3.

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.

| | 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. |
| featı | 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): Pond 3 is 0.97 acres and is upland dug. This pond has no features coming into it and no tres leaving it. The only water it is near is an isolated wetland documented on form 31 of 31. This pond has no connection to any or (jurisdictional). This pond is not an impoundment of a Water of the US and is not jurisdictional. |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | TION IV: DATA SOURCES. |
| A. S | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. USGS NHD data. |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. ☑ or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken by USACE dated 24-July-2013. ☑ Previous determination(s). File no. and date of response letter: △ Applicable/supporting case law: |
| | Applicable/supporting scientific literature: Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 upland dug pond (Pond 3). This pond is not jurisdictional and is not a water of the U.S.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 23 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: **SRPW 18=329** linear feet and Pond 1=1.79 acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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:

SECTION I: BACKGROUND INFORMATION

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.

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: 61,981 acres; 03050108-04 |
|------|--|
| | Drainage area: Pick List |
| | Average annual rainfall: 47.39 inches |
| | Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which |
| | flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). |
| | Tributary stream order, if known: |
| | |

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.

| (b) | Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: | | | | | |
|------|---|--|--|--|--|--|
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. | | | | | |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % | | | | | |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary haa a clear OHWM and distinct channel. | | | | | |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. | | | | | |
| | Subsurface flow: Unknown . Explain findings: | | | | | |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types. | | | | | |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. | | | | | |
| Ider | ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. | | | | | |
| Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. | | | | | |

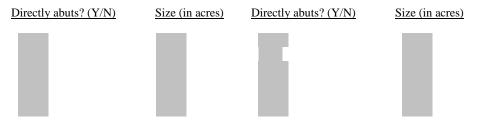
(iii)

(iv)

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.

| | | □ Wetland fringe. Characteristics: □ Habitat for: □ Federally Listed species. Explain findings: □ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife |
|----|------------|---|
| 2. | Cha | racteristics 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. | Cha | racteristics 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. |



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and | Adjacent Wetlands. | Check all that apply | and provide | e size estimates ii | n review area: |
|----|----------|--------------------|----------------------|-------------|---------------------|----------------|
| | TNWs: | linear feet | width (ft), Or, | acres. | | |

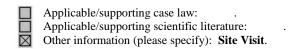
| | | Wetlands adjacent to TNWs: acres. |
|----|----|--|
| | 2. | RPWs that flow directly or indirectly into TNWs. Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: |
| | | Tributaries of TNW where tributaries 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: SRPW 18 is shown as a drainage feature on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offie to conclude the tributaries have a seasonal flow regime. |
| | | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: SRPW 18=329 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: |
| | 3. | Non-RPWs ⁸ 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 jurisidictional. 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. 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: Pond 1 (1.79 acres) is an impoundment at the start of SRPW 18. There is an overland spillway from Pond 1 to SRPW 18. SRPW is a water of the US as described above. |
| Е. | DE | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): ¹⁰ |

⁸See Footnote #3

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

| | 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: | |
|------|--|----------|
| | dentify water body and summarize rationale supporting determination: | |
| | rovide 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. | 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): | . |
| | rovide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR actors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional adgment (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. | ıl |
| | rovide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such 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. | ch |
| SEC | ION IV: DATA SOURCES. | |
| A. S | PPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked | d |
| | nd requested, appropriately reference sources below): Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. ☐ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ☐ Office does not concur with data sheets/delineation report. | |
| | Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050108-04. ☐ USGS NHD data. | |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ✓ Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. | |
| | or \(\subseteq Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken y USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: | |

 $^{^{10}}$ 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.



B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 seasonal RPW and an impoundment. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 24 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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]

| ı. | Wa | ers of the U.S. |
|----|----|---|
| | 9 | ndicate presence of waters of U.S. in review area (check all that apply): $^{ m 1}$ |

SECTION I: BACKGROUND INFORMATION

| a. | muica | the presence of waters of 0.5. In review area (check an that appry). |
|----|-------------|--|
| | | TNWs, including territorial seas |
| | | Wetlands adjacent to TNWs |
| | \boxtimes | Relatively permanent waters ² (RPWs) that flow directly or indirectly into TNWs |
| | | Non-RPWs that flow directly or indirectly into TNWs |
| | \boxtimes | 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 |
| | \boxtimes | 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: PRPW 23=2,138 linear feet, SRPW 24=162 linear feet, and Pond 2=0.81 acres.

Wetlands: Wetland S=0.047 acres and Wetland T=0.025 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 just | risdictional | waters and/or | wetlands we | ere assessed | within the | e 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 inches |
|------------|---|
| (ii) | Physical Characteristics: |
| (11) | (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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW ⁵ : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |

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.

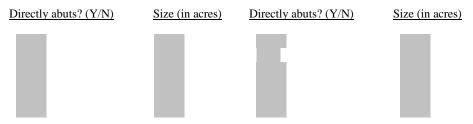
| | (b) | General Tributary Characteristics (check all that apply): Fributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|------|--|
| | | Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | Primary tributary substrate composition (check all that apply): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain: |
| | | Pributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Pributary geometry: Meandering. Pributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events . Other information on duration and volume: Tributary has a clear OHWM and distinct channel . |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channels during normal conditions. |
| | | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | | Tributary has (check all that apply): |
| | | If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply): High Tide Line indicated by: Oil or scum line along shore objects Fine shell or debris deposits (foreshore) Physical markings/characteristics Other (list): Mean High Water Mark indicated by: Survey to available datum; Physical markings; vegetation lines/changes in vegetation types. |
| (iii) | Cha | nical Characteristics: acterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water. |
| (iv) | Biol | ify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. gical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

