

**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):**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAW-RG-A; ELM Golf LLC/Rea Farms; SAW-2015-00947**

**Applicant: Lincoln Harris/ELM Golf**

**Site: Rea Farms**

**Form for: Isolated Wetlands C, D, E, G, H, I, O, P, Q, U, V, and W; Jurisdictional Wetlands A, F, J, M, N, S, Y, Z and AA; Perennial Stream R and X; Jurisdictional Ponds B and K.**

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

State: **NC** County/parish/borough: **Mecklenburg** City: **Weddington**

Center coordinates of site (lat/long in degree decimal format): Lat. **35.0549° N**, Long. **-80.7773° W**.

Universal Transverse Mercator:

Name of nearest waterbody: **Flat Branch**

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

Name of watershed or Hydrologic Unit Code (HUC): **Lower Catawba 03050103**

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): **2-6-2015**

**SECTION II: SUMMARY OF FINDINGS**

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

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

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

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

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

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

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: **541 linear feet: 4 width (ft)** and/or **0.05 acres**.

Wetlands: **4.08 acres of wetlands and 3.648 acres of open water pond acres**.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

<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).

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The site contains 2.153 acres of wetlands that are being considered isolated and non-jurisdictional. Specifically, as identified on the attached delineation map and survey, Isolated/Non-Jurisdictional Wetlands C, D, E, G, H, I, O, F, Q, U, V, W are being considered isolated and non-jurisdictional. These areas are classified by Schafale & Weakely (Classification of the Natural Communities of North Carolina Third Approximation, 1990) as an Upland Depression Swamp Forest community type which are found on broad upland flats and high ridge tops. As indicated by the attached topographic maps, these wetland areas in question are located on the highest topographic points on the property. This community is also found in the Iredell soil series which corresponds to the soil type where these wetlands areas are located in addition to the representative vegetative community common to Upland Depression Swamp Forests that is also present in these wetlands. Based on extensive past experience with these wetland communities which are only found in this region, they are typically naturally isolated with no surrounding drainages (overland or jurisdictional) that connects them to downslope features. These wetlands in particular have been disturbed by surrounding grading activities to develop a golf course that has been in place since the late 1990s. Based upon on-site evaluations, there are no signs of hydrologic connections from these wetland areas to other jurisdictional features on/off the site. The golf course has been maintained as such and there are no signs of overland flow, drainage patterns, ditches, grassed swales, or any other kind of drainage system that may connect these areas to downslope jurisdictional areas. The Iredell soil type also limits the opportunity for subsurface drainage as there is a restrictive/impermeable layer that prohibits subsurface drainage and which is what ultimately maintains the seasonal wetland hydrology for these areas. Based upon our on-site analysis of these wetland areas and our experience with wetlands in this region found in this Upland Depression Swamp Forest community, their landscape position and soil characteristics create a natural occurring isolated wetlands. Based upon our findings, we do not believe that the development of the surrounding golf course caused these wetland areas to be isolated since this is their natural state as indicated above and which apparently has not been changed by these human activities .**

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

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

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

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

(i) **General Area Conditions:**

Watershed size: 927 **square miles**

Drainage area: 190 **acres**

Average annual rainfall: 44 inches

Average annual snowfall: 0 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **3** tributaries before entering TNW.

Project waters are **15-20** river miles from TNW.

Project waters are **1 (or less)** river miles from RPW.

Project waters are **10-15** aerial (straight) miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from RPW.

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

Identify flow route to TNW<sup>5</sup>: **There are two flow paths for jurisdictional features on the site. Jurisdictional areas on the northern side of the property flow into unnamed tributaries before entering Flat Branch which then flow to**

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

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

**Sixmile Creek then to Twelvemile Creek (TNW). Jurisdictional areas on the southern portion of the property flow into unnamed tributaries before entering SixMile Creek then to TwelveMile Creek (TNW).**

Tributary stream order, if known: **1.**

(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 feet**  
Average depth: **+/-3 feet**  
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: .

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  
 OHWM<sup>6</sup> (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  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain: .

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

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

(iii) **Chemical Characteristics:**

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

Explain: **water color is clear - no signs of pollutants.**

Identify specific pollutants, if known: .

<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): **25-50m**.
- 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: **0.408 acres**

Wetland type. Explain: **Forested wetlands and herbaceous wetland areas within or adjacent to historically active golf course.**

Wetland quality. Explain: **Fair to poor.**

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Wetlands located adjacent to perennial and up and downslope of intermittent channels having flows resulting from precipitation events.

Surface flow is: **Overland sheetflow**

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: Non-abutting wetlands connected through observable overland flow and ephemeral conveyances.

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** 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: **water color is clear - no signs of pollutants** .

