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): 25 August 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District,CESAM-RD-A, Paul Peed d/b/a P & R Mining, LLC, SAM-2015-00770-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: 104 acre JD site is currently in agricultural production (rotational row crops) and is surrounded by other agricultural fields

State: Alabama County/parish/borough: Escambia City: Freemanville/Atmore
Center coordinates of site (lat/long in degree decimal format): Lat. 31.105603° **N**, Long. -87.515406° **W**.
Universal Transverse Mercator: Zone 16 X(easting): 450850.21 Y(northing): 3441419.70
Name of nearest waterbody: Sizemore Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Escambia River in Florida (which becomes Conecuh River in Alabama)
Name of watershed or Hydrologic Unit Code (HUC): (8-digit) 03140305 - Escambia, AL

- ☒ 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): 10 June 2015 by agent, 11 August 2015 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: 255 linear feet: approx. 3 width (ft) and/or acres.
   Wetlands: 0.60 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: 499, 200 **acres**
Drainage area: approx. 290 **acres**
Average annual rainfall: 62.7 inches
Average annual snowfall: N/A < 1 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **3** tributaries before entering TNW.

Project waters are **20-25** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **20-25** 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: Project waters DO NOT cross or serve as state boundaries
.

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

Identify flow route to TNW[5]: JD site (ephemeral UT to Sizemore Creek w/ abutting wetlands) to Sizemore Creek (perennial) to Big Escambia Creek (perennial), to Escambia Creek in Florida (perennial TNW).
Tributary stream order, if known: 1st.

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Based on available information and mapping (USGS quad maps, historic soil survey information, collected historic aerial photography) it appears the tributary was at one time a natural drainage feature that has been manipulated and degraded over time to accommodate/expand agricultural use and silvicultural production. It appears timber was harvested from the tributary corridor at one time and was largely replanted as pine plantation except the immediate location of the drainage channel, that area appears to have been allowed to regenerate naturally and is now predominantly invasive Chinese privet with little evidence of a channel feature due to sediment deposition from runoff from surrounding agriculture fields. Portions of the historic feature and its buffer are now in active agricultural production and have been for decades and a large drainage swale in uplands with no bed and bank features was created to replace the natural drainage feature to drain runoff from the fields.

Tributary properties with respect to top of bank (estimate):
Average width: approx 3 feet
Average depth: approx 0.5 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 tributary is significantly affected by sediment runoff and deposition from surrounding agricultural fields and roads. The tributary itself is relatively stable and doesn't show signs of excessive channel erosion or sloughing banks as it is an extremely narrow and shallow channel. Accumulations of sediment from surrounding land uses appears to cause flow to meander somewhat in order to find the path of least resistance or obstruction so water can continue its downstream flow.
Presence of run/riffle/pool complexes. Explain: The tributary is ephemeral, it does not exhibit run/riffle/pool complexes.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): unknown %

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **11-20**
Describe flow regime: Ephemeral flow driven by rainfall from surrounding agricultural fields.
Other information on duration and volume: No other tributary specific information, such as USGS gage data, on flow and volume is available.

Surface flow is: **Discrete**. Characteristics: Debris rafting in tributary and across abutting wetland suggests the feature conducts a substantial but brief duration amount of flow that spreads across the entire jurisdictional feature when there is significant rainfall otherwise the ephemeral flow is confined to the lowest point down the longitudinal center of the wetland drain.

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

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

☐ 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:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☒ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain: No standing water was present or observed in the non-RPW tributary during 11 August field review.

Identify specific pollutants, if known: No known identified chemical pollutants and no 303(d) impaired water listing of the unnamed tributary; however, since the tributary feature is surrounded by row crop fields, an observable common pollutants to the tributary is sediment. Other compounds including fertilizers, herbicides, and pesticides would likely also be present in some amount during a flow event.

[7] Ibid.

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

☒ Riparian corridor. Characteristics (type, average width): Ephemeral channel has abutting wetlands surrounding average width of approximately 65 feet each side of tributary - forested wetland system dominated by invasive exotic Ligustrum sinense. The wetland provides limited habitat for wildlife diversity due to lack of native vegetation that provides good food sources or roosting/nesting habitat; also, since the tributary is ephemeral there is no aquatic habitat for fish species.

☐ 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: 0.60 acres

Wetland type. Explain: Forested wetland drain surrounding ephemeral tributary. Based on an observed downstream adjacent but off site wetland, it appears the wetlands were historically a bayhead type drain composed of Magnolia virginiana, Liriodendron tulipifera, Quercus nigra, Woodwardia virginica; however the wetlands within the JD area have been historically cleared of vegetation and now are dominated by invasive exotic Ligustrum sinense with only the ocassional native wetland tree species such as M. virginiana and L. tulipifera.

Wetland quality. Explain:Low Quality. Wetlands show evidence of significant historic vegetative disturbance and sediment deposition from surrounding agricultural fields. Wetland within specified JD area is dominated by invasive exotics and has little to no ground cover due to excessive shading, the minimal ground cover noted was predominantly seedlings of the invasive exotics.