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.

| | | Wetland fringe. Characteristics: Habitat for: ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife. |
|----|---------|--|
| 2. | Char | acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | | 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 Discrete wetland hydrologic connection. Explain: Ecological connection. Explain: Separated by berm/barrier. Explain: |
| | | 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. |
| | (| 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. | | acteristics 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:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adja | icent wetlands. | Cneck all that apply | y and provide size estimates in review area | ı: |
|----|---------------|-----------------|----------------------|---|----|
| | TNWs: | linear feet | width (ft), Or, | acres. | |

| ☐ Wetlands adjacent to TNWs: acres. |
|---|
| 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: PRPW 23 was observed flowing at the time of flagging and during the Corps site visit. This tributary has a clear OHWM and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime. |
| 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: SRPW 24 is shown as drainage features on the topo map. It has a clear OHWM and distinct channel. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. |
| Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 23=2,138 linear feet and SRPW 24=162 linear feet Other non-wetland waters: Pond 2=0.81 acres. Identify type(s) of waters: Impoundment. |
| Non-RPWs ⁸ 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: . |
| 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: Wetland S and T are abutting PRPW 23 and have a continuous surface connection. |
| ■ 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: Wetland S=0.047 acres and Wetland T=0.025 acres. |
| 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 jurisidictional. Data supporting this conclusion is provided at Section III.C. |
| Provide acreage estimates for jurisdictional wetlands in the review area: acres. |
| 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. |
| Impoundments of jurisdictional waters. 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: Pond 2 is an impoundment of PRPW 23. It is located at the head of the tributary and is connected to PRPW 23 by a culvert. |
| |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050108-04.☐ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | ✓ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ✓ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ✓ State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: . 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with 2 abutting wetlands and an impoundment and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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

| Δ | . REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERM | MINATION (ID): 3-March-2015 |
|-----|---|--|
| 71. | KEI OKI COMI LEHON DATE FOR ALI KOVED JUKISDICHONAL DETEKI | .VIII (A I I O I (() D) . S - WI (I C II - 2 U I S |

| B. | DISTRICT OFFICE. | FILE NAME. | AND NUMBER: | JD Form 25 of 31: | : SAC 2013-00626, I-26 Mega Site | |
|----|------------------|------------|-------------|-------------------|----------------------------------|--|
|----|------------------|------------|-------------|-------------------|----------------------------------|--|

| υ. | DISTRICT OFFICE, FILE NAME, AND NOMBER, 3D Form 25 of 51, 5AC 2015-00020, F26 Mega Ste |
|----------|--|
| c. | PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Saluda River Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 |
| SE A. | CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION. |
| | Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the iew 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: |
| В. | CWA SECTION 404 DETERMINATION OF JURISDICTION. |
| The | ere 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): 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 |
| line | b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: PRPW 41=1,082 linear feet, PRPW 42=2,612 linear feet, SRPW 43=308 linear feet, SRPW 44=660 ear feet, and Pond 5=2.39 acres. Wetlands: Wetland DD=0.044 acres and Wetland EE=0.388 acres. |
| | c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, Established by OHWM., 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: . |

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

Watershed size: 182.561 acres: 03050109-12

General Area Conditions:

Drainage area: Pick List
Average annual rainfall: 47.39 inches
Average annual snowfall: 0 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 1 (or less) aerial (straight) miles from RPW.

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

Project waters cross or serve as state boundaries. Explain:

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

| | Navigable Water). Tributary stream order, if known: |
|-----|--|
| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
| | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have clear OHWM and distinct channels. Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: Oil or scum line along shore objects Fine shell or debris deposits (foreshore) Physical markings/characteristics Other (list): Mean High Water Mark indicated by: Survey to available datum; Other physical markings; Vegetation lines/changes in vegetation types. |
| Che | emical Characteristics: |

Identify flow route to TNW5: Unnamed Tributary which flows to Reedy Creek which flows to Beaverdam Creek which flows to the Bush River which flows to Lake Murray(Navigable Water of the U.S. and Traditional

⁷Ibid.

(iii)

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. 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.

Explain: Water was observed in some tributaries at the time of the site visit. The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water... Identify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. (iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): **Forested**. Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Kish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW **Physical Characteristics:** General Wetland Characteristics: Properties: Wetland size: 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: Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: 7 Approximately () acres in total are being considered in the cumulative analysis.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

For each wetland, specify the following:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site are collectively performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. These tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. These tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and Ad | jacent Wetlands. | Check all that apply | y 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: PRPW 41 and PRPW 42 are shown as a blue lines on the topo and shown on the soil map. They were observed flowing at the time of flagging and during the Corps site visit. These tributaries have very distinct channels with clear OHWMs. Stream characteristics observed and available data led this office to conclude the tributaries have a perennial flow regime. |
| | 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: SRPW 43 and SRPW 44 were smaller channels that fed into PRPW 42. These tributaries were not observed flowing during the Corps site visit. These tributaries are all shown on the topo as drainage features. Stream characteristics observed and available data led this offic to conclude the tributaries have a seasonal flow regime. |
| line | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 41=1,082 linear feet, PRPW 42=2,612 linear feet, SRPW 43=308 linear feet, SRPW 44=660 ar feet width (ft). Other non-wetland waters: Pond 5=2.39 acres. Identify type(s) of waters: Impoundment. |
| 3. | Non-RPWs ⁸ 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: Wetland DD and Wetland EE are abutting PRPW 41 and have a continuous surface connection. |
| | 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: Wetland DD=0.044 acres and Wetland EE=0.388 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 jurisidictional. 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. 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). |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

