

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): July 19, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAC-RD-NE; JD Form 1 of 2; SAC 2016-00757 Florence-Darlington Technical College Tract B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: **Darlington** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **34.257181° N**, Long. **-79.824603° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Unnamed tributary of High Hill Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **The aquatic resource remains confined within the project boundary and does not flow into a TNW.**

Name of watershed or Hydrologic Unit Code (HUC): **03040201-07**

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): **May 17, 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 no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

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

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

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

Wetlands: acres.

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

Elevation of established OHWM (if known):N/A.

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

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **One isolated wetland, totaling approximately 0.8 acre, was assessed within the review area and determined to**

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.

be a non-jurisdictional wetland. The topographic map depicts this wetland as cleared uplands with no blue lines or other potential linear features located within or near the isolated wetland. The aerials depict this wetland as forested with no potential linear features within or adjacent to the boundary of the wetland. The NWIs depict this wetland as palustrine forested (PFO4Ad), and the soil survey maps this wetland as Coxville, a hydric soil. This forested freshwater wetland was viewed during the site visit and determined to be completely surrounded by uplands. The southeastern portion of the wetland is separated from Palmetto Road by uplands. Within the uplands adjacent to Palmetto Road exists a swale. This swale was observed as having terrestrial vegetation in the bottom and no channel within bed and banks or OHWM. No indicators of flowing water were observed within the swale, and both ends of the swale terminated within uplands adjacent to Palmetto Road. Because this wetland is surrounded by uplands, no surface or shallow subsurface connections from the wetland to any Waters of the US (WOUS) were viewed during the site visit. A review of a previous jurisdictional determination completed on this site (SAC 2010-01092, letter dated April 29, 2011) determined that this area was uplands.

This depressional wetland exhibited hydric soils, hydrophytic vegetation, and indicators of hydrology, which satisfied the criteria set forth in the 1987 Wetland Delineation Manual and the Atlantic and Gulf Coastal Plain Regional Supplement. All water located within or draining toward this wetland had no discernible or traceable outfall or connection to any WOUS. Additionally, this wetland was found to be completely surrounded by forested uplands which further disrupts possible connections to any WOUS. Chemically, this wetland does not affect any WOUS in the absorption/treatment of nutrients, runoff, or pollutants. Physically, the topographic location of this wetland is such that water in the wetland is retained and eventually percolates through the soil to groundwater only, at an unknown depth, providing little if any stormwater attenuation. Biologically, this wetland is not 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. Because of the lack of discernible outfall, topography grades and lack of evidence of chemical, physical, or biological connection, this wetland was determined to be an isolated, non-jurisdictional wetland.

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

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

analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) General Area Conditions:

Watershed size: **Pick List** ;
 Drainage area: **Pick List**
 Average annual rainfall: inches
 Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
 Project waters are **Pick List** river miles from RPW.
 Project waters are **Pick List** aerial (straight) miles from TNW.
 Project waters are **Pick List** aerial (straight) miles from RPW.
 Project waters cross or serve as state boundaries. Explain: **N/A**.

Identify flow route to TNW⁵:
 Tributary stream order, if known:

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

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

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

Average width: feet
 Average depth: feet
 Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
 Presence of run/riffle/pool complexes. Explain:
 Tributary geometry: **Pick List**.
 Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
 Estimate average number of flow events in review area/year: **Pick List**
 Describe flow regime:
 Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

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

Tributary has (check all that apply):

- Bed and banks
- OHWM⁶ (check all indicators that apply):

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

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

- | | |
|--|---|
| <input 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 type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> 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 type="checkbox"/> High Tide Line indicated by: | <input 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: .

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: .

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: acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain: .
 - Ecological connection. Explain: .
 - Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

⁷Ibid.

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
 Identify specific pollutants, if known: .

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

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

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

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

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>

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

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

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

- TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

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

Identify type(s) of waters:

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

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

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

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

Identify type(s) of waters:

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

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

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

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

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

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

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

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

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

7. **Impoundments of jurisdictional waters.⁹**

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

⁸See Footnote # 3.

