

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): July 17, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, Zaheer Babar Wetland Restoration on Snow Road, SAM-2008-1615-SBC.

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. 30.6632° **N**, Long. -88.2748° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Tributary to Miller Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 8 digit HUC - 03170008; 12 digit HUC - 031700080502 Miller Creek

- 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: July 17, 2009
 Field Determination. Date(s): February 6, 2009 and June 17, 2009.

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 waters² (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: linear feet: width (ft) and/or acres.
Wetlands: approximately 1.8 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: .

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 waterbody⁴ 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) 442,519.6 acres

Drainage area: 3,540 +/- 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 3 tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.

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

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

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

Project waters cross or serve as state boundaries. Explain: Waters on project site do not cross or serve as State boundaries; however, Big Creek to which Miller Creek is a tributary does cross the State line from Alabama into Mississippi prior to converging into the Escatawpa River.

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 TNW⁵: Tributary flows to Miller Creek, which flows to Big Creek, which flows across the State boundary from Alabama into Mississippi and then flows into the Escatawpa River.
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: .

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet
Average depth: 1.0 to 2.0 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: The overall tributary condition through this delineation area appears to be relatively stable.

Presence of run/riffle/pool complexes. Explain: Stream appears to be maintaining natural channel morphology features including run/riffle/pool complexes and has good woody structure for instream habitat and natural maintenance of stream pattern, profile and dimension. Expected number and distribution of run/riffle/pool complexes per river mile of this stream is not known.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: The tributary to Miller Creek is a continuously flowing perennial waterway.

Other information on duration and volume: The tributary to Miller Creek is a perennial stream, no other tributary specific information, such as USGS gauge data, on flow and volume is available.

Surface flow is: **Confined**. Characteristics: Miller Creek exhibits a defined channel with bed and bank characteristics and a forested floodplain which the waters of the creek can access during high flow/flooding events, however, flow is normally confined to within the bed and bank stream channel.

Subsurface flow: **Pick List**. Explain findings: No subsurface flow investigation was conducted.

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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.

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.

⁷Ibid.

- tidal gauges
- other (list):

(iii) Chemical Characteristics:

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

Explain: Water in this tributary to Miller Creek is typically clear to slightly tannic (tea-colored - due to natural release of tannins from vegetative debris and detritus within the wetland floodplain), such that channel substrate and instream woody structure are visible through water column.

Identify specific pollutants, if known: No known identified chemical pollutants and no 303(d) impaired water listing of the stream. Potential pollutants include nutrients, sediment and turbidity due to construction, hydrocarbon compounds, chemical contaminants and pathogens associated with fertilizers and pesticides used on residential lawns, household pet wastes, improperly functioning on-site septic systems, and materials spilled or discharged on road surfaces.

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

Riparian corridor. Characteristics (type, average width): Riparian corridor is mixed hardwood and pine forested wetland, an average of approximately 440 feet in width through the 16.3 acre delineation site. Representative riparian corridor vegetation also includes *Nyssa biflora*, *Magnolia virginiana*, *Liriodendron tulipifera*, *Acer rubrum*, *Quercus nigra*, *Cyrilla racemiflora*, *Taxodium distichum*, *Ilex coriacea*, *Ligustrum sinense*, and *Woodwardia aerolata*.

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: The tributary helps convey organic carbon and nutrients from decaying riparian plant material and woody debris downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in Miller Creek and its 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: ~ 100-200 acres

Wetland type. Explain: Hardwood dominated forested wetland with occasional slash pine (*Pinus elliottii*) representation, cut-over areas of wetland dominated by shrub/scrub.

Wetland quality. Explain: Undisturbed wetland areas adjacent to the property are considered moderate to high quality forested bottomland hardwood wetland in the flood plain of a perennial stream. There are exotic vegetative species scattered throughout the system; however all the wetlands on the site parcel have been cut over and have less mature trees and more prevalent shrub/mid-story vegetation, contain a higher density of exotic and nuisance species (Chinese Tallow, etc.).

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: **Perennial flow**. Explain: The wetlands on this site provide stormwater storage/retention, flood water attenuation, and an area of groundwater recharge which contributes to the maintenance of a base flow hydrology in the tributary to Miller Creek.

Surface flow is: **Overland sheetflow**

Characteristics: The wetlands receive stormwater run-off and floodplain flows, which during rainfall events flow over the landscape through the wetlands toward the tributary to Miller Creek.

Subsurface flow: **Pick List**. Explain findings: No subsurface flow investigation was conducted.

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 **15-20** river miles from TNW.

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

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

Estimate approximate location of wetland as within the **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: Any water standing in the wetlands or flowing through wetlands is typically clear but tannic (tea colored) due to natural release of tannins from vegetative debris and detritus.

