

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): January 20, 2011

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 3 of 3; SAC 2003-34999-4E Lee Co. I-20 Industrial Park

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: South Carolina

County/parish/borough: **Lee** City:

Center coordinates of site (lat/long in degree decimal format): Lat. **34.203798° N**, Long. **-80.284779° W**.

Universal Transverse Mercator:

Name of nearest waterbody: **Gin Branch**

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

Name of watershed or Hydrologic Unit Code (HUC): **HUC 03040205-02**

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): **July 13, 2011**

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: (SRPW-3) **2730.22** linear feet: width (ft) and/or (Impoundments of WOUS) **0.5 a. + 0.87 a. = 1.37** acres.

Wetlands: (Wetland B) **0.60** acres.

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

Elevation of established OHWM (if known): .

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

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

Explain: **Two non-jurisdictional ponds and a non-jurisdictional ditch were assessed within the review area and determined to be non-jurisdictional. The two non-jurisdictional ponds are located along the southern and eastern**

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.

property boundaries and were excavated out of uplands for stormwater drainage. These two ponds were not created out of other jurisdictional Waters of the US nor are they impounded Waters of the US. The non-jurisdictional ditch within the review area is located near the northern property boundary and connects to SRPW-3 near the center of the property. This non-jurisdictional ditch was excavated out of uplands and does not have an upstream connection to a WOUS. During the site visit, this ditch was viewed and determined to have less than seasonal flow based on the presence of non-hydric soils in the channel and a lack of an OHWM. Matted down terrestrial vegetation in the bottom of the ditch indicates that this non-jurisdictional ditch receives flow from adjacent uplands and carries water toward the SRPW-3.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: _____

Summarize rationale supporting determination: _____

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": _____

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

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

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

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

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

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

(i) **General Area Conditions:**

Watershed size: **71,890 acres** ; HUC **03040205-02**

Drainage area: **118 acres**

Average annual rainfall: **50 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 **2-5** river miles from TNW.

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

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: **The project waters originate on site and do not cross or serve as state boundaries..**

Identify flow route to TNW⁵: **The on-site seasonal RPW labeled SRPW-3 on the plat flows south into an unnamed tributary of Gin Branch. Gin Branch flows directly into the Black River.**

Tributary stream order, if known: **The on-site seasonal RPW is a 1st order stream.**

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

Tributary is: Natural

Artificial (man-made). Explain: **The on-site seasonal RPW is man-made and, according to the aeriels, was constructed between 1999 and 2006.**

Manipulated (man-altered). Explain: .

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

Average width: **3** feet

Average depth: **1-3** 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 appears to be stable with no erosion or sloughing banks observed.

Presence of run/riffle/pool complexes. Explain: **No run/riffle/pool complexes were observed within the on-site tributary.**

Tributary geometry: **Relatively straight.**

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

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: **The tributary flows after storm events and during the wet season. According to the WETS rainfall database, the average rainfall within this area is between 41.06" and 49.3". Prior to the site visit, the NC State CRONOS website was consulted which showed that this area (Station # 380736 in Bishopville, SC) has received 38.7" in the past year. Also, a review of the SC State Climatology Office shows that the drought status for Lee County has been moderate since June 17, 2011.**

Other information on duration and volume: **The on-site portion of the tributary receives flow from the upstream wetland and a non-jurisdictional ditch as well as runoff from adjacent uplands. The on-site portion of the sRPW was also incorporated into the onsite stormwater drainage and receives flow from roadside drainage. The downstream portion of the tributary receives overland sheetflow from the adjacent agricultural fields.**

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

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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

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

- other (list):
- Discontinuous OHWM.⁷ Explain:

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

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

(iii) Chemical Characteristics:

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

Explain: **The water in the tributary is not discolored and has no oily film. According to the SCDHEC Watersheds website, this watershed is comprised primarily of agricultural land (62.6%) and forested wetlands (20.6%). The remaining land uses in the watershed are forested land, urban land, scrub/shrub land with less than 1% comprised of barren land, water, and nonforested wetlands.**

Identify specific pollutants, if known: **The onsite tributary receives overland sheetflow from adjacent uplands that are in the process of being developed into an industrial park site; however, currently, the only building within the review area is not in use. According to SCDHEC, the downstream monitoring station for the Black River (PD-353) shows that aquatic and recreational uses are fully supported in this watershed. The Black River is characterized as a blackwater system with naturally low dissolved oxygen conditions. Decreasing trends in total phosphorus and fecal coliform bacteria concentrations suggest improving conditions for this station; however, a fish consumption advisory has been issued due to the presence of mercury in the river .**

