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): February 22, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:; SAC # 2015-01185-2T Timothy Lake

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: Dorchester City: N/A
Center coordinates of site (lat/long in degree decimal format): Lat. ° **N**, Long. ° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Timothy Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Edisto River
Name of watershed or Hydrologic Unit Code (HUC): 305020503

☒ 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): 12/17/15

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):** [1]
      ☐ 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: PRPW 1: **4,335** linear feet: width (ft) and/or acres.
      Wetlands: **A: 4.46 ac; B: 5.70 ac; C: 0.43 ac; D: 0.16 ac; E: 0.23 ac; and F: 0.87 ac. Total: 11.85** 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):**[3] **[Including potentially jurisdictional features that upon assessment are NOT waters or wetlands]**

[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: **Five upland excavated ponds (I-V) are located within the project review area. The ponds consist of open water, are void of vegetation, do not meet the three wetland parameters and appeared to have been excavated from uplands as borrow areas and/or as ornamental ponds. As stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) vol "artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic purposes" and "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. For these reasons, the five ponds (I-V) located within the project review area were determined to be non-jurisdictional and not regulated by Section 404 of the CWA. The non-jurisdictional ponds are shown on the survey.**

There are two linear conveyances located within the project review areas. These linear conveyances began at non-jurisdictional pond IV and flow directly into the PRPW 1. The linear conveyances were excavated from uplands and appeared to provide overflow drainage from the non-jurisdictional pond IV to the PRPW 1. Flowing water was present in both of the linear conveyances at the time of the site visit, but no OHWM was observed. The water level in the non-jurisdictional pond IV appeared to exceed its capacity at the time of the site visit and that is why flowing water was observed in the linear conveyances. For these reasons, the two linear conveyances were determined to be non-jurisdictional and not regulated by Section 404 of the CWA. The non-jurisdictional linear conveyances are shown on a supplemental drawing in the project file.

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[4] 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

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

****Onsite PRPW 1 (two channels)****

(i) General Area Conditions:
Watershed size: **183,907 acres ;**
Drainage area: **800** acres (approximate)
Average annual rainfall: **48** inches
Average annual snowfall: **0** inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **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[5]: **Onsite PRPW 1 (Timothy Creek) to Four Hole Swamp (RPW) to Edisto River**.
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: **PRPW 1 (both channels) are natural but appear to have been manipluated (possibly dug out and straightened) based on the presence of a berm adjacent to the channel**.

Tributary properties with respect to top of bank (estimate):
Average width: **12 feet** feet
Average depth: **1-3** 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: **The PRPW 1 (both channels) appears to be relatively stable at the points observed onsite**.
Presence of run/riffle/pool complexes. Explain: **None**.
Tributary geometry: **Relatively straight.**
Tributary gradient (approximate average slope): **5** %

(c) Flow:
Tributary provides for: **Perennial flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: **Perennial**.
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[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation

[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.

☒ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of wrack line
☐ sediment sorting
☒ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community

☐ 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;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain: **Water quality of the tributary appeared to be good. The portion of PRPW 1 (both channels) located within the project review area is surrounded by forested uplands and wetlands. The areas surrounding the tributary consists of mostly undeveloped forested areas and some rural residential properties.** .

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 PRPW 1 channels likely 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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: **A: 4.46 ac; B: 5.70 ac; C: 0.43 ac; D: 0.16 ac; E: 0.23 ac; and F: 0.87 ac. Total: 11.85** 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 flow from the Wetlands A, B, C, D E and F to the PRPW 1 is intermittent and may occur seasonally and/or after rain events when surface water in the wetlands is present**.

Surface flow is**: Discrete**

Characteristics: .

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

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting - **Wetlands B, C, D and F are directly abutting PRPW 1.**
☒ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☒ Ecological connection. Explain: **The uplands adjacent to Wetlands A and E consist primarily of areas vegetated with herbaceous plants and undeveloped thereby providing a potential pathway for wildlife to move between the wetlands and PRPW 1 The wetlands are at a similar elevation as the adjacent uplands with the overall elevation sloping towards PRPW 1. In addition the wetlands are located in close proximity to PRPW 1. For these reasons, organisms that typically utilize forested wetlands, such as mammals, reptiles, amphibians, and various bird species may also utilize PRPW 1 and vice versa.** .
☐ Separated by berm/barrier. Explain: .

[7]Ibid.

(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 **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: **The water quality within the wetlands appeared to be good. The wetlands are surrounded by a narrow band of forested uplands within the project review area. The areas surrounding the tributary consists of mostly undeveloped forested areas and some rural residential properties.** .
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: **Vegetation found within Wetlands A, B, C, D E and F includes, but is not limited to Liquidambar styraciflua, Quercus nigra, Quercus michauxii, Quercus laurifoliam, Sabal minor, and Morella cerifera, 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: **7**
Approximately (**45**) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
B- Y	**5.7**	**Offsite Wetland-Y**	**Approx 34 ac**
C- Y	**0.43**		
D-Y	**0.16**		
F-Y	**0.87**		
A- N	**4.46**		
E- N	**0.23**		

Summarize overall biological, chemical and physical functions being performed: **The project review area includes the onsite wetlands totalling 11.85 acres and tributary waters of (2 channels) of PRPW 1 (Timothy Creek) totalling 4,335 linear feet. An offsite wetland that is approximately 34 acres in size is also being included in this cumulative analysis. These wetlands within the review area provide a variety of functions that are important for the downstream waters and the watershed as a whole. The wetlands 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 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**.

