

**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): 12/21/15**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER;; SAC # SAC-2015-01214-1T**

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

State: South Carolina County/parish/borough: Berkeley City: N/A  
Center coordinates of site (lat/long in degree decimal format): Lat. °33.069373 **N**, Long. °-80.098672 **W**.  
Universal Transverse Mercator:

Name of nearest waterbody: Back River

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

Name of watershed or Hydrologic Unit Code (HUC): 3050201

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): 11/23/15

**SECTION II: SUMMARY OF FINDINGS**

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

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

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

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

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

Wetlands: **Wetland A: 0.106 ac, Wetland B: 0.294 ac; Wetland C: 0.122 ac; Total: 0.522 acres.**

**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):<sup>3</sup> [Including potentially jurisdictional features that upon assessment are NOT waters or wetlands]**

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

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **There are 2 non-jurisdictional linear conveyances located within the project review area.**

**Non-jurisdictional linear conveyance #1 (Non-JD LC 1) is located in uplands and appears to drain only uplands from offsite areas. The linear conveyance flows through a culvert under U.S. HWY 176 and continues offsite onto an adjacent property with an existing jurisdictional determination (SAC-2014-01294-2T), where the same conveyance was also determined to be non-jurisdictional. Non-JD LC 1 was approximately 2 feet wide and 2 feet deep. Water was present at the time of the site visit but did not appear to be flowing. Non-JD LC 1 connects with roadside swales prior to flowing through the culvert under US HWY 176. Although water was present in the conveyance, there was no water flowing from the conveyance to the culvert. It appears that the Non-JD LC 1 was excavated from uplands for the purpose of draining uplands. For these reasons, the conveyance was determined to be non-jurisdictional and not regulated by Section 404 of the CWA.**

**Non-jurisdictional linear conveyance #2 (Non-JD LC 2) is also located in uplands and appears to drain only uplands from offsite areas. The linear conveyance flows through a culvert under U.S. Hwy 17-A. Flowing water was observed in the conveyance; however, the water was cloudy white and appeared to have a heavy sand content. Sand mining activities are occurring on the offsite property where the conveyance originates so the flowing water was likely discharge water from the sand mining activities. Based on a pending jurisdictional determination for the offsite property, the linear conveyance drains only uplands. Non-JD LC 2 appears to have been excavated from uplands for the purpose of draining uplands. For these reasons, the conveyance was determined to be non-jurisdictional and not regulated by Section 404 of the CWA.**

**There is also a roadside swale located just outside of the project review area. The swale by definition is non-jurisdictional but it does provide a hydrologic connection from Wetland A, B and C through the culvert under U.S. Hwy 176 to the offsite RPW A.**

### **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 waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

\*\*\*\*Tributary pRPW A and pRPW B are considered part of a braided channel tributary system and are located offsite, but their jurisdictional status was determined in a previous valid jurisdictional determination (SAC-2014-01294-2T). pRPW A and pRPW B were observed during a previous site visit for SAC-2014-01294-2T. A portion of pRPW A is also visible from U.S. Highway 176.\*\*\*\*\*

(i) General Area Conditions:

Watershed size: 206,457 acres ;

Drainage area: Approximately 670 acres The drainage area was approximated using topo maps for the purposes of this jurisdictional determination only.

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 4 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 TNW<sup>5</sup>: Wetlands to pRPW A offsite to pRPW B offsite to Laurel Swamp (RPW) to RPW to Back River (TNW).  
 Tributary stream order, if known: 1.

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

Tributary is:  Natural  
 Artificial (man-made). Explain: pRPW A appears to have been excavated out of uplands to drain uplands and wetlands.  
 Manipulated (man-altered). Explain: .

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

Average width: 6 feet  
 Average depth: 6 feet  
 Average side slopes: 2:1.

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: Minimal erosion was observed.  
 Presence of run/riffle/pool complexes. Explain: None.  
 Tributary geometry: Relatively straight.  
 Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: Perennial flow  
 Estimate average number of flow events in review area/year: 20 (or greater)

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

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

Describe flow regime: **pRPW A was determined to have perennial flow in SAC-2014-01294-2T.**  
Other information on duration and volume: .

Surface flow is: **Confined.** Characteristics: .

Subsurface flow: **Unknown.** Explain findings: .  
 Dye (or other) test performed: .

