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): 28 August 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:Mobile District CESAM-RD-A, William E. "Billy" Sumerlin - Lot 9 Castlewood Court, SAM-2014-00835-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alabama County/parish/borough: Mobile City: Mobile
Center coordinates of site (lat/long in degree decimal format): Lat. 30.609333° N, Long. -88.228167° W.
Universal Transverse Mercator: Zone 16 X: 382280.121692 Y: 3386950.012795
Name of nearest waterbody: Impoundment of an Unnamed Tributary to a Tributary of Halls Mill Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Halls Mill Creek
Name of watershed or Hydrologic Unit Code (HUC): 031602050203

- ☒ 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): 4 August 2014

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☒ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 40 linear feet: approximately 90 width (ft) and/or acres.
   Wetlands: 0.45 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):**[3]
   - ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

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[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.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. **TNW**
   Identify TNW: .

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

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

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

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

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

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

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

   (i) General Area Conditions:
   Watershed size: (8 digit HUC) 560,998.88acres
   Drainage area: 100 acres
   Average annual rainfall: 64 inches
   Average annual snowfall: 0 inches

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

   Project waters are 5-10 river miles from TNW.
   Project waters are Pick List river miles from RPW.
   Project waters are 5-10 aerial (straight) miles from TNW.
   Project waters are Pick List aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: Project waters do not cross or serve as State boundaries.

   Identify flow route to TNW[5]: The impoundment of the unnamed tributary of Halls Mill Creek discharges into a larger unnamed tributary to Halls Mill Creek which flows into Halls Mill Creek which widens into a tidal water course after

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

[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.

crossing under U.S. Highway 90 approximately 6 river miles downstream of the review area. Halls Mill Creek then converges into Dog River.
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: The headwater of this unnamed tributary to Halls Mill Creek was historically impounded creating an approximately 3.5 acre lake which is located within the Castlewood subdivision and is adjacent to the project review area.

Tributary properties with respect to top of bank (estimate):
Average width: 5 feet
Average depth: 2 feet
Average side slopes: 4:1 (or greater).

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 overall tributary condition appears to be relatively stable due to dense vegetative cover.
Presence of run/riffle/pool complexes. Explain: Perennial tributary below the Castlewood subdivision lake dam appears to have natural stream morphology characteristics including run/riffle/pool complexes and sandy alluvial meanderings.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): Unknown %

(c) Flow:
Tributary provides for: Pick List
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: The unnamed tributary to the tributary of Halls Mill Creek is a continually flowing perennial stream which contained flowing water downstream of the Castlewood subdivision lake on the day of field evaluation.
Other information on duration and volume: No other information available.

Surface flow is: Confined. Characteristics: The unnamed tributary to Halls Mill Creek exhibits defined bed and bank characteristics with a predominantly wetland flood plain of mixed pine and hardwood forest and dense shrub/mid-story cover. Flow is continuous/perennial.

Subsurface flow: Pick List. Explain findings: Subsurface flow was not evaluated.
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):
☒ clear, natural line impressed on the bank ☒ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☒ 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.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by: ☐ 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

[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.
[7]Ibid.

☐ other (list):

(iii) Chemical Characteristics:

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

Explain: The tributary has clear but slightly naturally tannic water which has no cloudiness or turbidity.

Identify specific pollutants, if known: No known identified pollutants.

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

☒ Riparian corridor. Characteristics (type, average width): Mixed pine and hardwood forested predominantly wetland riparian corridor along stream. The headwater segment of the relevant reach of the unnamed tributary to Halls Mill Creek for this project review area has historically been impounded to create a small lake and residential development has built up adjacent to the lake, however immediately downstream of the lake dam there remains an good, densely vegetated natural riparian buffer of approximately 180 feet in total width.

☒ Wetland fringe. Characteristics: Forested wetlands .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: The tributary helps convey organic carbon and nutrients from decaying riparian plant material downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the stream and adjacent riparian lands.

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:0.45 acres

Wetland type. Explain:Shrub and hardwood forested slope seepage wetlands which abut tributaries (sweetbay, red maple, black titi , buckwheat tree, black willow).