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: **The tributary intersects 0.6 acres of wetlands on site at its upstream terminus.**
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: **This tributary provides for an important wildlife habitat and improves wildlife diversity due to its location in a predominately rural watershed with a high percentage of agricultural land use and within a property currently being developed for use as an industrial park.**

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: **(Wetland B) 0.60** acres

Wetland type. Explain: **Small basin wetland.**

Wetland quality. Explain: **The wetland has been impaired due to clearing and maintenance of the wetland in an herbaceous state.**

Project wetlands cross or serve as state boundaries. Explain: **The project wetland is confined within the property boundary and does not cross or serve as state boundaries.**

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain:

Surface flow is: **Confined**

Characteristics:

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

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

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

⁷Ibid.

- (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.

(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 observed within Wetland B is clear with no oily film. According to the SCDHEC Watersheds website, this watershed is comprised primarily of agricultural land (62.6%) and forested wetlands (20.6%). The remaining land uses in the watershed are forested land, urban land, scrub/shrub land with less than 1% comprised of barren land, water, and nonforested wetlands.**

Identify specific pollutants, if known: **Wetland B is located within a planned industrial park site and receives overland sheetflow from the adjacent uplands. According to SCDHEC, the downstream monitoring station for the Black River (PD-353) shows that aquatic and recreational uses are fully supported in this watershed. The Black River is characterized as a blackwater system with naturally low dissolved oxygen conditions. Decreasing trends in total phosphorus and fecal coliform bacteria concentrations suggest improving conditions for this station; however, a fish consumption advisory has been issued due to the presence of mercury in the river .**

(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: **This wetland provides for an important wildlife habitat and**

improves wildlife diversity due to its location in a predominately rural watershed with a high percentage of agricultural land use and within a property currently being developed for use as an industrial park.

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

All wetland(s) being considered in the cumulative analysis: **1**
 Approximately (**0.6**) 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>
Y	0.6		

Summarize overall biological, chemical and physical functions being performed: **The on-site wetland labeled Wetland B and the seasonal RPW labeled SRPW-3 contribute vital biological, chemical, and physical functions to the downstream TNW. The wetland and the sRPW make up an important ecological system with vital aquatic habitat that supports an abundance of wildlife in a watershed comprised of over 60% agricultural land and on a site currently being developed as an industrial park. Due to the prevalence of agriculture land use in this watershed and the location of this wetland on an industrial site, these waters of the US are acting as a catch basin for the surrounding uplands by filtering sediments, herbicides, and other pollutants and by reducing the volume and velocity 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:

Documentation for the Record only: Significant nexus findings for seasonal RPWs and/or wetlands abutting seasonal RPWs: Wetland B and the abutting seasonal RPW are contributing vital biological, chemical, and physical functions to the downstream TNW. Although these waters of the US are maintained in a predominately herbaceous state, they still providing an important aquatic habitat within a site comprised primarily of uplands and that is being developed as an industrial park. The wetland and seasonal RPW are acting as a catch basin for the surrounding uplands and reduce the amount of chemicals and other pollutants as well as flood waters that reach the downstream TNW.

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: **The tributary labeled SRPW-3 on the plat was determined to have seasonal flow based on information obtained during the site visit and a review of the aerials. The aerials depict this tributary as a shaded linear feature. This tributary is not depicted on the topographic map and, according to the previous JD (SAC 81-2003-0414), was excavated out of uplands; however, during the site visit, this tributary was observed to have saturated hydric soils in the upper 12" of soil within the channel and vegetation was matted down. Further downstream, this tributary had water present and aquatic vegetation growing in the channel. This tributary continues south on the property until it reaches two man-made stormwater ponds labeled jurisdictional impoundments of WOUS on the plat. After exiting the second impoundment, the flow continues southwest until it reaches an unnamed perennial RPW that flows under Interstate-20 and directly into Gin Branch. Gin Branch (pRPW) flows directly into the Black River, a TNW.**

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

- Tributary waters: **2730.22** linear feet **3** 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.

⁸See Footnote # 3.

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: **According to the aerials, soil survey, and site visit, Wetland B was determined to directly abut the onsite seasonal RPW labeled SRPW-3 on the plat. The 2006 aerials depict this depressional wetland and the soil survey maps this area as Grady, which is a hydric soil. This wetland is not depicted on the NWIs; however, during the site visit, the boundary of Wetland B was verified and determined to directly intersect the boundary of SRPW-3 .**

Provide acreage estimates for jurisdictional wetlands in the review area: **(Wetland B) 0.60** 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.