Project wetlands cross or serve as state boundaries. Explain: JD area wetlands DO NOT cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Indications of periodic surface water flow were observed such as washing and rafting of leaf litter/detritus and sediment deposition; however there is no evidence of intermittent or ephemeral surface flow in the wetland.

Surface flow is**: Overland sheetflow**

Characteristics: Observed rafting of detritus and vegetation across the entire wetland drain indicates the wetland receives substantial overland sheetflow as a result of certain rainfall events.

Subsurface flow: **Unknown**. Explain findings: Subsurface flow was not evaluated; however, shallow water table is presumed to be present given there is no perennial surface flow maintaining the area but hydric soils, vegetation and hydrology are present.

☐ 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 **20-25** river miles from TNW.

Project waters are **20-25** 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: No standing water was present or observed in the wetlands during 11 August field review.

Identify specific pollutants, if known: No known identified chemical pollutants; however, sediment from the surrounding agricultual fields that has been deposited in the wetland over time is an observable common pollutant in the wetland. Other compounds including fertilizers, herbicides, and pesticides mixed with the sediment would likely also be present given that the wetland is surrounded by row crop agricultural fields.

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

☒ Riparian buffer. Characteristics (type, average width):Wetland has minimal forested upland riparian buffer surrounding that is predominantly planted pine to the north and east and hardwood species to the west. Beyond the minimal upland buffer is row crop agricultural fields that have been farmed for decades. The wetland itself is the buffer surrounding a segment of an ephemeral tributary. The wetland provides limited habitat for wildlife diversity due to lack of native vegetation that provides good food sources or roosting/nesting habitat.

- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

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

All wetland(s) being considered in the cumulative analysis: **1**

Approximately (13.7) 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	13.7 Ac.		

Summarize overall biological, chemical and physical functions being performed: The estimated 13.7 acres of similarly situated forested wetlands being considered in the cumulative analysis (which includes the 0.60 acres within the JD area and an additional approximately 13.1 acres of wetlands abutting the unnamed tributary to Sizemore Creek downstream of the project area) is within the riparian corridor along the entire reach (from headwater of the unnamed tributary to Sizemore Creek to its convergence into Sizemore Creek). This similarly situated wetland system provides a water recharge area to the groundwater table, Sizemore Creek, and other downstream waterbodies. The wetlands also provide capacity to receive, retain, and convey rainfall run-off that cannot immediately infiltrate, and provides removal of sediment and agricultural chemical applications that are picked up in ditched drainage and overland sheet flow across the surrounding agricultural fields prior to entering downstream perennial Sizemore Creek. Detritus and decomposition of organic matter from the abutting wetlands also provide nutrients and organic carbon for use by wildlife and fish in downstream food chains. These areas also provide undeveloped forested lands adjacent to a seasonal water source where wildlife may rest, forage, nest, or seek refuge from predators.

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 and non-RPW receive runoff water from adjacent undeveloped natural lands, surrounding agricultural fields, and dirt access roads. The non-RPW in combination with its directly abutting shrub and hardwood forested wetlands have a sigmificant nexus to the downstream perennial RPWs (Sizemore creek & Big Escambia Creek) and TNW (Escambia River) by providing 1)- shading of the non-RPW helping prevent/reduce increase of water temperature in waters feeding into downstream RPWs and TNWs 2)- a contributing source of water recharge to Sizemore Creek and other downstream waterbodies 3)- provides capacity to receive, retain, and convey rainfall run-off that cannot immediately infiltrate, and provides removal of sediment and agricultural chemical applications that are picked up in ditched drainage and overland sheet flow across the surrounding agricultural fields prior to entering the downstream perennial tributary system and TNW (perennial Sizemore Creek is only ~0.3 mile downstream of JD site) 4)- detritus and decomposition of organic matter conveyed from the wetlands by non-RPW flows 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 non-RPW drainage and its abutting wetlands create a wildlife habitat corridor that provides a protected travel corridor and access to a periodic source of water, resting, nesting, refuge, and foraging habitat for

amphibians, reptiles, birds, and mammals that may live in or periodically utilize this system which is located within a heavily manipulated and disturbed agricultural row crop area.

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: **255** linear feet **approximately 3** width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: **.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **.**

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

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

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[8]See Footnote # 3.

Provide estimates for jurisdictional wetlands in the review area: **0.60** 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.

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: Barry A. Vittor & Associates, Inc..
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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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.***

☒ 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: 1:24K 7.5-min. quadrangle Freemanville, AL.

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey, Escambia County, Alabama. Available online at http://websoilsurvey.nrcs.usda.gov/ accessed [8/25/2015].

☐ National wetlands inventory map(s). Cite name: .

☐ State/Local wetland inventory map(s): .

☒ FEMA/FIRM maps: Escambia County, AL and Incorporated Areas, Map No. 01053C0400E, Map Revised: June 5, 2012.

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date):Google Earth dated 2/13/2015 and 2/16/1997; historic aerials from www.alabamamaps.ua.edu from 1968, 1957, and 1953; and 1970 aerial photo base map in Escambia County Soil survey book issued December 1975.

or ☒ Other (Name & Date):Color digital photos taken by USACE project manager during 11 Aug 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: .