Identify specific pollutants, if known: No known identified pollutants or impairments. Potential pollutants include nutrients, sediment and turbidity from construction activity, hydrocarbon compounds, chemical contaminants and pathogens associated with fertilizers and pesticides used on residential lawns, household pet wastes, improperly functioning on-site septic systems, and materials spilled or discharged on road surfaces.

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

Riparian buffer. Characteristics (type, average width): Riparian buffer consists of mixed hardwood and pine forested wetland and shrub/scrub wetland, an average of approximately 400 - 600 +/- feet in width. Some areas of naturally vegetated riparian

buffer are more narrow than others along the tributary due to the presence existing single family residential homesteads with associated structures and fill that encroach into the riparian buffer. Representative riparian corridor vegetation also includes *Nyssa biflora*, *Magnolia virginiana*, *Liriodendron tulipifera*, *Acer rubrum*, *Quercus nigra*, *Cyrilla racemiflora*, *Taxodium distichum*, *Ilex coriacea*, *Ligustrum sinense*, and *Woodwardia aerolata*.

Vegetation type/percent cover. Explain: Hardwood forested system dominated by vegetation consisting of *Nyssa biflora*, *Magnolia virginiana*, *Liriodendron tulipifera*, *Acer rubrum*, *Quercus nigra*, *Cyrilla racemiflora*, *Cliftonia monophylla*, *Taxodium distichum*, *Itea virginica*, *Ligustrum sinense*, and *Woodwardia aerolata*. Most of the remaining undisturbed wetlands have a mature closed hardwood canopy with moderate to sparse ground cover vegetation. Over-cut wetlands on site have more dense shrub/mid-story vegetation growth.

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 refuge from predators, resting, nesting, and foraging habitat for amphibians, reptiles, birds, and mammals (up to medium and large sized 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: **1**

Approximately (100-200) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Yes	100 - 200		

Summarize overall biological, chemical and physical functions being performed: The estimated 100-200 acres of wetlands being considered in this cumulative analysis for the tributary to Miller Creek are the forested riparian wetland floodplain system directly abutting the creek along an approximately 4,000 to 5,000 foot segment of tributary flowing into Miller Creek. These wetlands are being considered as a single contiguous wetland system abutting the creek. This wetland system provides a water source/area of water recharge to the tributary, the wetlands provide capacity to receive and retain floodwater, and provides the function of removing sediment, fertilizers, pesticides, animal wastes, etc. that may be carried in flood water and stormwater run-off prior to entering the creek. The bio-geochemical functions of these wetlands in filtering, retaining and treating flood waters and run-off water and the physical buffering provided by these wetlands are important for Miller Creek to be able to maintain its apparent good water quality. 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 RPW and downstream TNWs for use by wildlife and fish both on-site and in downstream food chains. These areas also provide a habitat corridor and natural lands adjacent to a consistent 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: .
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:
4. **Significant nexus findings for wetlands abutting an RPW in the State of Alabama:** This wetland system provides a water source/area of water recharge to the tributary, the wetlands provide capacity to receive and retain floodwater, and provides the function of removing sediment, fertilizers, pesticides, animal wastes, etc. that may be carried in flood water and stormwater run-off prior to entering the creek. The bio-geochemical functions of these wetlands in filtering, retaining and treating flood waters and run-off water and the physical buffering provided by these wetlands are important for Miller Creek to be able to maintain its apparent good water quality. 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 RPW and downstream TNWs for use by wildlife and fish both on-site and

in downstream food chains. These areas also provide a habitat corridor and natural lands adjacent to a consistent water source where wildlife may rest, forage, nest, or seek refuge from predators.

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: Tributary to Miller Creek is shown as a solid blue line on USGS topographic quadrangle maps, which indicates the presence of a perennially flowing stream. Furthermore the stream has been observed to contain a continuous, perennial flow of water.
 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-RPWs⁸ 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 wetland review area consists of cut-over bottomland hardwood wetland on the flood plain of the perennial tributary to Miller Creek and is not physically separated from the creek by upland berms, roadways or other physical barriers disrupting surface hydrologic connectivity between the creek and the wetlands.**
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: **1.8** acres.

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

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

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

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

⁸See Footnote # 3.

- 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.

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.

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.

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 USGS Quad Tanner Williams, 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/>.
- National wetlands inventory map(s). Cite name:Tanner Williams, AL (on-line NWI digital data).
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Google Earth (2006).
or Other (Name & Date):Color digital photographs taken by Corps project manager on 2/6/09 and 6/17/09.
- 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: Regulatory authorities for jurisdiction over the review area waters is found at 33 CFR Section 328.3(a)(5) - Tributaries of waters identified in paragraphs (a)(1) through (a)(4) of this section.