- 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: The two impoundments on site labeled "Impoundment of WOUS Jurisdictional" were determined to receive flow from the on-site seasonal RPW and the flow was determined to exit the eastern impoundment and continue off-site downstream in the seasonal RPW.

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.

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.

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): **Two non-jurisdictional ponds and a non-jurisdictional ditch were assessed within the review area and determined to be non-jurisdictional. The two non-jurisdictional ponds are located along the southern and eastern property boundaries and were excavated out of uplands for stormwater drainage. These two ponds were not created out of other jurisdictional Waters of the US nor are they impounded Waters of the US. The non-jurisdictional ditch within the review area is located near the northern property boundary and connects to SRPW-3 near the center of the property. This non-jurisdictional ditch was excavated out of uplands and does not have an upstream connection to a WOUS. During the site visit, this ditch was viewed and determined to have less than seasonal flow based on the presence of non-hydric soils in the channel and a lack of an OHWM. Matted down terrestrial vegetation in the bottom of the ditch indicates that this non-jurisdictional ditch receives flow from adjacent uplands and carries water toward the SRPW-3 .**

review area and determined to be non-jurisdictional. The two non-jurisdictional ponds are located along the southern and eastern property boundaries and were excavated out of uplands for stormwater drainage. These two ponds were not created out of other jurisdictional Waters of the US nor are they impounded Waters of the US. The non-jurisdictional ditch within the review area is located near the northern property boundary and connects to SRPW-3 near the center of the property. This non-jurisdictional ditch was excavated out of uplands and does not have an upstream connection to a WOUS. During the site visit, this ditch was viewed and determined to have less than seasonal flow based on the presence of non-hydric soils in the channel and a lack of an OHWM. Matted down terrestrial vegetation in the bottom of the ditch indicates that this non-jurisdictional ditch receives flow from adjacent uplands and carries water toward the SRPW-3 .

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, plat by Nesbitt Surveying Co., Inc.**
- 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: **Bishopville West.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **pg. 15.**
- National wetlands inventory map(s). Cite name: **PF01B, U42P, U21.**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **99:11201:3.**
 - or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: **SAC 81-2003-0414, October 7, 2004.**
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: According to the aerials, soil survey, and site visit, Wetland B was determined to directly abut the onsite seasonal RPW labeled SRPW-3 on the plat. The 2006 aerials depict this depressional wetland and the soil survey maps this area as Grady, which is a hydric soil. This wetland is not depicted on the NWIs; however, during the site visit, the boundary of Wetland B was verified and determined to directly intersect the boundary of SRPW-3

The tributary labeled SRPW-3 on the plat was determined to have seasonal flow based on information obtained during the site visit and a review of the aeriels. The aeriels depict this tributary as a shaded linear feature. This tributary is not depicted on the topographic map and, according to the previous JD (SAC 81-2003-0414), was excavated out of uplands; however, during the site visit, this tributary was observed to have saturated hydric soils in the upper 12" of soil within the channel and vegetation was matted down. Further downstream, this tributary had water present and aquatic vegetation growing in the channel. This tributary continues south on the property until it reaches two man-made stormwater ponds labeled jurisdictional impoundments of WOUS on the plat. These impoundments were determined to be jurisdictional because they are impounded ponds created out of the seasonal RPW. After exiting the second impoundment, the flow continues southwest until it reaches an unnamed perennial RPW that flows under Interstate-20 and directly into Gin Branch. Gin Branch (pRPW) flows directly into the Black River, a TNW.

Two non-jurisdictional ponds and a non-jurisdictional ditch were assessed within the review area and determined to be non-jurisdictional. The two non-jurisdictional ponds are located along the southern and eastern property boundaries and were excavated out of uplands for stormwater drainage. These two ponds were not created out of other jurisdictional Waters of the US nor are they impounded Waters of the US. The non-jurisdictional ditch within the review area is located near the northern property boundary and connects to SRPW-3 near the center of the property. This non-jurisdictional ditch was excavated out of uplands and does not have an upstream connection to a WOUS. During the site visit, this ditch was viewed and determined to have less than seasonal flow based on the presence of non-hydric soils in the channel and a lack of an OHWM. Matted down terrestrial vegetation in the bottom of the ditch indicates that this non-jurisdictional ditch receives flow from adjacent uplands and carries water toward the SRPW-3 .