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 totalling 11.85 acres and tributary waters of (2 channels) of PRPW 1 (Timothy Creek) totalling 4,335 linear feet. An offsite wetland that is approximately 34 acres in size is also being included in this cummulative analysis. These wetlands within the review area provide a variety of functions that are important for the downstream waters and the watershed as a whole. The wetlands 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 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, there is a potential for major growth in the upper portion of the watershed in the Santee/eastern Orangeburg area associated with the major intermodal port (Jafza). The I-95, I-26, and US 301 area are called the Global Logistics Triangle, and is planned for major infrastructure improvements to support economic development in that region. A lower potential for growth is expected in the remainder of the watershed, which contains the Town of Holly Hill and portions of the Towns of Santee, Vance, Eutawville, and Harleyville. The Dorchester County region is estimated to build about 260 residential units between 2010 and 2035.

   Timothy Creek, the onsite PRPW-1, enters Four Hole Swamp at the lower end of the watershed. There is one SCDHEC monitoring station, E-015A, located downstream of Timothy Creek in Four Hole Swamp. At this station, aquatic life and recreational uses are fully supported; however, there is a significant increasing trend in five-day biochemical oxygen demand. In addition, a fish consumption advisory has been issued by SCDHEC for mercury in Four Hole Swamp. The project review area is located in a relatively small drainage area, approximately 800 acres in size and does not appear to have ongoing or recent development activities. The area consists of forested wetlands and uplands, light residential, industrial, and rural development. Outside of the drainage area, recent aerial photographs indicate that the approximate 2 mile portion of Timothy Creek located downstream of the project review area where it enters Four Hole Swamp consists mostly of forested areas, which may include wetlands. The approximate 1 mile portion of Timothy Creek located upstream of the project review area where Timothy Creek flows under I-26 also consists primarily of forested, undeveloped areas, which may include wetlands. Although no ongoing development appears to be occurring within the 800-acre drainage area and areas immediately upstream and downstream along Timothy Creek, the wetlands located within this 800-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 Four Hole Swamp and the Downstream TNW, the Edisto River. The wetlands within the review area have a significant nexus to the downstream TNW 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.

4. **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 PRPW 1 (2 channels) located within the project review area is a named tributary called Timothy Creek. The tributary channel is visible from aerial photographs, appears as a blue line stream on topo maps, has an estimated drainage area of 8,000 acres, has defined bed and banks, clear OHW marks, and appears to have year round flow. For these reasons, PRPW 1 was determined to be a perennial RPW**.

   - ☐ 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: **4,335** 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 B, C, D and F are directly abutting PRPW 1 as they share a direct hydrologic connection with PRPW 1. When water is present within the wetlands, it may flow directly into PRPW 1. Similarly, if water levels within PRPW 1 exceed bank full flow and overtop the banks, the water may flow directly into the wetlands**.**

     - ☐ 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: **7.16** 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: **4.69** 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]**

[8]See Footnote # 3.
[9] To 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): **Five upland excavated ponds (I-V) are located within the project review area. The ponds consist of open water, are void of vegetation, do not meet the three wetland parameters and appeared to have been excavated from uplands as borrow areas and/or as ornamental ponds. As stated in the Preamble to the November 13, 1986, Regulations found on page 41217 (Federal Register vol. 51 No. 219) vol "artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic purposes" and "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. For these reasons, the five ponds (I-V) located within the project review area were determined to be non-jurisdictional and not regulated by Section 404 of the CWA. The non-jurisdictional ponds are shown on the survey.**

There are two linear conveyances located within the project review areas. These linear conveyances began at non-jurisdictional pond IV and flow directly into the PRPW 1. The linear conveyances were excavated from uplands and appeared to provide overflow drainage from the non-jurisdictional pond IV to the PRPW 1. Flowing water was present in both of the linear conveyances at the time of the site visit, but no OHWM was observed. The water level in the non-jurisdictional pond IV appeared to exceed its capacity at the time of the site visit and that is why flowing water was observed in the linear conveyances. For these reasons, the two linear conveyances were determined to be non-jurisdictional and not regulated by Section 404 of the CWA. The non-jurisdictional linear conveyances are shown on a supplemental drawing in the project file.

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.

[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.*

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: **Sabine and Waters**.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant. **Concurs 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: Jedburg, Mouzon
- ☒ National wetlands inventory map(s). Cite name: PFO1A
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Dorchester 2006, 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): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: The project review area consists of 11.85 acre of wetlands and 4,335 linear feet of tributary that were determined to be jurisdictional and regulated by Section 404 of the CWA. The project review area also consists of two linear conveyances and five ponds that were determined to be non-jurisdictional and not regulated by Section 404 of the CWA.