Explain: Pond 5 is an impounment of PRPW 42. It connects to PRPW 42 by an overland spillway. PRPW 42 is a water of the U.S.

| 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): 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. |
| 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. |
| CTION IV: DATA SOURCES. |
| 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050109-12. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. |
| |

 $^{^{10}}$ 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.

| | State/Local wetland inventory map(s): . |
|-------------|---|
| | FEMA/FIRM maps: |
| | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| \boxtimes | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | or Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| by | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: |
| | Applicable/supporting scientific literature: |
| \boxtimes | Other information (please specify): Site Visit. |
| | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 2 perennial RPWs with 2 abutting wetlands and an impoundment and 2 seasonal RPWs. A Significant Nexus Determination was performed. Based on the documentation provided in Section III, C of this form, the nexus between the RPW and the downstream TNW is significant. The RPWs and wetlands documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 26 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Saluda River Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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): 24-July-2013 **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. 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: SRPW 39=1,985, SRPW 40=438 linear feet, and Pond 4=2.36 acres. Wetlands: Wetland CC=1.194 acres. c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, Established by OHWM., Pick List Elevation of established OHWM (if known): 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:

Water).

Watershed size: 182,561 acres; 03050109-12
Drainage area: Pick List
Average annual rainfall: 47.39 inches
Average annual snowfall: 0 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 are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: Unnamed Tributary which flows to Reedy Creek which flows to Beaverdam Creek

which flows to the Bush River which flows to Lake Murray (Navigable Water of the US and Traditional Navigable

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.

| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|------|--|
| | | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have clear OHWM and distinct channels. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | | Subsurface flow: Unknown . Explain findings: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line vegetation matted down, bent, or absent vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition multiple observed or predicted flow events water staining multiple observed or predicted flow events abrupt change in plant community Discontinuous OHWM. 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: |
| (iii) | Cha | emical Characteristics: unacterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: Water was observed in some tributaries at the time of the site visit. The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water ntify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): |

Tributary stream order, if known:

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.

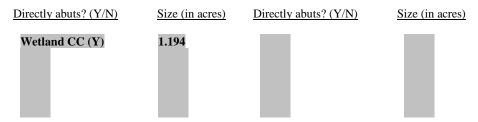
⁷Ibid.

| | | | Riparian corridor. Characteristics (type, average width): Forested. Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. |
|----|------------|-----------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: General Wetland Characteristics: Properties: Wetland size: 1.194 acres Wetland type. Explain: Forested. Wetland quality. Explain: Good. Project wetlands cross or serve as state boundaries. Explain: |
| | | (b) | General Flow Relationship with Non-TNW: Flow is: Intermittent flow. Explain: Water flows from wetland to RPW after heavy rain. |
| | | | Surface flow is: Discrete Characteristics: Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | | (c) | Wetland Adjacency Determination with Non-TNW: ☐ 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: Wetland to navigable waters. Estimate approximate location of wetland as within the Pick List floodplain. |
| | (ii) | Cha | emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water artify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| | (iii) | \square | logical Characteristics. Wetland supports (check all that apply): Riparian buffer. Characteristics (type, average width): forested. Vegetation type/percent cover. Explain: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Wetland provides breeding ground for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: Wetland provides habitat and foraging areas for wildlife. |
| 3. | Cha | | eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: 1 |

3.

Approximately (1.194) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:



Summarize overall biological, chemical and physical functions being performed: The wetland evaluated in this significant nexus determination which is abutting the RPW are collectively performing biological, chemical, and physical functions. The 1.194 acre wetland that is in the review area is abutting 2 seasonal RPWs that flows to the TNW. The wetland that is abutting to the RPW is forested. This wetland provides breeding ground for aquatic species and habitat for shelter and foraging for wildlife. This wetland also helps to filter pollutants from run-off and adjacent development before they travel to the downstream TNW. This wetland also performs flow maintenance functions by retaining run-off and storing flood waters during the wetter months and times of heavy rain.

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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries and abutting wetland on-site are collectively performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. These tributaries and wetland provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. These tributaries and wetland help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. The tributaries and wetland also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological,

chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL

| TH | AT 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: | | | | |
| | 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: SRPW 39 and SRPW 40 were not observed flowing during the Corps site visit. Theses tributaries have clear OHWMs, disctinct channles and are shown on the topo as drainage features. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. | | | | |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): ☐ Tributary waters: SRPW39=1,985 linear feet and SRPW 40=438 linear feet ☐ Other non-wetland waters: Pond 4=2.36 acres. ☐ Identify type(s) of waters: Impoundment. ☐ With the review area (check all that apply): ☐ width (ft). | | | | |
| 3. | Non-RPWs ⁸ 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: Wetland CC is abutting SRPW 39 and SRPW 40 and has a continuous surface connection. | | | | |
| | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland CC=1.194 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 jurisidictional. 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. 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 | | | | |

See Footnote # 3.