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: **Forested (80%) and herbaceous (10%) wetlands adjacent to historically active golf course.**

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: **typical wetland species - amphibians, etc.**

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

All wetland(s) being considered in the cumulative analysis: **9**

**Approximately ( 4.08 ) 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>
Jurisdictional Wetland A	0.461	Y	
Jurisdictional Wetland F	0.269	N	
Jurisdictional Wetland J	0.374	N	
Jurisdictional Wetland M	0.165	Y	
Jurisdictional Wetland N	0.041	Y	
Jurisdictional Wetland S	2.596	Y	
Jurisdictional Wetland Y	0.034	N	
Jurisdictional Wetland Z	0.13	N	
Jurisdictional Wetland AA	0.011	Y	

Summarize overall biological, chemical and physical functions being performed: **Onsite wetlands and jurisdictional RPW's provide habitat for herpetofauna and macroinvertebrates. These wetlands have the capacity to provide nutrients and organic carbon to downstream food webs. Wetlands provide flood storage during rain events and ground water recharge during dry periods. The wetlands also trap and filter pollutants before reaching Perennial RPWs on site and the Six/Twelvemile Creek (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: **Wetland F is 0.269 acres in size and is adjacent to but not abutting Jurisdictional Wetland AA. There is upland area/ephemeral swale separating the Wetland F from Wetland AA but surrounding characteristics such topography, and the aforementioned swale indicate that water from Wetland F flows downslope to Jurisdictional Wetland AA. Wetland F is considered jurisdictional due to its significant nexus to the downslope Jurisdictional Wetland AA which abuts an offsite RPW which flows to Flat Branch. Wetland Y is 0.034 acres in size and is adjacent but not abutting Jurisdictional Wetland M. There is upland area separating Wetland Y from Wetland M but surrounding characteristics such topography, drift lines and drainage patterns indicate that water from Wetland Y flows downslope to Jurisdictional Wetland M. Wetland Y is considered jurisdictional due to its significant nexus to the downslope Jurisdictional Wetland M which abuts Jurisdictional Pond B which flows to an off-site, unnamed tributary to Sixmile Creek. Wetland Z is 0.13 acres**

in size and is adjacent but not abutting Jurisdictional Wetland Y. There is upland area (golf cart path) separating the Wetland Z from Wetland Y but surrounding characteristics such topography and drainage patterns indicate that water from Wetland Z flows downslope to Jurisdictional Wetland Y. Wetland Z is considered jurisdictional due to its significant nexus to the downslope Jurisdictional Wetland Y which is connected to the associated TNW through Jurisdictional Wetland M as described above. Wetland J is 0.374 acres in size and is adjacent but not abutting Jurisdictional Wetland Z. There is upland area separating the Wetland J from Wetland Z but surrounding characteristics such topography, drift lines and drainage patterns indicate that water from Wetland J flows downslope to Jurisdictional Wetland Z. Wetland J is considered jurisdictional due to its significant nexus to the downslope Jurisdictional Wetland Z which abuts Jurisdictional Y which is connected to Jurisdictional Wetland M and their associated TNW as described above. Pollutants can be transported from these wetlands to the TNW by the identified routes. Additionally, these wetlands have the capacity to reduce pollutants through vegetation filtering, reduce flooding by providing storage, providing recharge to adjacent RPWs during dry climate conditions, transfer nutrients and organic carbon to downstream food webs, and provide habitat for amphibians and other wildlife.

**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: **Perennial RPW R and X shows typical morphology and flow of perennial streams for this region and the determination is supported by the accompanying Stream Reach Evaluation Forms. The attached forms document the existing conditions of these channels has having characteristics typically found in streams with perennial flow in this region which includes 1) presence of geomorphological indicators such as continuous bed/bank and active floodplain 2) presence of hydrologic indicators such as base flow and iron oxidizing bacteria 3) and presence of biological indicators such as macrobenthos.**

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are.

- 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: **541** linear feet **4** width (ft).
- Other non-wetland waters: **3.65** acres.

Identify type(s) of waters: **Pond B is located in the southwestern portion of the site is abutted by Jurisdictional Wetland A. Pond K is located in the northwestern portion of the site and flows to Jurisdictional pRPW X.**

**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: **Wetland A is directly abutting an unnamed tributary to Sixmile Creek via a culvert that flows under Ardrey Kell Road with no break in jurisdiction. Wetland M abuts Jurisdictional Pond B which is connected to Jurisdictional Wetland A and their associated TNW as described above, with no break in jurisdiction. Wetland N abuts Jurisdictional Pond B which is connected to Jurisdictional Wetland A and their associated TNW as described above, with no break in jurisdiction. Wetland S is directly abutting pRPW R with no**

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

**break in jurisdiction. Wetland AA is connected to an offsite seasonal/perennial RPW with no break in jurisdiction.**

- 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: **3.274** acres.

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: **0.807** acres.

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

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

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

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

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

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

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

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

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

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

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

**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. **See Section II.B(2)**  
 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): .

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

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

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: **2.153**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:      .
- 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: **Weddington, NC**      .
- USDA Natural Resources Conservation Service Soil Survey. Citation:      .
- National wetlands inventory map(s). Cite name:      .
- State/Local wetland inventory map(s):      .
- FEMA/FIRM maps:      .
- 100-year Floodplain Elevation is:      (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): **October 2014**      .  
or  Other (Name & Date): **January 21, 2015**      .
- 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 WoUS within the project area are depicted on the attached Figure 9 Delineation Map-Waters of the US, dated April 1, 2015, prepared by WEPG. In summary this form details that Wetlands A, F, J, M, N, S, Y, Z and AA, Perennial Streams R and X and Ponds B and K are jurisdictional WoUS. Wetlands C, D, E, G, H, I, O, P, Q, U, V, and W are non-jurisdictional isolated features.**