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

- 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): .

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: **0.8** acres.

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

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

SECTION IV: DATA SOURCES.

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Report by S&ME, Inc.; plat by Thomas & Hutton.**
- 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.

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.

- U.S. Geological Survey map(s). Cite scale & quad name: **Darlington East; The topographic map depicts this wetland as cleared uplands.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Page 39; The soil survey maps this wetland as Coxville, a hydric soil.**
- National wetlands inventory map(s). Cite name: **The NWIs map this wetland as palustrine forested (PFO4Ad).**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **SCDNR 2006, 99:11227:71; The aeriels depict the wetland as forested.**
or Other (Name & Date): **Site photos provided by S&ME, Inc.**
- Previous determination(s). File no. and date of response letter: **SAC 2010-01092-4E; letter dated April 29, 2011.**
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: One isolated wetland, totaling approximately 0.8 acre, was assessed within the review area and determined to be a non-jurisdictional wetland. The topographic map depicts this wetland as cleared uplands with no blue lines or other potential linear features located within or near the isolated wetland. The aeriels depict this wetland as forested with no potential linear features within or adjacent to the boundary of the wetland. The NWIs depict this wetland as palustrine forested (PFO4Ad), and the soil survey maps this wetland as Coxville, a hydric soil. This forested freshwater wetland was viewed during the site visit and determined to be completely surrounded by uplands. The southeastern portion of the wetland is separated from Palmetto Road by uplands. Within the uplands adjacent to Palmetto Road exists a swale. This swale was observed as having terrestrial vegetation in the bottom and no channel within bed and banks or OHWM. No indicators of flowing water were observed within the swale, and both ends of the swale terminated within uplands adjacent to Palmetto Road. Because this wetland is surrounded by uplands, no surface or shallow subsurface connections from the wetland to any Waters of the US (WOUS) were viewed during the site visit. A review of a previous jurisdictional determination completed on this site (SAC 2010-01092, letter dated April 29, 2011) determined that this area was uplands.

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U.S. Army Corps of Engineers

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B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAC-RD-NE; JD Form 2 of 2; SAC 2016-00757 Florence-Darlington Technical College Tract B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina County/parish/borough: **Darlington** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **34.257181° N**, Long. **-79.824603° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Unnamed tributary of High Hill Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Black Creek**
Name of watershed or Hydrologic Unit Code (HUC): **03040201-07**

- 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): **May 17, 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: **(W-1) 0.55 a. + (W-2) 0.11 a. = 0.66 acres.**

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

Elevation of established OHWM (if known):N/A.

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **A potentially jurisdictional linear feature was assessed within the review area and determined to be non-jurisdictional. This feature originates within W-1 and continues northeast where it intersects with an unnamed**

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.

tributary of High Hill Creek. It is depicted on the topographic map as a dashed blue line and on the aerials as a shaded linear feature. During the site visit, this feature was observed as having water stained leaf litter and debris in the bottom and no OHWM.

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: **Black Creek.**

Summarize rationale supporting determination: **The Black Creek was determined to be a Traditional Navigable Water based on several factors. The Black Creek is listed as a state navigable water on both the SCDHEC Navigable Waters of SC list and the SCDNR Region 2 list of Navigable Waters. The upstream limit of this navigable water for both lists is the confluence of the Black Creek and Little Black Creek within Chesterfield County. This is located upstream of the project site. There are public boat ramps located both upstream and downstream of the project site on Black Creek. Additional indicators that the Black Creek is currently being used for commercial water-bourne recreation/navigation include the presence of an RV park and several campgrounds upstream of the project site. These campgrounds also have boat ramps and public restrooms present. There is one fishing supply shop located within the City of Hartsville and several located in the surrounding area. There is also a fishing guide business that is located nearby and services this area. The City of Hartsville also hosts the annual Black Creek Canoe/Kayak Festival that brings not only the public, but also vendors and businesses, to the Black Creek. These factors are all evidence that the Black Creek supports a wide variety of commercial water-bourne recreation.**

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) General Area Conditions:

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

Watershed size: **186,969 acres** ; HUC **03040201-07**
Drainage area: **382 acres**
Average annual rainfall: **46.90 inches**
Average annual snowfall: **1.1 inches**

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through **2** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **2-5** 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: **N/A**.

