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): 3 December 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-A, Alabama Department of Transportation, SAM-2015-01284-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Schillinger Road North between Moffett Road (US Hwy 98) and Lott Road (State Road 217). JD Form 2 encompassing jurisdictional areas identified as 3 & 4.

State: Alabama County/parish/borough: Mobile City: Semmes

Center coordinates of site (lat/long in degree decimal format): Lat. 30.780667° **N**, Long. -88.225694° **W**.

Universal Transverse Mercator: Zone 16R X(easting): 382716.57 Y(northing):3405936.79

Name of nearest waterbody: Red Creek

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

Name of watershed or Hydrologic Unit Code (HUC): (8-digit) 03160204 Mobile-Tensaw, Alabama

- ☒ 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): 3 December 2015 -verified by USACE

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: 175 linear feet: approximately 32 width (ft) and/or acres.
   Wetlands: 0.83 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]

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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.

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

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) 622,080 **acres**
   Drainage area: Approximately 384 **acres**
   Average annual rainfall: approximately 65.4 inches
   Average annual snowfall: < 0.2 inches

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

   Project waters are **10-15** river miles from TNW.
   Project waters are **1 (or less)** river miles from RPW.
   Project waters are **5-10** aerial (straight) miles from TNW.
   Project waters are **1 (or less)** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: The project waters do not cross or serve as a State boundary.

   Identify flow route to TNW[5]: Red Creek (perennial) flows into Eighmile Creek (perennial), which flows to TNW Chickasaw Creek.

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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.

Tributary stream order, if known: .

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

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

Tributary properties with respect to top of bank (estimate):
Average width: 32 feet
Average depth: Depth was not measured, depth unknown 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: Red Creek has a stable channel with banks that generally have a 2:1 slope although areas of the creek have more gentle slope. The tributary overall has a moderately wide flat floodplain about 500 feet wide between sandy ridges at this review location.

Presence of run/riffle/pool complexes. Explain: The tributary has observable glide/pool complexes and periodic riffle/pool areas at grade changes around standing trees and root structure within and along the banks of the channels. No riffle/pools could be directly observed in the immediate review area, however, the sound of water flow characteristic of the flow disturbance associated with riffle features could be heard both upstrem and downstream of the permit area.

Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: ~~**Seasonal flow**~~ Perennial
Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: Red Creek is a continually flowing perennial stream which contained flowing water on the day of field evaluation.

Other information on duration and volume: No other tributary specific information or gauge station data is available for Red Creek.

Surface flow is: **Discrete and confined.** Characteristics: Red Creek exhibits a defined bed and bank morphology with a predominantly hardwood forested wetland riparian corridor within a 100-year floodplain.

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 water flowing in Red Creek is naturally tannic and dark tea colored as a result of release of tannic acid during the natural decompostion of organic material and vegetation in the creek and along its floodplain. The water observed flowing in the tributary at the time of field review was clear with its normal dark tea coloration. There was no oily sheen, film, tubidity, or unnatural discoloration of the water observed.

Identify specific pollutants, if known: No known chemical pollutants to Red Creek have been identified and Red Creek is not listed on the Alabama 303(d) list of waterways that are impaired relative to the water quality standards for their use classification. It appears the greatest contaminant potential at this location on Red Creek is road side trash and household garbage and debris illegally disposed by individuals in undeveloped areas near the creek.

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

☒ Riparian corridor. Characteristics (type, average width): Bay-Gum canopy forested wetland with fern ground cover riparian corridor. Riparian corridor is dominated by the 100-year floodplain of the creek. The vegetative cover within the riparian cooridor is predominantly natural native vegetation, no obvious areas of intentionally landscaped non-native or ornamental vegetation; however there is invasive exotic nuisance vegetation such as privet, tallow tree, and Japanese climbing fern scattered through the wetland areas and particularly concentrated around the edges of previously cleared or disturbed areas and along the existing road slopes. Due to residential development encroachment into the riparian corridor, the width of the corridor varies from approximately 500 feet wide+/- to 2,000 feet wide +/- in more remote rural areas. Much of the encroachment in to the riparian corridor consists of older ponds that were constructed in association with rural single family residences.