Tributary has (check all that apply):

- Bed and banks
  - OHWM<sup>6</sup> (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.<sup>7</sup> Explain: .
- |  |
|--|
| <input type="checkbox"/> the presence of litter and debris                     |
| <input type="checkbox"/> destruction of terrestrial vegetation                 |
| <input type="checkbox"/> the presence of wrack line                            |
| <input type="checkbox"/> sediment sorting                                      |
| <input type="checkbox"/> scour   |
| <input checked="" type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> abrupt change in plant community                      |

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: <ul style="list-style-type: none"><li><input type="checkbox"/> oil or scum line along shore objects</li><li><input type="checkbox"/> fine shell or debris deposits (foreshore)</li><li><input type="checkbox"/> physical markings/characteristics</li><li><input type="checkbox"/> tidal gauges</li><li><input type="checkbox"/> other (list):</li></ul> | <input type="checkbox"/> Mean High Water Mark indicated by: <ul style="list-style-type: none"><li><input type="checkbox"/> survey to available datum;</li><li><input type="checkbox"/> physical markings;</li><li><input type="checkbox"/> vegetation lines/changes in vegetation types.</li></ul> |
|---|--|

**(iii) Chemical Characteristics:**

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

Explain: **Chemical characteristic appeared to be fair to good. Some roadside runoff, which may include various pollutants and trash, likely flows into the tributary as roadside swales drain to the tributary.**

Identify specific pollutants, if known: .

**(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 channel may provide habitat for various aquatic organisms including fish, reptiles, amphibians, as well as various birds and mammals .**

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

**\*\*\*\*Wetlands A, B, and C are located within the project review area are included in this significant nexus determination and total 0.522 acres in size.\*\*\*\***

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: **0.522** acres

Wetland type. Explain: **scrub/shrub.**

Wetland quality. Explain: **Fair. The wetlands are located within a waterline easement and appear to be maintained as scrub/shrub wetlands. Some disturbance from prior activities was observed.**

Project wetlands cross or serve as state boundaries. Explain: .

**(b) General Flow Relationship with Non-TNW:**

<sup>6</sup>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.

<sup>7</sup>Ibid.

Flow is: **Intermittent flow**. Explain: **Water flow from the Wetlands A, B, and C to the offsite pRPW A is intermittent and may occur seasonally and/or after rain events when surface water in the wetlands is present and flows into the offsite roadside swale and then to the pRPW A.**

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: **Wetland A, B, and C abut an offsite non-jurisdictional roadside swale. The non-jurisdictional roadside swale runs parallel with U.S. Highway 176 and flows into the culvert that goes under the road into pRPW A, which is located offsite across the road from the subject project review area.**

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(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 **2-year or less** 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: **The water quality of the wetlands appeared to be good. The surrounding area consists of forested uplands and a road.**

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: **Wetlands A, B, and C include vegetation that consists of**

***Nyssa sylvatica, Acer rubrum, Liquidambar styraciflua, Osmundastrum cinnamomeum, Persea borbonia, and Quercus phellos.* A diverse forested wetland often attracts diverse wildlife, which may include various species of insects, amphibians, reptiles, mammals, and birds, all of which may use the wetlands for all or part of their lives, such as for foraging, nesting and/or for shelter.**

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

All wetland(s) being considered in the cumulative analysis: **6**

Approximately ( **149.68** ) 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>
<b>Offsite Wet 1: Y;</b>	<b>36.14 ac</b>		
<b>Offsite Wet 2: Y</b>	<b>40.02 ac</b>		
<b>Offsite Wet 3: Y</b>	<b>73 ac (approx)</b>		
<b>Onsite Wet A: N</b>	<b>0.106 ac</b>		
<b>Onsite Wet B: N</b>	<b>0.294 ac</b>		
<b>Onsite Wet C: N</b>	<b>0.122 ac</b>		

Summarize overall biological, chemical and physical functions being performed: **The review area for the cumulative analysis is approximately 670 acres in size and includes approximately 149.68 acres of wetlands and approximately 6,600 linear feet of tributary. Wetlands A, B, and C are located within the subject project review area and total 0.522 acres in size. Tributary pRPW A, pRPW B, Wetland 1 and Wetland 2 are located offsite and were previously determined to be jurisdictional (SAC-2014-01294-2T). The review area consists of a headwater system with braided tributaries (pRPW A and pRPW B), abutting and non-abutting wetlands.**

