

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): 22 May 2008**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, B.T. Roberts - Roberts Brothers, SAM-2007-1712-LET**

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

State: Alabama County/parish/borough: Baldwin City: Stockton  
Center coordinates of site (lat/long in degree decimal format): Lat. 30.950920° N, Long. 87.853834° W.  
Universal Transverse Mercator: Zone 16 X: 418444.67444 Y: 3424475.21539

Name of nearest waterbody: Griffin Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 8 digit HUC - 03160204 ; 12 digit HUC - 031602040203 The Basin

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: 4 March 2008

Field Determination. Date(s): 14 November 2007

**SECTION II: SUMMARY OF FINDINGS**

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

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

Waters subject to the ebb and flow of the tide.

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

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

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

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

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

TNWs, including territorial seas

Wetlands adjacent to TNWs

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

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or 2 acres.

Wetlands: 17.8 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):<sup>3</sup>**

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

Explain: 4 isolated Grady wetlands and 1 excavated pond which have no surface hydrology or ecological connection to

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

**the nearest RPW surface tributary system. The approximate acreages of the Grady wetlands are 4 acres, 3.3 acres, and two of approximately 5 acres in size. The excavated pond is approximately 2 acres in size. See Sections III.F. and IV.B. below for further discussion.**

### SECTION III: CWA ANALYSIS

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

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

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

##### I. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 619,248.38 acres

Drainage area: 345 acres

Average annual rainfall: 65 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

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

Project waters are 2-5 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.

Identify flow route to TNW<sup>5</sup>: UT to Griffin Creek to Griffin Creek to Tensaw River.

Tributary stream order, if known:

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

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

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

Tributary is:  Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Between the headwater of the UT to Griffin Creek and the south side of the Interstate 65 corridor the tributary is routed through a concrete bottom roadside ditch and a large concrete box culvert beneath the I-65 corridor.

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

Average width: 6 feet

Average depth: Unknown feet

Average side slopes: 3:1.

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: Banks are relatively stable but do show some minor evidence of scour at transition points where hardened ditch and culvert structures transition to a natural soil channel.

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

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: Seasonal flow

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

Describe flow regime: Flow regime appears to be seasonal primarily depending on groundwater sources to maintain base flow, however flow volume is also influenced by rain events with overland sheetflow of runoff from adjacent hills and the existing state highway also contributing to the stream flow. On the date of field inspection the tributary flowing water.

Other information on duration and volume: No other information known.

Surface flow is: Confined. Characteristics: The tributary drainage channel originates just south of the review area wetland and has a small (approximately 2 feet wide) but defined drainage channel.

Subsurface flow: Unknown. Explain findings: Not evaluated.

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

clear, natural line impressed on the bank

the presence of litter and debris

changes in the character of soil

destruction of terrestrial vegetation

shelving

the presence of wrack line

vegetation matted down, bent, or absent

sediment sorting

leaf litter disturbed or washed away

scour

sediment deposition

multiple observed or predicted flow events

water staining

abrupt change in plant community

other (list):

Discontinuous OHWM.<sup>7</sup> Explain: A segment of the tributary flows through a box culvert under I-65. The OHWM through the box culvert segment is not as high through as in the natural channel because the waterflow through the box culvert spreads out over a broader area than is allowed by the upstream and downstream dimensions of the natural channel.

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

High Tide Line indicated by:

Mean High Water Mark indicated by:

oil or scum line along shore objects

survey to available datum;

fine shell or debris deposits (foreshore)

physical markings;

physical markings/characteristics

vegetation lines/changes in vegetation types.

tidal gauges

other (list):

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

**(iii) Chemical Characteristics:**

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

Explain: Water flowing in the tributary at the time of field evaluation was clear with no discoloration or cloudiness. At the south end of the box culvert under I-65 water flows out across a concrete spillway which is very orange stained by iron occurring naturally in the water.

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

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

Riparian corridor. Characteristics (type, average width): An approximately 400 foot wide riparian corridor along the tributary south of I-65 appears relatively undisturbed, the riparian buffer along the tributary is primarily forested hardwood wetlands. This unnamed tributary to Griffin Creek and Griffin Creek are tributaries to the TNW Tensaw River which is identified by the State of Alabama as having a use classification of Outstanding Alabama Water which indicates it is "high quality waters that constitute an outstanding Alabama resource, such as waters of State parks and wildlife refuges and waters of exceptional recreational or ecological significance" per Alabama Department of Environmental Management's Division 6 Volume 1 Water Quality Program regulations.

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 forest canopy plant material downstream to resident amphibians, reptiles, and aquatic vertebrates and invertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently or temporarily in Griffin Creek, its tributaries, and adjacent riparian lands. The area also provides a water source which mammals can utilize for hydration on a seasonal basis.

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: 0.47 acres

Wetland type. Explain: Hardwood forested and shrub wetlands.