☐ Wetland fringe. Characteristics: .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: The perennial flow regime of the creek and natural woody in-stream structure provides appropriate habitat for fish foraging and refuge as well as spawining and nursery areas.

☐ 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. Having perennial flow, this tributary also provides a consistent water source for drinking and other life needs for terrestrial species in surrounding riparian corridor and undeveloped forest areas.

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: 0.83 acres

Wetland type. Explain: Bay-Gum hardwood forested wetlands with fern understory.

Wetland quality. Explain: Despite the disturbance caused by the existing road and encroachment of residential development into some wetland areas, the wetlands beyond the existing road ROW are predominantly medium to high quality. Wetlands within the existing ROW are predominantly low quality due to sedimentation from the road slopes and disturbance from installation and maintenance of utility lines (e.g. water, sewer, phone/cable/fiber optic, natural gas) within the ROW. There is evidence of some invasive species presence in the wetlands with prevalence being much greater in the wetland areas that have been previously disturbed by the roads and utilities, and residential impacts.

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: Water flows across the wetland surface as overland sheetflow to Red Creek when there is sufficient saturation and/or inundation from rainfall and the winter seasonal high water table; additionally, when there is significant rainfall the wetlands experience brief periods of floodwater inundation from over bank flooding of Red Creek.

Surface flow is: **Overland sheetflow**

Characteristics: Water flow through the wetlands is most commonly overland flow from run-off from precipitation events or from sufficient groundwater saturation to the soil surface that the water forms shallow flow across the ground down gradient toward the creek. When Red Creek and nearby Double Branch (which converges with Red Creek just downstream of the project area) experience overbank flooding the flow of floodwater dominates the wetland surface flow regime.

Subsurface flow: **Pick List**. 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 **10-15** 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 **50 - 100-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: At the time of field review there was no standing water in the wetlands for evaluation. The greatest contaminant potential to these wetlands is road side trash and household garbage and debris illegally disposed by individuals in wetland areas along the creek .

Identify specific pollutants, if known: No known identified chemical pollutants to the wetlands and as noted previously in this form the associated tributary has no known hazardous pollutants and is not listed on the state's 303(d) list of impaired waters.

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

☒ Riparian buffer. Characteristics (type, average width): The wetlands function as a significant part of the forested wetland buffer and 100-year floodplain along Red Creek. The riparian corridor and buffering provided to Red Creek consists of natural forested vegetative cover. On average, within the immediate review area the riparian buffer is approximately 645+/- feet wide (approximately 323 ft. wide each side of the creek).

☒ Vegetation type/percent cover. Explain: The dominant plant species in the project area have Fac to Obl Atlantic & Gulf Coastal Plain Region wetland indicator status and include species such as Nyssa sylvatica, Cliftonia monophylla, Cyrilla racemiflora, Magnolia virginiana, Illicium floridanum, Ilex coriacea, Osmunda cinnamomea, Woodwardia areolata, and Woodwardia virginica.

☒ Habitat for:

☐ Federally Listed species. Explain findings:

☒ Fish/spawn areas. Explain findings: Roots of trees and other woody debris from forested wetland vegetation along the creek provide good foraging and refuge habitat for fishes.

☐ 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, water fowl, and small to medium and large sized mammals that 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: **1**