Headwater systems provide a variety of functions that are important for the downstream waters and the watershed as a whole. The wetlands and tributaries not only provide habitat for various aquatic and terrestrial organisms, including a variety of insects, amphibians, reptiles, mammals and birds, but are also a source of food, nutrients, and carbon for organisms located downstream. The headwater wetlands and tributaries are especially important for the water quality of a watershed. Water runoff from adjacent uplands that may contain pollutants, sediments, excess nutrients, etc., that flow through the wetlands before entering the tributaries has the opportunity to be filtered out prior to flowing to downstream TNWs. In addition, excess water can temporarily be stored thereby minimizing potential flooding of downstream areas and can also slowly release water downstream to maintain seasonal flow volumes. Runoff water may also transport organisms, nutrients, and carbon from the wetlands into the tributaries, which continue to flow to downstream TNWs. The small headwater tributaries often have shallow water, low volume, and slow flow, which allows for more surface area of the water column to come into contact with channel substrate and any vegetation that may be present, allowing for sediments and pollutants to settle out of or be filtered from the water column before flowing to downstream TNWs

### 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 project review area includes the onsite wetlands which total 0.522 acres, the offsite wetlands totaling approximately 149.16 acres, and approximately 6,600 linear feet of tributary. Onsite wetlands A, B, and C do not directly abut offsite pRPW A, thus a significant nexus determination is being performed. Offsite Wetlands 1, 2, and 3 abut tributaries pRPW A and**

pRPW B. pRPW B drains into JD Wetlands, 4, 5, 6, and 7 and RPW 2 drain into Laurel Bay/Daisy Swamp, which flow in multiple directions towards multiple TNWs. Based on the contour lines of the topo map, it appears that the tributary discharges into Laurel Bay/Daisy Swamp at a point that would likely drain east towards the Back River, which is a TNW. The Back River ultimately flows to the Cooper River and the Charleston Harbor.

The wetlands provide a variety of functions that are important for the downstream waters and the watershed as a whole. They not only provide habitat for various aquatic and terrestrial organisms, including a variety of insects, amphibians, reptiles, mammals and birds, but are also a source of food, nutrients, and carbon for organisms located downstream. The wetlands are especially important for the water quality of a watershed. Water runoff from adjacent uplands that may contain pollutants, sediments, excess nutrients, etc., that flow through the wetlands before entering the tributaries has the opportunity to be filtered out prior to flowing to downstream TNWs. In addition, excess water can temporarily be stored thereby minimizing potential flooding of downstream areas and can also slowly release water downstream to maintain seasonal flow volumes. Runoff water may also transport organisms, nutrients, and carbon from the wetlands into the tributaries, which continue to flow to downstream TNWs.

According to the SCDHEC Watershed Assessment information available online, this watershed includes the Town of Moncks Corner, Hanahan, Goose Creek, Ladson, and Kiawah Island, the City of Folly Beach, and portions of the City of Charleston, North Charleston and the Town of Summerville. Additional growth is expected in this watershed. SCDHEC has no monitoring stations located on the Back River, except for at the Back River Reservoir, which is located near where the Back River flows into the Cooper River. A monitoring site, MD-152, is located on the Cooper River where the Back River flows into the Cooper River. At this station, aquatic life and recreational uses are fully supported for both freshwater and saltwater classifications. Although dissolved oxygen excursions occurred, they were typical of values seen in such systems and were considered natural, not standard violations. There is a significant trend in pH. Significant decreasing trends in five-day biological oxygen demand, turbidity, total phosphorus concentration, and total nitrogen concentration suggest improving conditions for these parameters at this site.

The project area is located within an area of Berkeley County that is beginning to see new development, which will likely include residential and commercial development. The project site is located in an area known as Carnes Crossroads and is located near a large residential development called Cane Bay. Recent and ongoing development is visible in areas surrounding the project review area and the approximate 670 acre drainage area being discussed in this significant nexus determination. Currently, the wetlands located within the approximate 670 acre 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 Back River and 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: **Offsite pRPW A and pRPW B were determined to have perennial flow in jurisdictional determination SAC-2014-01294-2T.**

- 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: **Approximately 6,600** linear feet (**Offsite**) width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters:

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

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

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

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.

Identify type(s) of waters: .

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: **0.522** acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), 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):<sup>10</sup>**

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

**Identify water body and summarize rationale supporting determination:** .

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

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

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

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

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.



**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

**SECTION IV: DATA SOURCES.**

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Wetland Solutions, LLC.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. Concur with conclusions.
  - 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: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: Goldsburg loamy fine sand, Pantego loamy fine sand
- National wetlands inventory map(s). Cite name: PFO1
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google 2015  
or  Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): **Jurisdictional Determination (SAC-2014-01294-2T) located on adjacent parcel.**

**B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands A, B, and C located within the project review area are jurisdictional and subject to regulation by Section 404 of the CWA.**