Wetland quality. Explain: Low to Medium quality wetlands that incur periodic disturbances from cutting and removal of shrub and canopy vegetation within an aerial utility line right-of-way that runs through the wetland on an alignment approximately parallel to the interstate. The quality of the wetlands has also been affected over the years by use of the site as a large agricultural field with associated drainage manipulation impacts and possible sediment runoff impacts to the wetland.

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: Ephemeral flow. Explain: Overland water flow passes through the forested wetlands after rain events until the run-off flows into the Griffin Creek tributary drainage, is absorbed into the ground, or is taken up in the evapotranspiration process.

Surface flow is: Overland sheetflow

Characteristics: Water flows over the landscape and through the wetlands to the tributary to Griffin Creek.

Subsurface flow: Unknown. Explain findings: Not evaluated.

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 2-5 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: There was no standing water in the review area wetlands at the time of field review. Identify specific pollutants, if known: No known identified pollutants.

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

Riparian buffer. Characteristics (type, average width): Hardwood forested buffer wetland at headwater of unnamed tributary to Griffin Creek providing an approximately 160 foot vegetated buffer and run-off treatment between the agricultural fields and the waters of the tributary which flow through Griffin Creek to the Tensaw River which has an Outstanding Alabama Water use classification.

Vegetation type/percent cover. Explain: 90% of the dominant plant species in the project area have Region 2 wetland indicator status of Fac or wetter and include species such as Liriodendron tulipifera, Quercus nigra, Magnolia virginiana, Acer rubrum, Sapium sebiferum, and Ligustrum sinense.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

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

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

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

Approximately ( 20 ) 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>
Y	10		
Y	10		

Summarize overall biological, chemical and physical functions being performed: The estimated 20 acres of wetlands being considered in the cumulative analysis are the hardwood forested riparian wetland floodplain system directly abutting the unnamed tributary to Griffin Creek, to the east and west, from the project site to the convergence of the unnamed tributary with Griffin Creek. This wetland system provides a water source/water recharge to the tributary, it provides capacity to receive and retain floodwater, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by agricultural activities or road and utility right of way maintenance prior to entering Griffin Creek. Detritus and decomposition of organic matter from the wetlands also provide nutrients and organic carbon to the RPW and TNWs for use by wildlife and fish in downstream food chains. These areas also provide 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:

### 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<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- 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: At the time of field inspection on 14 November 2007 a minimal volume of water was observed flowing in the tributary to Griffin Creek. Based on the observation of flow in the tributary, despite record drought conditions throughout 2007 in the southeastern United States, it appears this tributary likely contains flow on at least a seasonal basis during more normal rainfall year conditions. Furthermore, the shrub and forested wetland within the review area which is at the headwater of the tributary to Griffin Creek and part of the riparian wetland corridor of the tributary is not physically separated from the creek drainage channel natural or man-made dikes, barriers, berms, or other physical barriers.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.47 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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - 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: **The four isolated Grady wetlands and one excavated pond have no surface hydrology or ecological connection to the nearest RPW surface tributary system See Section IV.B. below for further discussion.**
- 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: 2 acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: 17.3 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 Bay Minette North, AL.

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

USDA Natural Resources Conservation Service Soil Survey. Citation: National Cooperative Soil Survey, Web Soil Survey 2.0 Baldwin County, Alabama.

National wetlands inventory map(s). Cite name:

State/Local wetland inventory map(s):

FEMA/FIRM maps: Baldwin County, Alabama and Unincorporated Areas Panel 300 of 1100 Map No. 01003C0300L revised effective July 17, 2007.

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

Photographs:  Aerial (Name & Date):

or  Other (Name & Date): Digital photographs taken by Corps project manager 14 November 2007.

Previous determination(s). File no. and date of response letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): Field review of site 14 November 2007. Regulatory authority for jurisdiction over the 0.47 acre review area wetland that abuts the tributary to Griffin Creek, which begins just outside of the review area, is found at 33 CFR Section 328.3(a)(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (a)(6) of this section. Regulatory authority regarding review of the 4 isolated grady wetlands and excavated pond is found at 33 CFR Section 328.3(a)(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** During a 14 November 2007 field review it was confirmed that the Grady areas had the three requisite characteristics of a wetland (hydric soils, hydrology from ponded water, and hydrophytic vegetation) and that the delineated boundary represented on the delineation map and in the field were correct. After walking and driving the periphery of the approximately 95 acre property, and reviewing the grady wetlands and excavated open water pond in the field and utilizing available color aerial photography it was evident that the grady wetlands and excavated pond do not have surface hydrologic connections or outlets by ditches, culverts, swales or other similar conveyances to any surface tributary systems located within the property vicinity. The Grady wetlands and open water pond are not within the designated floodplain or floodway of any surface tributary. Field review of the site revealed that each grady wetland and the open water pond are individual depression or bowl-like features on the landscape surrounded by either public roadways or tilled, row-cropped agricultural fields in uplands. The Grady wetland nearest to a jurisdictional surface tributary system is a distance of at least 1,056 linear feet away from that system and is separated from the tributary system by farmed upland soils, therefore it has been determined that neither the Grady wetlands or open water pond have a significant nexus to interstate commerce or a traditionally navigable waterway.