 $^{^{9}\,\}mathrm{To}$ complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| | Demonstrate that water is isolated with a nexus to commerce (see E below). Explain: Pond 4 is an impoundment above Wetland CC. It is connected to Wetland CC by a culvert. Wetland CC is abutting SRPW 39 and SRPW 40, which are waters of the U.S. |
|----|---|
| 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): 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. Other non-wetland waters: acres. List type of aquatic resource: . Wetlands: acres. |
| SE | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Goffice concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office does not concur with data sheets/delineation report. Data sheets prepared by the Corps: Corps navigable waters' study: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050109-12. USGS NHD data. USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. |

 $^{^{10}}$ 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.

| \boxtimes | National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. |
|-------------|--|
| | State/Local wetland inventory map(s): . |
| | FEMA/FIRM maps: . |
| | 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| \boxtimes | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| | or Mother (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: . |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |
| | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include s seasonal RPWs with an abutting wetland and impoundment. A Significant Nexus Determination was performed, which includes all wetlands on-site and those in the drainage area outside of the project limits. Based on the documentation provided in Section III, C of this form, the nexus between the RPW (and its adjacent wetlands) and the downstream TNW is significant. The RPW and wetland documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015

| B. | DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 27 of 31; SAC 2013-00626, I-26 Mega Site |
|------|--|
| C. | PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek |
| | Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Saluda Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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: 3-March-2015 ☐ Field Determination. Date(s): 24-July-2013 |
| | CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION. |
| | re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew 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: |
| В. (| CWA SECTION 404 DETERMINATION OF JURISDICTION. |
| The | re 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): TNWs, including territorial seas Wetlands adjacent to TNWs Relatively permanent waters ² (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 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 |
| line | b. Identify (estimate) size of waters of the U.S. in the review area: Non-wetland waters: PRPW 45=2,872 linear feet, SRPW 46=215 linear feet, SRPW 50=844 linear feet, PRPW 51=715 ar feet, and SRPW 52=68 linear feet. |
| Wet | Wetlands: Wetland FF=2.924 acres, Wetland GG=0.665 acres, Wetland LL=2.9 acres, Wetland MM=0.057 acres, and tland NN=0.089 acres. |

2. Non-regulated waters/wetlands (check if applicable):³

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

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.

| | | Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not juris Explain: | dictional. |
|-----|----------------------------------|---|--|
| SEC | CTIO | III: CWA ANALYSIS | |
| A. | TN | Vs AND WETLANDS ADJACENT TO TNWs | |
| | Sect | agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, co on III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III. 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. | СН | ARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): | |
| | | section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it rmine whether or not the standards for jurisdiction established under <i>Rapanos</i> have been met. | helps |
| | wat mor (per | agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively perm rs" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typicall ths). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year ennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennia to Section III.D.4. | y 3 r-round |
| | EP/ | etland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps dis regions will include in the record any available information that documents the existence of a significant nexus be ively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water gh a significant nexus finding is not required as a matter of law. | tween a |
| | wat cons ana the the | e waterbody ⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine rbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation ider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines ytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD ributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section II ributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both offsite. The determination whether a significant nexus exists is determined in Section III.C below. | must , for equest is II.B.1 for |
| | 1. | Characteristics of non-TNWs that flow directly or indirectly into TNW | |
| | | (i) General Area Conditions: Watershed size: 182,561 acres; 03050109-12 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 Project waters are Pick List aerial (straight) miles from TNW. Project waters are 1 (or less) aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain:

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

| | Tributary stream order, if known: . |
|-----|---|
| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
| | 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): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: Other. Explain: . |
| | Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributaries have clear OHWM and distinct channels. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions. |
| | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events 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: |
| Che | emical Characteristics: |

Identify flow route to TNW5: Unnamed Tributary which flows to Reedy Creek which flows to Beaverdam Creek which flows to the Bush River which flows to Lake Murray(Navigable Water of the US and Traditional Navigable

Water).

(iii)

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. 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.

Explain: Water was observed in some tributaries at the time of the site visit. The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water... Identify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. (iv) Biological Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): **Forested**. Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Kish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW **Physical Characteristics:** General Wetland Characteristics: Properties: Wetland size: 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: Characteristics of all wetlands adjacent to the tributary (if any) All wetland(s) being considered in the cumulative analysis: 7 Approximately () acres in total are being considered in the cumulative analysis.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

For each wetland, specify the following:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributaries on-site are collectively performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. These tributaries provide breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. These tributaries help to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. These tributaries also help to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | TNWs and Ad | jacent Wetlands. | Check all that apply | y 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: PRPW 45 and PRPW 51 are shown on the soil map. They were observed flowing at the time of flagging and during the Corps site visit. These tributaries have very distinct channels with clear OHWMs. Stream characteristics observed and available data led this office to conclude the tributaries have a perennial flow regime. |
| | 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: SRPW 46, SRPW 50, and SRPW 52 are smaller channels that feed into PRPW 45. These tributaries were not observed flowing during the Corps site visit. These tributaries are all shown on the topo as drainage features and have clear OHWMs and distinct channels. Stream characteristics observed and available data led this offie to conclude the tributaries have a seasonal flow regime. |
| line | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 45=2,872 linear feet, SRPW 46=215 linear feet, SRPW 50=844 linear feet, PRPW 51=715 ar feet, and SRPW 52=68 linear feet width (ft). Other non-wetland waters: Identify type(s) of waters: |
| 3. | Non-RPWs ⁸ 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: Wetland FF, Wetland GG, Wetland LL, Wetland MM, and Wetland NN are abutting and have a continuous surface connection with PRPW 45. |
| | 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: |
| Wet | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland FF=2.924 acres, Wetland GG=0.665 acres, tland LL=2.9 acres, Wetland MM=0.057 acres, and Wetland NN=0.089 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 jurisidictional. 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. 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| USE, LUDING ANY |
|--------------------------------------|
| |
| |
| ps of Engineers pased solely on the |
| on is the MBR ag best professional |
| tandard, where such |
| |
| and, where checked s. |
| ar s. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
|---|
| Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |
| or 🖂 Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| by USACE dated 24-July-2013. |
| Previous determination(s). File no. and date of response letter: |
| Applicable/supporting case law: . |
| Applicable/supporting scientific literature: |
| Other information (please specify): Site Visit. |
| |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 2 perennial RPWs, 5 seasonal RPWs with 5 abutting wetlands and 3 wetlands that are abutting. A Significant Nexus Determination was performed. Based on the documentation provided in Section III, C of this form, the nexus between the RPW (and its adjacent wetlands) and the downstream TNW is significant. The RPWs and wetlands documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 28 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Saluda River Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: **PRPW 49=409** linear feet. Wetlands: Wetland KK=0.207 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known): 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 |
| | Average ainitial showfall. |
| (#) | Dhysical Characteristics |
| (ii) | |
| | (a) <u>Relationship with TNW:</u> |
| | ☐ 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 ⁵ : . |
| | Tributary stream order, if known: |
| | |

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.

