# 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): Oct
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DISTRICT OFFICE, FILE NAME, AND NUMBER: JD Form 34 of 50 (Reach WW): SAC #1992-24122-41H. Haile Gold Mine

ъ.	DISTRICT OFFICE, FILE WAVE, AND WOMENER, 3D Form 34 of 30 (Reach WW), SAC #1772-24122-4011, Hanc Gold William
C.	PROJECT LOCATION AND BACKGROUND INFORMATION:  State: South Carolina County/parish/borough: Lancaster City: Kershaw  Center coordinates of site (lat/long in degree decimal format): Lat. 34.599342° N, Long80.548780° W.  Universal Transverse Mercator:  Name of nearest waterbody: Camp Branch  Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lynches River  Name of watershed or Hydrologic Unit Code (HUC): Little Lynches River: HUC 03040202-02  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): April 26-27, 2011 and July 24-25, 2012
	CTION II: SUMMARY OF FINDINGS RHA SECTION 10 DETERMINATION OF JURISDICTION.
	re Are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the ew 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:
В. (	CWA SECTION 404 DETERMINATION OF JURISDICTION.
The	re 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):  TNWs, including territorial seas  Wetlands adjacent to TNWs  Relatively permanent waters <sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  Non-RPWs that flow directly or indirectly into TNWs  Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly 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: 1,448.33 linear feet: 3' width (ft) and/or 0.08 (impoundment) acres.  Wetlands: 2.12 acres.
	c. Limits (boundaries) of jurisdiction based on: Established by OHWM., 1987 Delineation Manual, Pick List Elevation of established OHWM (if known):
	<ul> <li>Non-regulated waters/wetlands (check if applicable):<sup>3</sup></li></ul>

<sup>&</sup>lt;sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.
<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

## **SECTION III: CWA ANALYSIS**

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#### 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.	INW Identify TNW:	
	Summarize rationale supporting determination: .	
2.	Wetland adjacent to TNW Summarize rationale supporting conclusion that wetland is "adjacent":	

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

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

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

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

If the waterbody 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: 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 <b>Pick List</b> tributaries before entering TNW.
	Project waters are <b>Pick List</b> river miles from TNW.
	Project waters are <b>Pick List</b> river miles from RPW.
	Project waters are <b>Pick List</b> aerial (straight) miles from TNW.
	Project waters are <b>Pick List</b> aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain: .
	Identify flow route to TNW <sup>5</sup> : .
	•
	Tributary stream order, if known: .

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

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

	(b)	General Tributary (	Characteristics (check all that apply	/):		
		Tributary is:	Natural			
		·	Artificial (man-made). Explain	n:		
			Manipulated (man-altered). E		n: .	
				1		
		Tributary properti	es with respect to top of bank (estir	mate):	:	
		Average width		,		
		Average depth				
			slopes: Pick List.			
			r · · · ·			
		Primary tributary si	ubstrate composition (check all that	t appl	v):	
		☐ Silts	Sands `	11.	,	Concrete
		Cobbles	Gravel			Muck
		Bedrock	Vegetation. Type/%	cove	r:	
		Other. Exp				
		Tributary condition	stability [e.g., highly eroding, slou	aghing	g banks].	Explain: .
			fle/pool complexes. Explain:			•
		Tributary geometry				
			(approximate average slope):	%		
		, , , , , , , , , , , , , , , , , , ,				
	(c)	Flow:				
	` ,	Tributary provides	for: Pick List			
			umber of flow events in review are	a/yeai	r: Pick Lis	st
		Describe flow		,		_
		Other information of	on duration and volume: .			
		Surface flow is: Pic	ck List. Characteristics: .			
		Subsurface flow: P	ick List. Explain findings: .			
		Dye (or oth	her) test performed: .			
		Tributary has (chec	k all that apply):			
		Bed and ba				
		OHWM <sup>6</sup> (	check all indicators that apply):			
			natural line impressed on the bank			nce of litter and debris
		☐ change	es in the character of soil		destructio	on of terrestrial vegetation
		shelvii				nce of wrack line
			tion matted down, bent, or absent		sediment	sorting
			ter disturbed or washed away		scour	
			ent deposition			observed or predicted flow events
			staining		abrupt cha	ange in plant community
		other (				
		☐ Discontinu	ious OHWM. <sup>7</sup> Explain:			
						t of CWA jurisdiction (check all that apply):
			e Line indicated by:	Mear	n High Wa	ater Mark indicated by:
			scum line along shore objects	S	urvey to a	vailable datum;
			nell or debris deposits (foreshore)		hysical ma	
			eal markings/characteristics	U V	egetation l	lines/changes in vegetation types.
		☐ tidal g				
		other (	(list):			
(iii)		mical Characterist			C"1	
	Cha		.g., water color is clear, discolored	, oily	film; wate	er quality; general watershed characteristics, etc.)
		Explain: .				
	Iden	ntify specific pollutar	nts, if known:			

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

<sup>7</sup>Ibid.