Approximately (34) 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	34		

Summarize overall biological, chemical and physical functions being performed: The relevant reach of Red Creek being considered consists of the main stem of the stream extending from its downstream convergence with Double Branch about 0.5 mile upstream of Schillinger Road up to the convergence of a small unnamed side tributary that enters from the north. The estimated 34 acres of wetlands being considered in the cumulative analysis for relevant reach in this jurisdictional determination consist of the system of riparian wetlands extending from the creek margin to the wetland/upland boundary and is land almost entirely within the 100-year floodplain of Red Creek. This area is being considered as a single wetland system abutting to and buffering Red Creek. This wetland system provides 1) a groundwater discharge source and/or area of water recharge to the tributary, 2) it provides water purification functions to the RPW and other downstream RPWs and the TNW by moderating the flow of water entering those streams 3) provides capacity to receive and retain floodwater resulting in removal of sediment, trash, fertilizers, pesticides, other chemicals, animal and other biological wastes, etc. that may be picked up in stormwater run-off that can enter the creek from residential properties, utility ROWs, and roadways. The ability to receive and retain stormwater also provides flood attenuation functions for developed upland areas and the vegetation provides roughness to slow the velocity of floodwater that may flow across the floodplain. The similarly situated wetlands in this system along Red Creek 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 and reproduction, 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 TNW 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 ~~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: The wetlands receive and naturally remove pollutants from runoff water from adjacent undeveloped natural buffer lands, residentially developed lands, and roadways surrounding the review area. Red Creek, in combination with its directly abutting wetlands in the JD review area have a significant nexus to the downstream TNW by providing 1)- shading of the perennial-RPW helping prevent/reduce increase of water temperature in waters feeding into the downstream TNW helping to keep these waters more habitable to aquatic wildlife and reducing the potential for in-stream algal blooms/growth spikes that often result from increased light exposure and water temperature 2)- a groundwater discharge source contributing to the water recharge of Red Creek and all its connected downstream waterbodies 3)- provides capacity to receive,

retain and treat rainfall run-off, and provides removal of sediment, trash, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from residential properties, and roadways prior to entering the downstream tributary system and TNW 4)- detritus and decomposition of organic matter conveyed from the wetlands by the flow of Red Creek also provide nutrients and organic carbon to the downstream waters for use by wildlife and fish in the downstream aquatic system and food chains 5)- the abutting wetlands provide and maintain roughly 30 acres of natural wildlife habitat corridor along this reach of Red Creek providing access to sources of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and small to large mammals that reside permanently in or periodically utilize Red Creek, its smaller tributaries, wetlands, and undeveloped uplands surrounding the waterway. The ability of upstream waterways such as Red Creek, which are tributary to a TNW, to provide and perform these identified functions directly affects and prevents or reduces the degradation of the chemical, physical, and biological integrity of the TNW receiving waters.

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: Red Creek is shown as a solid blue line on USGS topographic maps which typically indicates a perennial tributary and also has a 100-year floodplain which is most commonly associated with perennial tributaries. Furthermore, based on field review and USACE project manager knowledge of the area, this tributary is not known to cease flowing at any time during any the year.
   - ☐ 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: **175** linear feet **32** 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 wetlands within the review area are situated within the FEMA mapped 100-year floodplain directly abutting to Red Creek. On site observations confirmed that nothing (natural or man-made uplands, berms, roads, etc.) physically or hydrologically separates the subject wetlands within the review area from the tributary.**
     - ☐ 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: **0.83** acres.

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[8]See Footnote # 3.

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): .

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.

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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 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.

