

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): October 21, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 1 of 1; SAC #2016-00796 The Mill

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: **Berkeley** City: **Huger**
Center coordinates of site (lat/long in degree decimal format): Lat. **32.9793° N**, Long. **-79.8127° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **French Quarter Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **French Quarter Creek/ Cooper River**

Name of watershed or Hydrologic Unit Code (HUC): **03050201-03 East Branch Cooper River**

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: **September 21, 2016**

Field Determination. Date(s): **May 26, 2016**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: **22.27** acres. (Wetland A= **8.07** acres, Wetland B= **0.62** acre, Wetland C= **8.55** acres, Wetland D= **0.28** acre, Wetland E= **0.61** acre, Wetland F= **0.86** acre, Wetland G= **0.03** acre, Wetland H= **0.66** acre, Wetland I= **1.02** acres, Wetland J= **1.04** acres, Wetland K= **0.03** acre, Wetland L= **0.01** acre, Wetland M= **0.18** acre, Wetland N= **0.29** acre, Wetland O= **0.02** acre)

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

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³ [Including potentially jurisdictional features that upon

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.

assessment are NOT waters or wetlands]

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: There is a non-jurisdictional ditch that extends from Wetland N to Wetland M. It is approximately 435 linear feet. It appears to have been excavated from uplands, did not have an OHWM, and does not transport relatively permanent water, therefore it is considered non-jurisdictional. However, it does provide a hydrologic connection between Wetland N and Wetland M. There are also two non-jurisdictional upland excavated ponds on site that total approximately 4.62 acres. They were dug from uplands as sand mines. As stated in the Preamble to the November 13, 1986, Regulation found on page 41217 (Federal Register vol. 51 No. 219) “waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and resulting body of water meets the definition of waters of the United States” are generally not considered waters of the U.S. The ponds actively receives stormwater from the surrounding uplands and are both open water ponds. For these reasons, the ponds were also determined to also be non-jurisdictional and not regulated by section 404 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.

The RPW discussed below is French Quarter Creek which flows through a previously preserved area under SAC-26-04-0362-T and is therefore not included on this JD.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 17,000 acres ;

Drainage area: 3,700 acres Drainage areas were approximated as part of the Significant nexus determination performed for this JD. This area was drawn based on apparent flow pathways and drainage areas associated with the

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

subject relevant reach using USGS quad mapping, aerial photography, and observations of connectivity and direction of flow made in the field.

Average annual rainfall: ~50 inches

Average annual snowfall: 1 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 **5-10** river miles from TNW.

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

Project waters are **5-10** 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: **French Quarter Creek flows northwest to the East Branch of the Cooper River.**

Tributary stream order, if known: **First Order.**

(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: **8** feet

Average depth: **2** feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

- | | | |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input checked="" type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain: **There were no riffle pool complexes witnessed in the project vicinity.**

Tributary geometry: **Meandering.**

Tributary gradient (approximate average slope): **less than 1 %**

(c) Flow:

Tributary provides for: **Perennial flow**

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

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Discrete and confined.** Characteristics: **Surface flow is confined to the channel with inputs from surrounding defined wetland drainages.**

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

- Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input checked="" type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input checked="" type="checkbox"/> multiple observed or predicted flow events |
| <input checked="" type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |

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

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- 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):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

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

Explain: **Water color is clear to dark with some evidence of algae and inputs of iron and organics.**

Identify specific pollutants, if known: **There is no direct evidence of unnatural pollutants on site.**

(iv) Biological 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: **The tributary provides habitat for aquatic species that would utilize tributaries throughout the low country such as insects and amphibians along with the predators which feed upon them such as snakes, birds, mammals.**

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: **22.27** acres

Wetland type. Explain: **Forested.**

Wetland quality. Explain: **Moderate. The site has been disturbed.**

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, & O Flow is: **Intermittent flow**. Explain: **These wetlands are all part of a larger system that was previously preserved under SAC-26-04-0362-T that directly abuts French Quarter Creek, a perennial RPW.**

Surface flow is: **Discrete and confined** for directly abutting wetlands (Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, & O).

Wetland N Flow is: **Intermittent flow**. Explain: **Wetland N is adjacent to but not directly abutting French Quarter Creek. It flows through a non-jurisdictional ditch that connects it to Wetland M which is part of the larger system that was previously preserved under SAC-26-04-0362-T that directly abuts French Quarter Creek.**

Surface flow is: **Discrete and unconfined for non-abutting wetlands (Wetland N).**

Characteristics:

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

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting **Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, & O**
- Not directly abutting **Wetland N**
- Discrete wetland hydrologic connection. Explain: **Wetland N is adjacent to but not directly abutting French Quarter Creek through means of a non-jurisdictional ditch to Wetland M which directly abuts French Quarter Creek.**
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain:

⁷Ibid.