Wetland quality. Explain: Medium and low quality wetland areas. Wetland portion of lot that is still forested and has not been disturbed is medium quality wetlands, portions of wetlands on lot that were cleared and grubbed for house, driveway and boat slip construction and are now part of routinely mowed yard area that will be behind house are low quality wetlands. Originally wetland acreage on lot was approximately 0.50-acre but due to past implementation of a portion of the previously permitted fill activities, the wetland acreage is now approximately 0.45-acre.

Project wetlands cross or serve as state boundaries. Explain: Project wetlands do not cross or serve as State boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Shallow sub-surface movement and seepage of water from wetland slopes during periods when the water table is high in hydric soils or satruated from storm events augments hydrologic flow of the unnamed tributaries of Halls Mill Creek and Halls Mill Creek itself.

Surface flow is: Overland sheerflow

Characteristics: Primarily floodplain flows (during rainfall events run-off water flows over the landscape toward and through the wetlands to the unnamed tributaries to Halls Mill Creek) but there are also discrete areas where water seeps out of the ground in sloping wetlands and flows slowly down-gradient to the lake and tributaries.

Subsurface flow: Unknown. Explain findings: Subsurface flow was not evaluated.

☐ 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 5-10 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 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: Areas of standing water in the wetlands consisted of clear but naturally tannic (orangish-brown tinted) water.

Identify specific pollutants, if known: No known identified pollutants.

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

☒ Riparian buffer. Characteristics (type, average width): Forested wetland +/- 180 ft total width downstream of subdivision lake dam to convergence with tributary to Halls Mill Creek. The downstream tributary to Halls Mill Creek also has forested wetland riparian buffer of up to 800 feet of total width and greater along some segments.

☒ Vegetation type/percent cover. Explain: The dominant plant species in the project area have Fac to Obl Region 2 wetland indicator status and include species such as Pinus elliottii, Nyssa biflora, Magnolia virginiana, Ilex coriacea, Acer rubrum, Smilax laurifolia, Cliftonia monophylla, Cyrilla racemiflora, Salix nigra, Liriodendron tulipifera, Ilex glabra, Osumnda cinnamomea, and Woodwardia aerolata.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: The wetlands provide resting, nesting, refuge from predators, and foraging habitat for small amphibians, reptiles, birds, and mammals of the coastal plain that may reside in or periodically utilize the area.

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

All wetland(s) being considered in the cumulative analysis: 2

Approximately (11.6) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	2.6		
Y	9.0		

Summarize overall biological, chemical and physical functions being performed: The estimated 11.6 acres of wetlands being considered in the cumulative analysis for the unnamed tributary to the tributary to Halls Mill Creek are remaining undeveloped wetlands along the impoundment of the tributary headwater and the forested riparian wetland system directly abutting the creek between the dam of the lake and the downstream convergence with the tributary to Halls Mill Creek. These areas are being considered as 2 wetland systems, those abutting the lake and those abutting the natural tributary. This wetland system provides a water source/area of water recharge to the tributary, it provides water purification functions to the TNW by moderating the flow of water and providing capacity to receive and retain floodwater resulting in removal of sediment, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from residential properties prior to entering the lake and tributaries, this ability to receive and retain stormwater also provides flood attenuation functions. The similarly situated wetlands along the tributaries in this system also provide a natural corridor for wildlife to utilize while carrying out their daily functions such as foraging for food and water and seeking shelter for nesting or as refuge from predators.. The fruits, nuts, and seeds of plants, and detritus and decomposition of organic matter from the wetlands also provide nutrients and organic carbon to the RPWs and downstream TNWs for use by wildlife and fish on-site and in downstream food chains.

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 [redacted]-RPW and its adjacent wetlands, where the [redacted]-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: *Significant Nexus discussion addressing 11th Circuit Court decision from United States v. Robison et.al. (McWane) case concluding that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos: The wetlands on the project site in combination with the impoundment of the perennial RPW UT to Halls Mill Creek, the flowing portion of the creek below the dam and above the lake pool, and similarly situated adjacent and abutting wetlands receive direct precipitation as well as runoff water from adjacent residentially developed lands and roadways. The subject RPW (UT to Halls Mill Creek) in combination with its adjacent and abutting forested and scrub-shrub wetlands have a significant nexus to the downstream RPWs and TNW by providing 1)- shading of the impoundment and perennial-RPW helping prevent/reduce the increase of water temperature in waters feeding into downstream TNW helping to keep these waters more habitable to aquatic wildlife and reducing the potential for in-stream algal blooms or growth spikes that often result from increased light exposure and water temperature; the impounded areas provide a natural instream sink capturing excess sediment that is being carried in the water column from surrounding land uses 2)- a groundwater discharge source/contributing source of water recharge to UT to Halls Mill