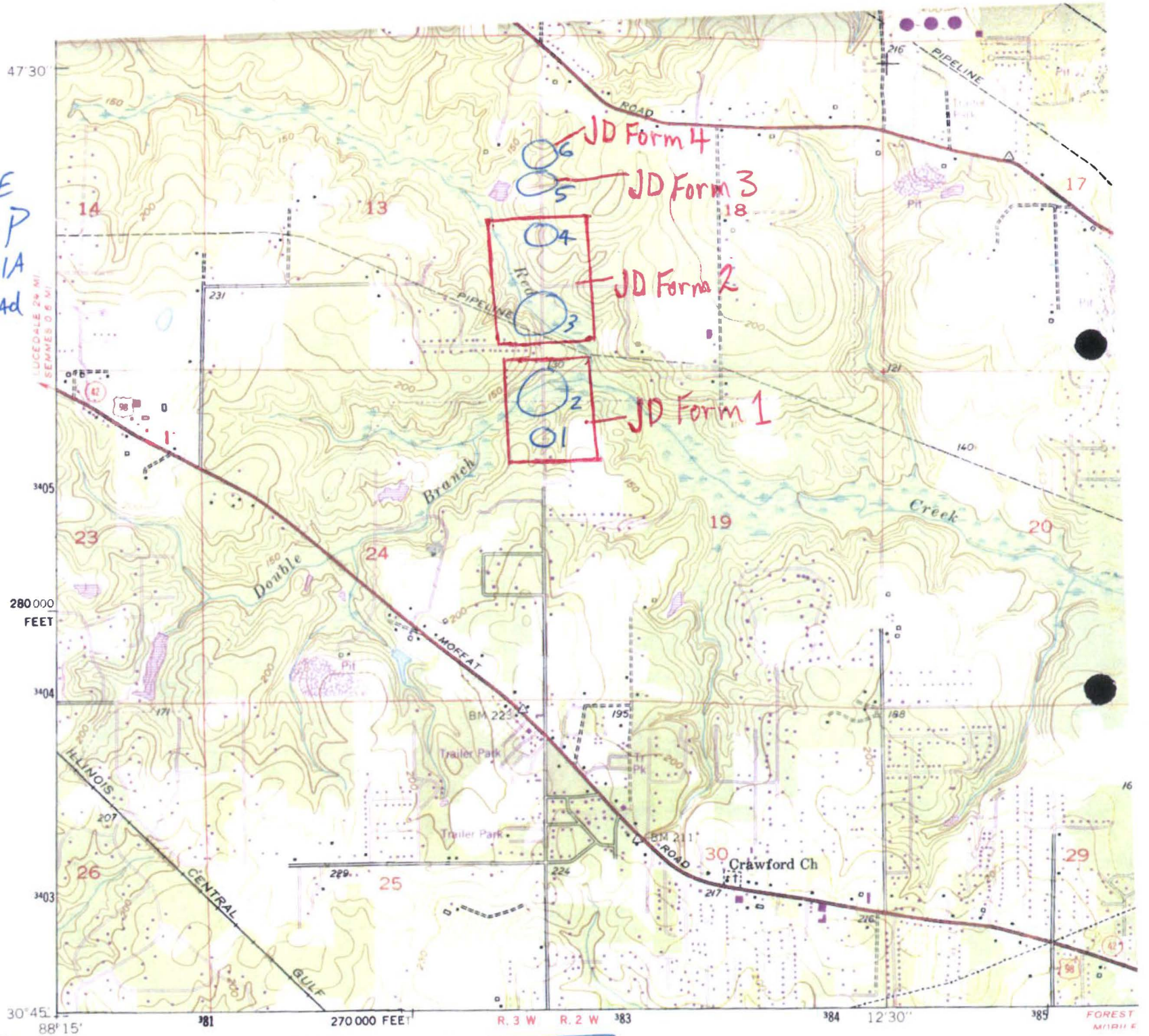
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ 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 Kushla, Alabama.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey, National Cooperative Soil Survey Version 9 Sept. 28, 2015, Mobile County, Alabama. Available online at http://websoilsurvey.nrcs.usda.gov/.
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps:Mobile County, Alabama and Incorporated Areas, Map Nos. 01097C0411K and 01097C0413K, Effective date: March 17, 2010.
☒ 100-year Floodplain Elevation is: Between 117 and 118 feet referenced to the North American Vertical Datum of 1988 (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):Color aerial photograph downloaded from Google Earth dated 1/30/2015.
  or ☒ Other (Name & Date): Color digital photographs taken by the USACE project manager during 3 Dec 2015 field review.
☐ 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: * Minor modification to form for Alabama to address SN discussion required for perennial and seasonal RPWs and wetlands adjacent and abutting perennial and seasonal RPWs resulting from 11th Ciercuit Court of Appeals decision in U.S. v. Robison et.al. (October 24, 2007). The US 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.