- (d) Proximity (Relationship) to TNW
 Project wetlands are **5-10** river miles from TNW.
 Project waters are **5-10** aerial (straight) miles from TNW.
 Flow is from: **Wetland to navigable waters.**
 Estimate approximate location of wetland as within the **500-year or greater** 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: **Water color is clear to dark with some evidence of algae and inputs of iron and organics.**

Identify specific pollutants, if known: **There is no direct evidence of unnatural pollutants.**

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: **Forested and Scrub shrub species/ 50-100% FAC or wetter.**
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: **Emergent and forested wetlands are transitional habitats between terrestrial and aquatic habitats, and as such generally have high wildlife abundance and diversity. Numerous wading birds and mammals feed and spawn in these wetlands. In addition, these habitats support great numbers of insects, which attract insect-feeding birds, amphibians, reptiles and mammals.**

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

All wetland(s) being considered in the cumulative analysis: **15-20**

Approximately (**22.27**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
A, Y	8.07	I, Y	1.02
B, Y	0.62	J, Y	1.04
C, Y	8.55	K, Y	0.03
D, Y	0.28	L, Y	0.01
E, Y	0.61	M, Y	0.18
F, Y	0.86	N, N	0.29
G, Y	0.03	O, Y	0.02
H, Y	0.66		

Summarize overall biological, chemical and physical functions being performed: **The review area contains a larger wetland system that is comprised of a perennial tributary, as well as abutting and adjacent wetlands, which is discussed as a whole on this JD Basis Form. The forested palustrine wetland which are similarly situated and adjacent (both directly abutting and non-abutting) to the RPW are collectively performing functions consistent with the following: Biological – wetlands adjacent to the RPWs include bay forest and emergent wetlands. As such, a broad variety of biological functions are being performed which include providing breeding grounds and shelter for aquatic species, foraging areas for wetland dependent species, and in particular, floodplain wetlands provide important spawning areas for species that inhabit the main channel as adults. These wetlands are essential in providing organic carbon in the form of their collective primary productivity to downstream waters, resulting in the nourishment of the downstream food web. Chemical – Wetlands in the review area are providing the important collective functions of removal of excess nutrients which are contributed by runoff from the surrounding uplands and developed areas, reducing nitrogen and phosphorus loading downstream, and effectively preventing oxygen depletion that can result from eutrophication. Some of the adjacent wetlands in this review area have been ditched which likely has reduced the effectiveness of some of the wetlands’ nutrient removal function. Physical – Wetlands in the review area are collectively performing flow maintenance functions, including retaining runoff inflow and storing flood water temporarily. Flow maintenance results in the reduction of downstream peak flows (discharge and volume), helping to maintain seasonal flow volumes. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the traditional navigable waters of the Cooper River, this office has determined that there is a Significant Nexus between the review area Relevant Reach and its adjacent wetlands and the downstream TNW.**

C. **SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow

of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **The review area of approximately 155.06 acres contains a large portion of wetlands (34.95 acres) previously protected under SAC-26-94-0362-T as well as 22.27 acres of additional wetlands that are all part of French Quarter Creek. The forested palustrine wetland are similarly situated and adjacent (both directly abutting and non-abutting) to the RPW. Regardless of the type of hydrologic connection, these wetlands and RPWs are part of a headwater stream system that provides a variety of functions that are important for the downstream waters and the watershed as a whole. They are collectively performing functions consistent with the following: Biological – wetlands adjacent to the RPWs include bay forest and emergent wetlands. As such, a broad variety of biological functions are being performed which include providing breeding grounds and shelter for aquatic species, foraging areas for wetland dependent species, and in particular, floodplain wetlands provide important spawning areas for species that inhabit the main channel as adults. These wetlands are essential in providing organic carbon in the form of their collective primary productivity to downstream waters, resulting in the nourishment of the downstream food web. Chemical – Wetlands in the review area are providing the important collective functions of removal of excess nutrients which are contributed by runoff from the surrounding uplands and developed areas, reducing nitrogen and phosphorus loading downstream, and effectively preventing oxygen depletion that can result from eutrophication. Some of the adjacent wetlands in this review area have been ditched which likely has reduced the effectiveness of some of the wetlands' nutrient removal function. Physical – Wetlands in the review area are collectively performing flow maintenance functions, including retaining runoff inflow and storing flood water temporarily. Flow maintenance results in the reduction of downstream peak flows (discharge and volume), helping to maintain seasonal flow volumes. Based on the collective functions described above and their importance to the biological, chemical, and physical integrity of the traditional navigable waters of the Cooper River, this office has determined that there is a Significant Nexus between the review area Relevant Reach and its adjacent wetlands and the downstream TNW.**