Creek and downstream waterways 3)- the overall stream and wetland system provides capacity to receive, retain and treat and convey rainfall run-off by providing buffering wetland areas where the roughness created by vegetative cover allows sediment and trash picked up in runoff to settle out of the water column prior to entering the stream channel and being transported to the downstream TNW. The wetlands along the stream play a significant role in treating, retaining and absorbing stormwater run-off thereby helping attenuate the potential for flooding as a result of surrounding increased development and creation of impervious surfaces. Bacteria in the wetland soils also provide natural removal of chemical contaminants such as petroleum based products from roadways and fertilizers, pesticides, and herbicides that is picked up in stormwater run-off from yards, road surfaces and rights-of-way. Once oxygen in the soil is exhausted, bacteria in the soil use water in the soil pore spaces containing these contaminants to generate the energy they need to survive and in this process chemically breakdown these contaminants and fix the by-products in the soil reducing their concentration in the adjacent stream and downstream waterways and making these contaminants less accessible to fish and other animals in the food web. 4)- Bacterial and fungal decomposition of detritus and other organic matter (e.g. dead animals, fecal material, etc.) are conveyed from the wetlands by the RPW and outfall from the impoundment on the RPW supplying nutrients and organic carbon to the downstream waters and TNWs for use by wildlife and fish in the downstream aquatic system and food web 5)- the wetlands adjacent and abutting to UT to Halls Mill Creek and impoundment in combination with the creek, which flows through another perennial RPW (Halls Mill Creek) which becomes a TNW several miles downstream at the point where US Hwy 90 crosses, provides a wildlife habitat corridor that provides access to a source of water and forested habitat for refuge, resting, nesting, and foraging for amphibians, reptiles, birds, and small to medium and larger sized (primarily deer) mammals that reside permanently in and/or periodically utilize the system of streams, wetlands, and uplands surrounding Halls Mill Creek and its tributaries.

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: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

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

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The shrub and forested wetlands within the review area are directly abutting a man-made impoundment of the headwater segment of what was historically a free-flowing perennial stream and are not physically separated from the lake by upland berms, roadways or other physical barriers. The remaining**

[8]See Footnote # 3.

free-flowing segment of the impounded tributary downstream of the dam was observed as having a defined channel with bed and bank and flowing water at the time of field review.

☐ 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: **0.45** 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.**[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).

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

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

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
   ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

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

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

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

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

SECTION IV: DATA SOURCES.

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

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☐ 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: 1:24,000, 7.5 Minute, Theodore, AL.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey 2.0, Mobile County, Alabama. Available online at http://websoilsurvey.nrcs.usda.gov/ accessed [3/19/2008].
- ☐ National wetlands inventory map(s). Cite name: .
- ☐ State/Local wetland inventory map(s): .
- ☒ FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas Map No. 01097C0651K, Revised Effective date March 17, 2010.
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): .
  or ☒ Other (Name & Date): Digital photos taken by Corps project manager 4 August 2014.
- ☒ Previous determination(s). File no. and date of response letter: SAM-2006-0668-LRG 24 April 2006, SAM-2008-00373-LET 4 April 2008.
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Jurisdictional authority regarding regulation of this wetland area and its associated impoundment and tributary is found at 33 CFR Section 328.3(a)(4) All impoundments of waters otherwise defined as waters of the United States under the definition, 33 CFR Section 328.3(a)(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section, and 33 CFR Section 328.3(a)(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (a)(6) of this section.

B. ADDITIONAL COMMENTS TO SUPPORT JD: * Minor modification to form for Alabama to address SN discussion required for perennial and seasonal RPWs and wetlands abutting perennial and seasonal RPWs resulting from 11th Circuit Court of Appeals decision in U.S. v. Robison et.al. (October 24, 2007). The U.S. v. Robison decision concluded that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos and Clean Water Act jurisdiction for all waters that are not TNWs or wetlands adjacent to TNWs .