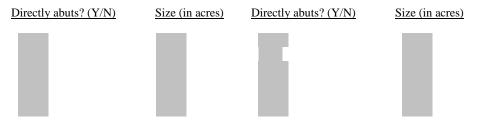
| | (b) | General Tributary Characteristics (check all that apply): |
|-------|------|--|
| | , | Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
| | | Tributary properties with respect to top of bank (estimate): Average width: feet Average depth: feet Average side slopes: Pick List. |
| | | Primary tributary substrate composition (check all that apply): Silts Sands Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting leaf litter disturbed or washed away sediment deposition destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting scour multiple observed or predicted flow events 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: attify specific pollutants, if known: |
| (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: |

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.

| | | | ☐ Federally Listed species. Explain findings: ☐ Fish/spawn areas. Explain findings: ☐ Other environmentally-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: |
|----|-------|------|---|
| 2. | Cha | ract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: httify specific pollutants, if known: |
| | (iii) | Bio | logical 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. | Cha | All | wetland(s) being considered in the cumulative analysis: Pick List broximately () acres in total are being considered in the cumulative analysis. |

For each wetland, specify the following:



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:

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

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

| ı. | 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: **PRPW 49 is a perennial tributary that was observed flowing at the time of flagging and during the**

| | Corps site visit. This tributary has a clear OHWMs and distinct channel. Stream characteristics observed and available data led this office to conclude the tributary has a perennial flow regime |
|----|---|
| | 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: PRPW 49=409 linear feet width (ft). Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: This wetland is abutting PRPW 49 and has a continuous surface connection. |
| | 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: Wetland KK=0.207 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 jurisidictional. 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. 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: |
| DE | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

E.

 ⁸See Footnote # 3.
 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.

| | ☐ 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 <u>sole</u> 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. |
| SEC | CTION 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. Office data part appropriately reference sources below): |
| | ☐ Office does not concur with data sheets/delineation report. ☐ Data sheets prepared by the Corps: ☐ Corps navigable waters' study: 1977 Navigability Study. ☐ U.S. Geological Survey Hydrologic Atlas: 03050109-12. ☐ USGS NHD data. |
| | ☑ USGS 8 and 12 digit HUC maps. ☑ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. ☑ National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. ☑ State/Local wetland inventory map(s): ☐ FEMA/FIRM maps: ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) ☑ Photographs: ☑ Aerial (Name & Date): 11188:189 & 11188:187, 1999. ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
| | by USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and an abutting wetland. Based on guidance in RGL 07-01, the perennial RPW and wetland are waters of the U.S. and within jurisdiction of the Clean Water Act.

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.

REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 29 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Saluda River Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 47=1,711 linear feet and SRPW 48=654 linear feet. Wetlands: Wetland HH=0.69 acres, Wetland II=0.065 acres, and Wetland JJ=0.038 acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known):

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:

SECTION I: BACKGROUND INFORMATION

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: 182,561 acres; 03050109-12 Drainage area: **Pick List** Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. Project waters are **Pick List** aerial (straight) miles from TNW. Project waters are 1 (or less) aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW5: Unnamed Tributary which flows to Reedy Creek which flows to Beaverdam Creek

which flows to the Bush River which flows to Lake Murray (Navigable Water of the US and Traditional Navigable Water).

 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.

| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural Artificial (man-made). Explain: Manipulated (man-altered). Explain: |
|-------|-----|---|
| | | Tributary properties with respect to top of bank (estimate): Average width: 3 feet Average depth: feet Average side slopes: Pick List. |
| | | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): |
| | (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributaries during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions . |
| | | Subsurface flow: Unknown. Explain findings: Dye (or other) test performed: |
| | | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment deposition destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment deposition destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment sorting sediment sorting sediment deposition destruction of terrestrial vegetation in the presence of litter and debris destruction of terrestrial vegetation in the presence of wack line sediment sorting sediment sorting sediment sorting sediment sorting sediment sorting sediment sorting 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: |
| (iii) | Cha | emical Characteristics: aracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% scrub/shrub, and 0.2% water Intify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| (iv) | | logical Characteristics. Channel supports (check all that apply): |
| | | == : |

Tributary stream order, if known:

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.

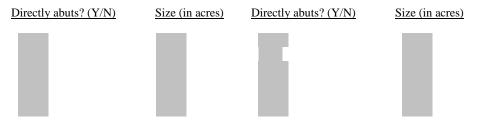
⁷Ibid.

| ⊠ Riparian corridor. Characteristics (type, average width): Forested. Wetland fringe. Characteristics: Habitat for: |
|--|
| Federally Listed species. Explain findings: |
| ☐ Fish/spawn areas. Explain findings: The tributary provides breeding grounds for aquatic species. ☐ Other environmentally-sensitive species. Explain findings: |
| ☐ Other environmentarry-sensitive species. Explain findings: ☐ Aquatic/wildlife diversity. Explain findings: The tributary provides shelter and foraging areas for wildlife |
| 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: |
| Separated by bernizoarner. Explain. |
| (d) <u>Proximity (Relationship) to TNW</u> Project wetlands are Pick List river miles from TNW. |
| Project wettands are Pick List river innes 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: |
| 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. |

2.