Identify flow route to TNW⁵: **The off-site tributary flows through a 2nd order stream prior to entering High Hill Creek. High Hill Creek flows into the Black Creek, a TNW.**
Tributary stream order, if known: **The off -site tributary is a 1st order stream.**

(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: **4-6** feet
Average depth: **2-4** feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

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

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

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

Tributary geometry: **Meandering.**

Tributary gradient (approximate average slope): **0-1 %**

(c) Flow:

Tributary provides for: **Perennial flow**

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

Describe flow regime: **This tributary receives flow from the abutting wetlands via overland sheetflow and from adjacent, non-abutting, wetlands via discrete and confined flow.**

Other information on duration and volume: .

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

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

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour

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

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

- sediment deposition
- water staining
- other (list):
- Discontinuous OHWM.⁷ Explain: .
- multiple observed or predicted flow events
- abrupt change in plant community

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: **The off-site tributary has a firm, sandy bottom with clear water typical of the blackwater tributaries in this watershed. This tributary is located within the Black Creek Watershed, which consists of approximately 49% agricultural land, 19% forested land, 17% forested wetlands, and 11% urban land. The remaining land uses in this watershed are scrub/shrub land, water, nonforested wetlands, and barren land.**

Identify specific pollutants, if known: **According to the SCDHEC Watersheds website, a review of the downstream monitoring station for Black Creek (PD-078) shows that this area fully supports aquatic and recreational uses. Significant decreasing trends in five-day biological oxygen demand and turbidity suggest improving conditions for these parameters..**

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

- Riparian corridor. Characteristics (type, average width): **100-200'**.
- Wetland fringe. Characteristics: **The entire length of the 1st order tributary intersects a wetland system.**
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: **This perennial RPW provides an important habitat and corridor for wildlife as well as a connection to the downstream TNW for aquatic species.**

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: **W-1 0.55 a. + (W-2) 0.11 a. = 0.66 acres**
 Wetland type. Explain: **Palustrine forested.**
 Wetland quality. Explain: **Fully functional.**
 Project wetlands cross or serve as state boundaries. Explain: **N/A.**

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: .
 Surface flow is: **Discrete and confined**
 Characteristics: **W-1 and W-2 on site flow into the off-site 1st order tributary via non-jurisdictional ditches.**
 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: **Jurisdictional W-1 and W-2 flow directly into the 1st order tributary via non-jurisdictional ditches.**
 Ecological connection. Explain: .
 Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.
 Project waters are **2-5** aerial (straight) miles from TNW.
 Flow is from: **Wetland to navigable waters.**
 Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

⁷Ibid.

(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 wetlands have been determined to be fully functional and seasonally saturated. No water was present on the surface of the wetlands during the site visit. These two wetlands are 44.36 located within the Black Creek watershed, which consists of approximately 49% agricultural land, 19% forested land, 17% forested wetlands, and 11% urban land. The remaining land uses in this watershed are scrub/shrub land, water, nonforested wetlands, and barren land .**

Identify specific pollutants, if known: **According to the SCDHEC Watersheds website, a review of the downstream monitoring station for Black Creek (PD-078) shows that this area fully supports aquatic and recreational uses. Significant decreasing trends in five-day biological oxygen demand and turbidity suggest improving conditions for these parameters..**

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: **Acer rubrum (FAC) and Pinus taeda (FAC).**
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **5**
 Approximately (**44.36**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
N	0.55	N	0.11
N	2.0	N	0.5
Y	41.2		