T-3S

SITE MAP
Kushla Quad



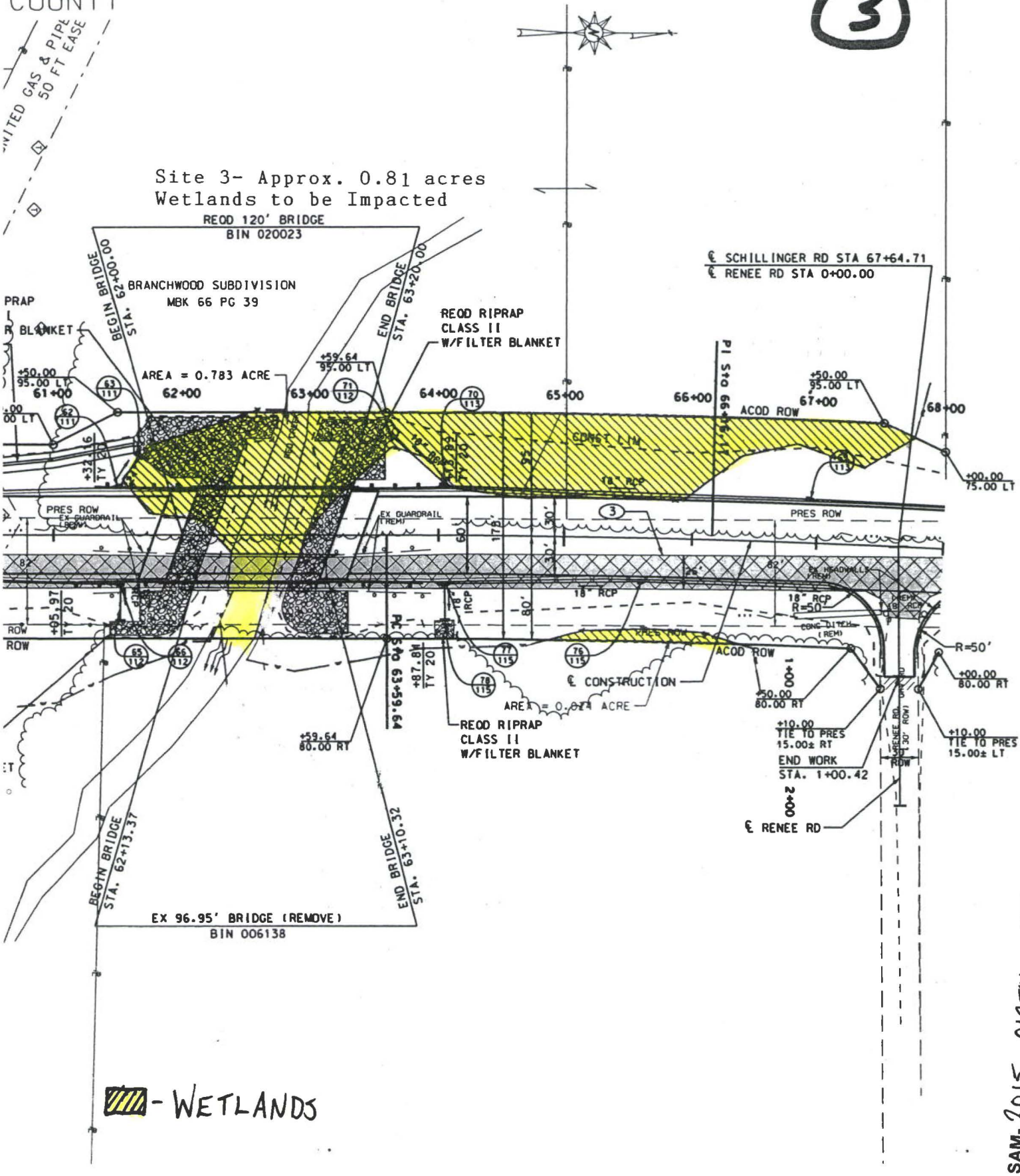
Mapped, edited, and published by the Geological Survey

SAM-2015-01284-LET
DEPT. OF THE ARMY

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
STPMBF-STPAAF-7503(601)	2015	7

SHEET
-STPAAF-7503(601)
COUNTY

3



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DEPT. OF THE ARMY

MITTAL	ALABAMA DEPARTMENT OF TRANSPORTATION	HORIZ -50 0 50 SCALE (FEET) VERT -50 0 50	SHEET TITLE	ROUTE
			PLAN SHEET	CR-372