	(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.	Cha	rracteristics 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: 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.	Cha	Aracteristics 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:



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 ALI
	THAT APPLY):	

1.	TNWs and Ad	ljacent Wetlands.	Check all that apply	and provide size estimates in review area:
	TNWs:	linear feet	width (ft), Or,	acres.
	Wetlands a	djacent to TNWs:	acres.	

2. RPWs that flow directly or indirectly into TNWs.

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: The flow of onsite tributary was determined to be at least 90% of the year under normal climatic

	within bed and banks had a firm sandy bottom clear of vegetation and debris, sediment bars/deposition bars located adjacent to the channel which is evidence of perennial flow. In addition, hydrologic indicators observed were: Leaves within the channel being continuously washed downstream, wrack lines consisting of organic debris, flowing water under drought conditions and an even distribution of substrates (longitudinally) in the stream channel. The tributary flows and outfalls directly into the tributary identified as "VV" which flows to Camp Branch which flows to Little Lynches River that outfalls into Lynches River, 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: 1,448.33 linear feet 3 width (ft). ☐ Other non-wetland waters: 0.08 acres.  Identify type(s) of waters: Impoundment.
3.	Non-RPWs <sup>8</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
	Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: linear feet width (ft).  Other non-wetland waters: acres.  Identify type(s) of waters: .
4.	Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Wetlands directly abut the onsite tributary; tributary flows through wetlands.
	Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
	Provide acreage estimates for jurisdictional wetlands in the review area: 2.12 acres.
5.	Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
	Provide acreage estimates for jurisdictional wetlands in the review area: 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.  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 man-made impoundment is located in the headwaters of Tributary "WW". The man-made impoundment was constructed within the channel below the OHWM of tributary "WW" which has been determined to be waters of the United States.
DE	DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, GRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY CH WATERS (CHECK ALL THAT APPLY): 10

E.

 $<sup>^8</sup> See$  Footnote # 3.  $^9$  To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

	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: 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.
	CTION IV: DATA SOURCES.  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: Maps and report submitted by Ecological Resource Consultants, Inc. (ERC) dated January 6, 2012, Revised August 2012.  ✓ Data sheets prepared/submitted by or on behalf of the applicant/consultant.  ✓ Office concurs with data sheets/delineation report. The exact location where the data points were collected was not visited;
how	wever, in general the data forms represent the typical soils, vegetation, and indicators of hydrology throughout the tract.    Office does not concur with data sheets/delineation report.   Data sheets prepared by the Corps:   Corps navigable waters' study: USACE Charleston District (1977) Navigability Study- Lynches River Basin   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: Kershaw: Quad depicts a symbol which typically represents a tributary with intermittent or seasonal flow for Tributary "WW". However, the site evaluation of July 2012 revealed the
	dominant flow regime for the majority of the reach of the tributary identified as "WW" to be perennial.  USDA Natural Resources Conservation Service Soil Survey. Citation: Lancaster County Soil Survey page 38 depicts the non-hydric soil type of Wagram.
	National wetlands inventory map(s). Cite name: <b>NWI maps depicts the review as U42P (Upland planted pines).</b> State/Local wetland inventory map(s):

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

	FEMA/FIRM maps: .	
	100-year Floodplain Elevation is: (Nat	onal Geodectic Vertical Datum of 1929)
$\boxtimes$	Photographs: Aerial (Name & Date): 2006	SCDNR.
	or Other (Name & Date): Site p	hotos provided by ERC.
	Previous determination(s). File no. and date of	response letter: .
	Applicable/supporting case law: .	
	Applicable/supporting scientific literature:	
	Other information (please specify): .	

B. ADDITIONAL COMMENTS TO SUPPORT JD: The review area identified as Aquatic Resource "WW" contains 1,448.33 linear feet of tributary determined to be a waters of the United States; 2.12 acres of freshwater wetlands determined to directly abutting, adjacent to the tributary; and one 0.08 acre impoundment of a waters of the United States. Aquatic Resource "WW" flows directly to the tributary identified as "VV" which flows to Camp Branch which flows to Little Lynches River that flows approximately 20-25 miles to the Lynches River a TNW.

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