3.

For each wetland, specify the following:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributariy provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. The tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributaries to the downstream TNW.

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

| ı. | TNWs and Adja | acent Wetlands. | Check all that apply | and provide si | ize estimates i | n 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: PRPW 47 was observed flowing at the time of flagging and during the Corps site visit. It has a very distinct channel with a clear OHWM. Stream characteristics observed and available data led this office to conclude this tributary has a perennial flow regime. |
| | 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: SRPW 48 flows directly into PRPW 47. These tributaries are shown on the topo as a drainage feature. They all have clear OHWMs and distinct channels. Stream characteristics observed and available data led this offie to conclude the tributaries have a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 47=1,711 linear feet and SRPW 48=654 linear feet Other non-wetland waters: acres. Identify type(s) of waters: . |
| 3. | Non-RPWs ⁸ 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: All wetlands are abutting PRPW 47 and have a continuous surface connection. |
| | 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: |
| We | Provide acreage estimates for jurisdictional wetlands in the review area: Wetland HH=0.69 acres, Wetland II=0.065 acres, and etland JJ=0.038 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 jurisidictional. 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. 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: |
| | |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ✓ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ✓ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps:□ Corps navigable waters' study: 1977 Navigability Study. |
| | ☑ U.S. Geological Survey Hydrologic Atlas: 03050109-12.☐ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: |
| | Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or Mother (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|--|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW with 3 abutting wetlands and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 30 of 31; SAC 2013-00626, I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: **Newberry** City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Gilders Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Enoree River Name of watershed or Hydrologic Unit Code (HUC): 03050108-04 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **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. 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: PRPW 37=1,974 linear feet and SRPW 38=44 linear feet. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Established by OHWM., Pick List, Pick List Elevation of established OHWM (if known): 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: 61,981 acres; 03050108-04 Drainage area: Pick List Average annual rainfall: 47.39 inches Average annual snowfall: 0 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 1 (or less) river miles from RPW. |
| | Project waters are Pick List aerial (straight) miles from TNW. |
| | Project waters are 1 (or less) aerial (straight) miles from RPW. |
| | Project waters cross or serve as state boundaries. Explain: |
| | Identify flow route to TNW^5 : Unnamed Tributary which flows to Gilders Creek which flows to Indian Creek which flows to the Enoree River which flows to the Broad River (Traditional Navigable Water). Tributary stream order, if known: |
| | 1 ributary stream order, if known: |

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.

| (b) | General Tributary Characteristics (check all that apply): Tributary is: |
|------|---|
| | Tributary properties with respect to top of bank (estimate): Average width: 2 feet Average depth: feet Average side slopes: Pick List. |
| | 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: Fairly stable. Presence of run/riffle/pool complexes. Explain: Tributary geometry: Meandering. Tributary gradient (approximate average slope): % |
| (c) | Flow: Tributary provides for: Seasonal flow Estimate average number of flow events in review area/year: 20 (or greater) Describe flow regime: Water flows in tributary during wetter months and after rain events. Other information on duration and volume: Tributary has a clear OHWM and distinct channel. |
| | Surface flow is: Discrete and confined. Characteristics: Water flows in channel during normal conditions . |
| | Subsurface flow: Unknown. Explain findings: |
| | Tributary has (check all that apply): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil shelving vegetation matted down, bent, or absent leaf litter disturbed or washed away sediment deposition water staining 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: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; wegetation lines/changes in vegetation types. |
| | emical Characteristics: racterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.) Explain: The watershed is 76% forested, 12% agricultural, 5.5% urban, 4.5% forested, 1.3% barren, 0.5% corub(chrub, and 0.2% water |
| Iden | scrub/shrub, and 0.2% water tify specific pollutants, if known: There is the possibility of pollutants from nearby roads and railroad. |
| Biol | ogical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Forested. |

(iii)

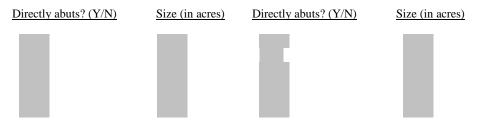
(iv)

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.

| | | □ Wetland fringe. Characteristics: □ Habitat for: □ Federally Listed species. Explain findings: □ Fish/spawn areas. Explain findings: The tributaries provide breeding grounds for aquatic species. □ Other environmentally-sensitive species. Explain findings: □ Aquatic/wildlife diversity. Explain findings: The tributaries provide shelter and foraging areas for wildlife |
|----|------------|---|
| 2. | Cha | racteristics 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. | Cha | racteristics 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:



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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: The seasonal tributary on-site is performing a variety of functions that relate to the biological, chemical, and physical integrity of the TNW. The tributary provides breeding grounds and shelter for wildlife and provide foraging areas for aquatic species. The tributary helps to filter runoff from adjacent roads and railroads before they travel to the down stream TNW. This tributary also helps to store flood water during the wetter months and after heavy rains. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the TNW, it has been determined there is a significant nexus between the relevant reach of the tributary to the downstream TNW.