REFERENCE PROJECT NO	FISCAL YEAR	SHEET NO
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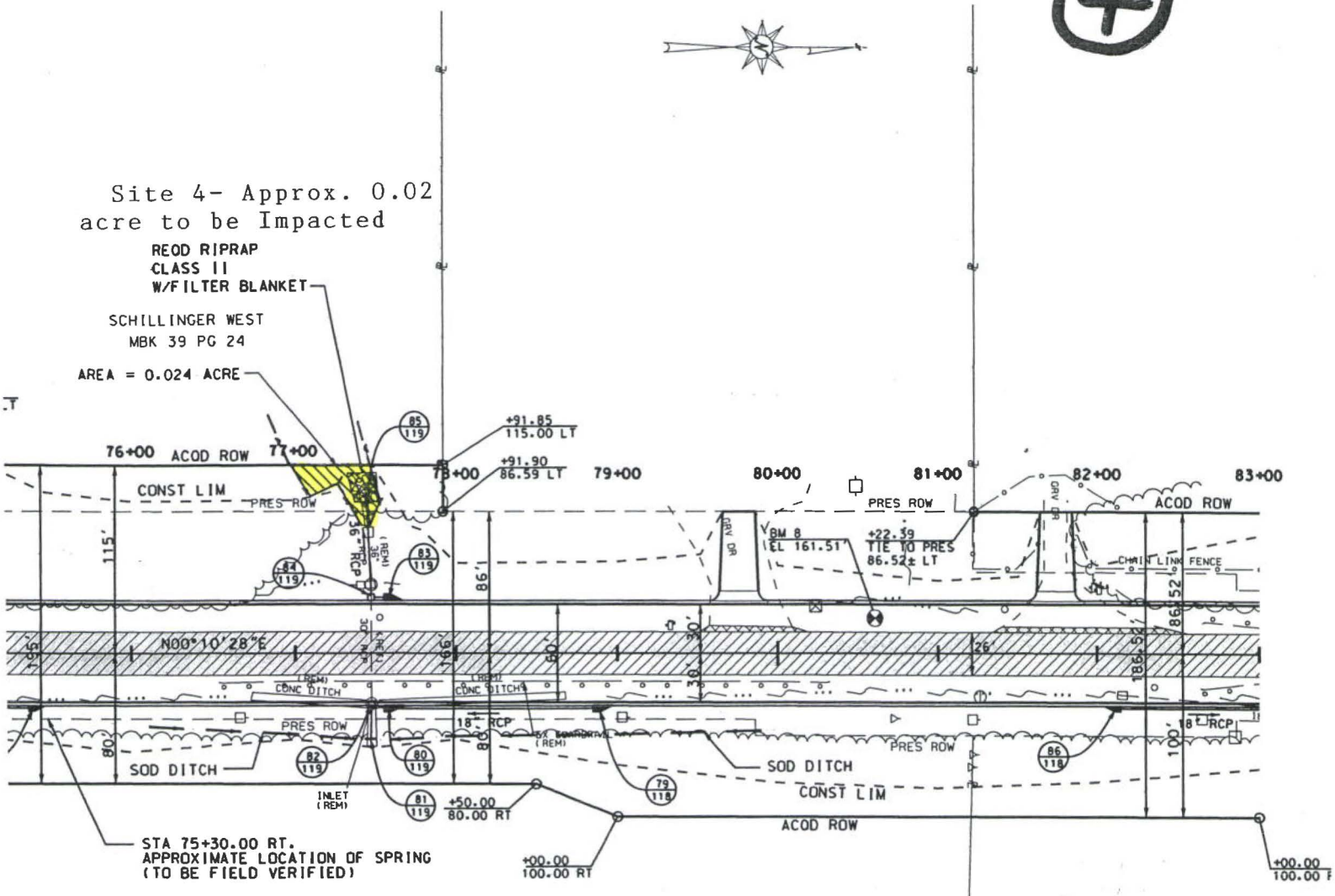
I SHEET
BF-STPAAF-7503(601)
E COUNTY

4



- WETLANDS

SAM-2015-01284-LET
DEPT. OF THE ARMY

SUBMITTAL	ALABAMA DEPARTMENT OF TRANSPORTATION	HORIZ -50 0 50 SCALE (FEET) VERT -50 0 50	SHEET TITLE	ROUTE
			PLAN SHEET	CR-372