Summarize overall biological, chemical and physical functions being performed: **The 1st order perennial RPW and the approximately 44.36 acres of wetlands located adjacent to this perennial RPW contribute vital biological, chemical, and physical functions to the downstream TNW. These wetlands and the adjacent pRPW make up an important ecological system with vital aquatic habitat that supports an abundance of wildlife in a watershed that consists predominately of agricultural and silvicultural land. Due to the prevalence of agriculture and silvicultural land use in this watershed, these wetlands and the adjacent pRPW are acting as a catch basin for the adjacent uplands by filtering sediments, herbicides, and other pollutants and by reducing the amount of flood waters reaching the downstream TNW.**

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

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

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

- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **The 1st order perennial RPW, which is an unnamed tributary of High Hill Creek, and the nonabutting wetlands contribute vital biological, chemical, and physical functions to the downstream TNW. The wetlands provide important aquatic habitat used for feeding, nesting, and other functions that support wildlife within uplands that are predominately in use for agricultural and silvicultural purposes. These wetlands also act as a catch basin for the adjacent uplands by filtering sediments, herbicides, and other pollutants and by reducing the amounts of flood waters that can reach the downstream TNW. These wetlands have a direct hydrologic connection to the downstream perennial RPW via a non-jurisdictional ditch. Because of this connection, these wetlands have the capacity to transfer nutrients to the downstream RPW that provide support to the aquatic wildlife in the perennial RPW and the downstream TNW. Due to the prevalence of agriculture land use in this watershed, these wetlands are a vital part of the perennial RPW's 382 acre drainage area and were determined to have a significant nexus to 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: **Based on a review of the aerials, topographic map, soil survey, and NWIs, the off-site, 1st order tributary was determined to have perennial flow. The aerials depict this tributary as a shaded linear feature, and the topographic map depicts this tributary as a blue line. The soil survey maps this tributary as Johnston, a hydric soil. The NWIs map this tributary as palustrine wetlands. This 1st order tributary flows into a 2nd order tributary that is an unnamed tributary of High Hill Creek. High Hill Creek continues southeast where it flows into Black Creek, a TNW.**
 - Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

- Tributary waters: 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.

⁸See Footnote # 3.

- 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: **W-1) 0.55 a. + (W-2) 0.11 a. = 0.66** acres.

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

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

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

7. Impoundments of jurisdictional waters.⁹

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

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

Explain:

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

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

Identify water body and summarize rationale supporting determination: .

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

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

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): **A linear feature was assessed within the review area and determined to be a non-jurisdictional ditch.**

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

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

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

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

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

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

SECTION IV: DATA SOURCES.

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Report by S&ME, Inc.; plat by Thomas & Hutton.**
- 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: **Darlington East; The topographic map depicts these wetlands as cleared uplands.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Page 39; The soil survey maps W-1 as Noboco, a non-hydric soil and W-2 as Coxville, a hydric soil.**
- National wetlands inventory map(s). Cite name: **The NWIs map W-1 as upland planted pine (U42P) and W-2 as palustrine forested wetlands (PFO1/2Cd).**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **SCDNR 2006, 99:11227:71; The aerials depict the wetlands as forested.**
or Other (Name & Date): **Site photos provided by S&ME, Inc.**
- Previous determination(s). File no. and date of response letter: **SAC 2010-01092-4E; letter dated April 29, 2011.**
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Based on a review of the aerials, topographic map, soil survey, and NWIs, the off-site, 1st order tributary was determined to have perennial flow. The aerials depict this tributary as a shaded linear feature, and the topographic map depicts this tributary as a blue line. The soil survey maps this tributary as Johnston, a hydric soil. The NWIs map this tributary as palustrine wetlands. This 1st order tributary flows into a 2nd order tributary that is an unnamed tributary of High Hill Creek. High Hill Creek continues southeast where it flows into Black Creek, a TNW. W-1 and W-2 on site were determined to be adjacent, non-abutting, to the downstream 1st order tributary in Section IIIC above. A review of a previous jurisdictional determination completed on this site (SAC 2010-01092, letter dated April 29, 2011) determined that these wetlands were jurisdictional.