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

| 1. | INWS and Adj | acent 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: PRPW 37 was observed flowing at the time of flagging and during the Corps site visit. It has a very distinct channel with a clear OHWM. Stream characteristics observed and available data led this office to conclude this tributary has a perennial flow regime. |
| | 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: SRPW 38 is a smaller channel that flows directly into PRPW 37. It was not observed flowing during the Corps site visit. The tributary is shown on the topo as a drainage feature. Stream characteristics observed and available data led this offie to conclude the tributary has a seasonal flow regime. |
| | Provide estimates for jurisdictional waters in the review area (check all that apply): Tributary waters: PRPW 37=1,974 linear feet and SRPW 38=44 linear feet Other non-wetland waters: acres. Identify type(s) of waters: |
| 3. | Non-RPWs ⁸ 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 jurisidictional. 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. 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: |

 $^{^8} See$ Footnote # 3. 9 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

| 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): |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. |
| | 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. |
| SEC | CTION IV: DATA SOURCES. |
| Α. | 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: S&ME. Data sheets prepared/submitted by or on behalf of the applicant/consultant. |
| | ☑ Office concurs with data sheets/delineation report. This office agrees with the conclusions of the data sheets. ☑ Office does not concur with data sheets/delineation report. |
| | □ Data sheets prepared by the Corps: □ Corps navigable waters' study: 1977 Navigability Study. |
| | ■ U.S. Geological Survey Hydrologic Atlas: 03050108-04.■ USGS NHD data. |
| | ✓ USGS 8 and 12 digit HUC maps. ✓ U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. |
| | USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): |
| | FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) |
| | Photographs: |

 $^{^{10}}$ 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 $\it Memorandum~Regarding~CWA~Act~Jurisdiction~Following~Rapanos.$

| | or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken |
|-------------|---|
| by l | USACE dated 24-July-2013. |
| | Previous determination(s). File no. and date of response letter: |
| | Applicable/supporting case law: . |
| | Applicable/supporting scientific literature: . |
| \boxtimes | Other information (please specify): Site Visit. |

B. ADDITIONAL COMMENTS TO SUPPORT JD: Aquatic resources documented on this form include 1 perennial RPW and 1 seasonal RPW. RPWs are jurisdictional according to RGL 07-01, however, the significant nexus findings for the record are included as required by Rapanos Guidnace. Therefore, the waters documented on this form are waters of the U.S. and within jurisdiction of the Clean Water Act.

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 REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3-March-2015 DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 31 of 31; SAC 2013-00626 I-26 Mega Site C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: South Carolina County/parish/borough: Newberry City: Newberry Center coordinates of site (lat/long in degree decimal format): Lat. 34.3349° N, Long. 81.6431° W. Universal Transverse Mercator: NAD 83 Name of nearest waterbody: Unnamed Tributary of Reedy Creek Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A Name of watershed or Hydrologic Unit Code (HUC): 03050109-12 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: 3-March-2015 Field Determination. Date(s): 24-July-2013 **SECTION II: SUMMARY OF FINDINGS** A. RHA SECTION 10 DETERMINATION OF JURISDICTION. There Are "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. 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: linear feet: width (ft) and/or acres. Wetlands: acres. c. Limits (boundaries) of jurisdiction based on: Pick List, Pick List, Elevation of established OHWM (if known):

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: The 2,164 acre project area contains one 0.173 acre isolated herbaceous wetland. The topo map depicts a blue line stream connecting the herbaceous wetland to a downstream impoundment. However, there is no blue line stream

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.

which was confirmed by the Corps during the site visit. There may have been one historically, however site manipulations on the adjacent agriculture fields and grazing lands likely resulted in the filling in of this feature. The herbaceous wetland seep flows under Looney Drive (the adjacent dirt road) through a culvert. The adjacent farm field, which is located on the other side of Looney Drive (outside of the project area), was inundated with water during the site visit. Hoever, there is no blueline stream located here either. These areas are seepy low lying areas that do not flow anywhere. There is a culvert located under US Highway 76 that appears to have historically connected the wetland seep to a pond located outside of the project area on the adjacent pasture land. However, this pond has been filled in and elevation changed such that this area is now higher in elevation than the isolated wetland, thus preventing the isolated wetland from flowing anywhere. The nearest waterbody (impoundment of a blue line stream) is located approximately 2,200 linear feet away. The herbaceous wetland showed no evidence of physical, chemical, or biological connectivity tto waters of the U.S., including any apparent surface or shallow subsurface hydrologic connection. There was also no apparent connection to interstate or foreign commerce. In addition, there is no apparent evidence of ecological interconnectivity between the isolated wetland and waters of the U.S. On this basis, this office has determined that this wetland is isolated from waters of the U.S. and is not within the jurisdiction of the Clean Water Act.

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

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

| (ii) | | sical Characteristics: 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 ⁵ : Tributary stream order, if known: |
| | (b) | General Tributary Characteristics (check all that apply): Tributary is: Natural 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): Silts Concrete Cobbles Gravel Muck Bedrock Vegetation. Type/% cover: 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): Bed and banks OHWM ⁶ (check all indicators that apply): clear, natural line impressed on the bank changes in the character of soil destruction of terrestrial vegetation the presence of wrack line sediment sorting sediment sorting sediment deposition multiple observed or predicted flow events abrupt change in plant community other (list): Discontinuous OHWM. Explain: |

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

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. 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.