According to the SCDHEC Watershed Assessment information available online, this watershed (03050201-03) is located in Berkeley County and consists primarily of the East Branch Cooper River and its tributaries. There is a low potential for growth expected in this watershed, which is almost entirely within the Francis Marion National Forest. There are numerous historic structures located in the area, and a great public sentiment to preserve the historic character of the area. There is one monitoring station in this watershed (CSTL-123). At CSTL-123, aquatic life uses are fully supported; however, there are significant increasing trends in five-day biochemical oxygen demand. Although dissolved oxygen excursions occurred, they were typical of values seen in such systems and were considered natural, not standard violations. Recreational uses are also fully supported. Currently, the wetlands located within this drainage area are likely performing many of the services that wetlands and tributaries provide; however, when wetlands and tributaries are filled or altered, the services they provide may be compromised and the loss of those services affects downstream waters and TNWs, including the Cooper River. The wetlands within the review area have a significant nexus to downstream TNWs as they provide a source of carbon and nutrients, can provide water quality functions, can store excess water minimizing flooding impacts downstream, can maintain seasonal flow volumes, and can transport organisms, carbon, and nutrients. In addition, the wetlands within the review area are contributing to the relatively good water quality and integrity of the downstream TNW.

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: **The tributary on-site is named French Quarter Creek and is depicted on the USGS Quadrangle as a blue line perennial stream. It has an approximate drainage area of over 3,700 acres. It is also depicted on the NHDS Map as having a perennial flow regime. This RPW is previously protected under SAC-26-94-0362-T, therefore is not subject to this JD Basis Form.**

- 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-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

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

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Wetland A= 8.07 acres, Wetland B= 0.62 acre, Wetland C= 8.55 acres, Wetland D=0.28 acre, Wetland E=0.61 acre, Wetland F=0.86 acre, Wetland G= 0.03 acre, Wetland H= 0.66 acre, Wetland I= 1.02 acres, Wetland J= 1.04 acres, Wetland K= 0.03 acre, Wetland L= 0.01 acre, Wetland M=0.18 acre, and Wetland O=0.02 acre are all part larger wetland system, previously preserved under SAC-26-94-0362-T, that continues offsite and directly abuts French Quarter Creek, a perennial 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: **21.98** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.29** acres. (**Wetland N**)

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

⁸See Footnote # 3.

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

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

Explain:

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

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

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

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): **There is a non-jurisdictional ditch that extends from Wetland N to Wetland M. It is approximately 435 linear feet. It appears to have been excavated from uplands, did not have an OHWM, and does not transport relatively permanent water, therefore it is considered non-jurisdictional. However, it does provide a hydrologic connection between Wetland N and Wetland M. There are also two non-jurisdictional upland excavated ponds on site that total approximately 4.62 acres. They were dug from uplands as sand mines. As stated in the Preamble to the November 13, 1986, Regulation found on page 41217 (Federal Register vol. 51 No. 219) "waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and resulting body of water meets the definition of waters of the United States" are generally not considered waters of the U.S. The ponds actively receives stormwater from the surrounding uplands and are both open water ponds. For these reasons, the ponds were also determined to also be non-jurisdictional and not regulated by section 404 of the Clean Water Act.**

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): **435** linear feet width (ft).
- Lakes/ponds: **4.62** 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.

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.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **The Mill Updated Wetlands Overlay.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **USGS Quad Map The Mill Berkeley County, South Carolina.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Soil Map The Mill Berkeley County, South Carolina..**
- National wetlands inventory map(s). Cite name: **NWI The Mill Berkeley County, South Carolina..**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): **Site Photographs May 2016.**
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: There are 22.27 acres of jurisdictional, freshwater wetlands that are subject to regulation under the Clean Water Act. There is also a non-jurisdictional ditch and two upland excavated ponds that were determined to be non-jurisdictional and therefore not subject to regulation under the Clean Water Act.