| | | | High Tide Line indicated by: oil or scum line along shore objects fine shell or debris deposits (foreshore) physical markings/characteristics tidal gauges other (list): Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types. |
|----|-------|------|--|
| | (iii) | Cha | emical Characteristics: uracterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: tify specific pollutants, if known: |
| | (iv) | Biol | logical Characteristics. Channel supports (check all that apply): Riparian corridor. Characteristics (type, average width): Wetland fringe. Characteristics: Habitat for: Federally Listed species. Explain findings: Fish/spawn areas. Explain findings: Other environmentally-sensitive species. Explain findings: Aquatic/wildlife diversity. Explain findings: |
| 2. | Cha | | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW |
| | (i) | | Sical Characteristics: 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) | Cha | emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: artify specific pollutants, if known: |
| | (iii) | Bio | logical 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 adj All wetland(s) being considered Approximately () acres | l in the cumulative ar | | ılysis. |
|------------------------------------|--|---|--|--|
| | For each wetland, specify the fo | ollowing: | | |
| | Directly abuts? (Y/N) | Size (in acres) | Directly abuts? (Y/N) | Size (in acres) |
| | | | | |
| | Summarize overall biologi | cal, chemical and ph | ysical functions being perform | med: . |
| SIG | NIFICANT NEXUS DETERMINA | ATION | | |
| by a of a wet Cor of wet trib outs | any wetlands adjacent to the tributa TNW. For each of the following si lands, has more than a speculative of asiderations when evaluating significater in the tributary and its proximal lands. It is not appropriate to determine and its adjacent wetland or beside of a floodplain is not solely determined to the connections between the features connections are connected to the connection of the features connected to the features connected t | ary to determine if the tuations, a significant or insubstantial effectant nexus include, nity to a TNW, and the trainer significant nexus arminetive of significant nexus arminative of significant nexus arminative of significant nexus arminative of significant nexus and the ok. Factors to consider the tits adjacent wetla collutants or flood water ith its adjacent wetlang, spawning, or reari | ney significantly affect the ont nexus exists if the tributance on the chemical, physical but are not limited to the vote functions performed by the functions performed by the functions performed by the based solely on any speciand the TNW). Similarly, the cant nexus. The effects on the TNW, as idder include, for example: and (if any), have the capacitaters reaching a TNW? and (if any), provide habitate ang young for species that are | effic threshold of distance (e.g. between a ne fact an adjacent wetland lies within or entified in the <i>Rapanos</i> Guidance and y to carry pollutants or flood waters to and lifecycle support functions for fish and present in the TNW? |
| • | support downstream foodwebs? | - | - | y to transfer nutrients and organic carbon that |
| • | Does the tributary, in combination w biological integrity of the TNW? | ith its adjacent wetla | nds (if any), have other relati | onships to the physical, chemical, or |
| Not belo | | not inclusive and of | ther functions observed or l | known to occur should be documented |
| 1. | Significant nexus findings for non- findings of presence or absence of si | | | directly or indirectly into TNWs. Explain f, then go to Section III.D: |
| 2. | | e or absence of signif | | n-RPW flows directly or indirectly into the tributary in combination with all of its |
| 3. | | | | tly abut the RPW. Explain findings of with all of its adjacent wetlands, then go to |
| Doc | numentation for the Record only: S | ignificant nexus find | lings for seasonal RPWs an | d/or wetlands abutting seasonal RPWs: |

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

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

☐ TNWs: linear feet width (ft), Or, acres.

acres.

TNWs: linear feet
Wetlands adjacent to TNWs:

C.

| 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 ⁸ 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 i 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 jurisidictional. 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. | 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: |
| DE SU | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH 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. |

E.

 ⁸See Footnote # 3.
 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.

| | □ 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): ☐ Other: (explain, if not covered above): | | | | | |
| | Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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. | | | | | |
| SEC | CTION 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: S&ME. 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: 1977 Navigability Study. U.S. Geological Survey Hydrologic Atlas: 03050109-12. | | | | | |
| | USGS 8 and 12 digit HUC maps. U.S. Geological Survey map(s). Cite scale & quad name: Newberry West. USDA Natural Resources Conservation Service Soil Survey. Citation: (18 & 25) Pacolet, Toccoa, Helena, Cecil, Cartecay. National wetlands inventory map(s). Cite name: U42P, U21, U41, Open Water. State/Local wetland inventory map(s): FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929) Photographs: Aerial (Name & Date): 11188:189 & 11188:187, 1999. or ☑ Other (Name & Date): Photos 1-22 of 22 taken by S&ME dated 21-May-2013 and photos 1-77 of 77 taken | | | | | |
| | by USACE dated 24-July-2013. Previous determination(s). File no. and date of response letter: Applicable/supporting case law: Applicable/supporting scientific literature: Other information (please specify): Site Visit. | | | | | |

B. ADDITIONAL COMMENTS TO SUPPORT JD: The 2,164 acre project area contains one 0.173 acre isolated herbaceous wetland. The topo map depicts a blue line stream connecting the herbaceous wetland to a downstream impoundment. However, there

is no blue line stream which was confirmed by the Corps during the site visit. There may have been one historically, however site manipulations on the adjacent agriculture fields and grazing lands likely resulted in the filling in of this feature. The herbaceous wetland seep flows under Looney Drive (the adjacent dirt road) through a culvert. The adjacent farm field, which is located on the other side of Looney Drive (outside of the project area), was inundated with water during the site visit. Hoever, there is no blueline stream located here either. These areas are seepy low lying areas that do not flow anywhere. There is a culvert located under US Highway 76 that appears to have historically connected the wetland seep to a pond located outside of the project area on the adjacent pasture land. However, this pond has been filled in and elevation changed such that this area is now higher in elevation than the isolated wetland, thus preventing the isolated wetland from flowing anywhere. The nearest waterbody (impoundment of a blue line stream) is located approximately 2,200 linear feet away. The herbaceous wetland showed no evidence of physical, chemical, or biological connectivity tto waters of the U.S., including any apparent surface or shallow subsurface hydrologic connection. There was also no apparent connection to interstate or foreign commerce. In addition, there is no apparent evidence of ecological interconnectivity between the isolated wetland and waters of the U.S. On this basis, this office has determined that this wetland is isolated from waters of the U.S. and is not within the jurisdiction of the Clean Water Act.