

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): 27 June 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District, McGowin Properties Interstate Subdivision, SAM-2007-775-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alabama County/parish/borough: Mobile City: Mobile
Center coordinates of site (lat/long in degree decimal format): Lat. 30.6483° N, Long. -88.12141° W.
Universal Transverse Mercator: Zone 16 NAD83 Datum

Name of nearest waterbody: Montlimar Creek and UT to Bolton Branch

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

Name of watershed or Hydrologic Unit Code (HUC): Upper Dog River 031602050202

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: 18 June 2007

Field Determination. Date(s): 22 June 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):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: 9,504 linear feet: 12 width (ft) and/or acres.

Wetlands: 6 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: 25,400 acres
Drainage area: Indeterminate/Unknown Pick List
Average annual rainfall: 65 inches
Average annual snowfall: None inches

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

Project waters are 1-2 river miles from TNW.
 Project waters are Pick List river miles from RPW.
 Project waters are 1-2 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 TNW⁵: The UT begins in the south-central and southeast quadrant of an approximately 20 acre parcel of undeveloped property and flows northeast diagonally through a box culvert under Interstate 65 north/south toward a forested wetland area then flows southeast through an engineered ditch system constructed around the city baseball stadium into Bolton Branch which is an engineered urban stream/drainage conveyance that flows into Dog River.

Tributary stream order, if known: The UT beginning on the 20 acre parcel would be 1st order stream, Bolton Branch would be 2nd order stream and Dog River would be a 3rd order stream at the point Bolton Branch and Dog River converge..

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

Tributary is: Natural

Artificial (man-made). Explain: The wetland area on the proposed project site appears to have historically been adjacent to and drained naturally toward the southwest into Montlimar Creek; however decades ago Montlimar Creek was engineered into an approximately 200 ft. wide, 20+ ft. deep canal with a 50 ft wide maintenance access road preventing the wetland from draining to Montlimar Creek. What appears to be a manmade ditch was excavated in the wetland re-directing its drainage path to the east through a culvert under an interstate highway and through a concrete bottom drainage ditch system along the interstate highway to connect with an existing unnamed tributary, which is a blue line on the USGS topographic map, conveying water to Bolton Branch which is also a blue line on the USGS topographic map.

Manipulated (man-altered). Explain: The existing unnamed tributary and Bolton Branch have both been engineered over time into channelized urban stream drainage conveyances. There is variation in engineering techniques that have been used over time along the length of Bolton Branch and the UT, some segments are vegetated ditches, some are concrete bottom with vegetated banks, some are natural bottom with hardened banks (e.g. concrete retaining wall, steel sheetpile, riprap gabion), and some segments are completely concrete lined ditches.

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

Average width: 12 feet

Average depth: 12 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: Banks are relatively stable, there is some evidence of bank erosion where trees have fallen into the tributary and water eddies around the obstruction.

Presence of run/riffle/pool complexes. Explain: The tributary no longer has natural run/riffle/pool complexes because it has been almost completely channelized into a city drainage ditch.

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: Tributary currently contains water although the region is at approximately 17 inches below normal rainfall for the period January to June 2007. Due to the low rainfall for the year to date, the tributary currently exhibits little directional flow. Bolton Branch is a perennial drainage and does contain sufficient water volume to be actively flowing toward Dog River despite current drought conditions.

Other information on duration and volume:

Surface flow is: Confined. Characteristics: The tributary is in an urban setting surrounded by residential and commercial development and therefore has been over-widened and over-deepened and defined/confined by hardened structures along most of its length to increase drainage and reduce flooding impacts to surrounding developed areas.

Subsurface flow: Yes. Explain findings: Groundwater moves laterally toward the tributary drainage, seeps into and becomes part of the surface water flowing downstream within the tributary.

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

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.

- | | |
|---|---|
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input checked="" type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input checked="" type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input checked="" type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> 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):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

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

Explain: Water was tannic and clear such that the bottom of the channel was visible, there was a slight cloudiness but not enough to significantly impact water clarity/visibility.

Identify specific pollutants, if known: Due to urbanization of the area, typical pollutants include trash thrown from cars, petroleum compounds from roads and parking surface runoff, sediment from new construction activities.

⁷Ibid.

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

Riparian corridor. Characteristics (type, average width): Some channel segments have relatively undeveloped forested wetland and upland buffers that are estimated to vary in width from as little as 3-5 feet per side of channel to 3 or 4 segments with buffer width in excess of 25 feet per side of channel.

Wetland fringe. Characteristics: Some channel segments on the headwater end of the channel that are not armored or hardened have narrow freshwater wetland fringes consisting of vegetation such as Typha sp., Sagittaria sp., Ludwigia sp., and young Salix sp.

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 provides floodwater/stormwater conveyance from urban areas and provides some aquatic habitat for fishes in these urban stream reaches, as evidenced by observation of a local Kingfisher capturing a small fish to feed on from the tributary. The tributary also conveys organic carbon and nutrients downstream to the aquatic vertebrates and invertebrates spawning and feeding in Dog River.

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: 4.5 acres

Wetland type. Explain: Forested hardwood wetland depression or remnant drainage feature that crosses property diagonally from northeast to southwest. Dominant wetland vegetation includes Magnolia virginiana, Nyssa sylvatica, and Woodwardia aerolata.

Wetland quality. Explain: Wetland quality is low due to adverse hydrology effects from extensive channelizing, ditching, and re-directing of once natural streams and drainages to construct roads, reduce flooding, and facilitate urban development. Reduced hydroperiod has allowed facultative exotic species such as privet and tallow to colonize aggressively in the wetland. The wetland shows evidence of past site clearing or timbering activity such as tire ruts and piles of mulched or decomposing woody debris in multiple locations and small pieces of burned wood 3+ inches from the current ground surface in some soil cores.

Project wetlands cross or serve as state boundaries. Explain: Project wetlands DO NOT CROSS or SERVE as State boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: True flow relationship from wetlands to the Non-TNW is unknown however intermittent sheet flow from rainfall runoff and possibly perennial movement of groundwater from saturated wetland soils toward the tributary is very likely.

Surface flow is: Overland sheetflow

Characteristics: Wetland drains to a lowest point on the south end of the property where the wetland is separated from the non-TNW by an upland berm. Some narrow, shallow channel-like areas were observed that appear to allow water that may pond in the wetland to flow across the berm into the non-TNW.

Subsurface flow: Yes. Explain findings: Slow seepage of groundwater retained in the wetland soils provides a water source to the tributary during periods of limited rainfall/drought.

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: The berm/barrier separating the wetland from the non-TNW appears to be a combination of naturally occurring upland land form (such as an upland hummock or ridge) and historic sidecast of material from excavation of the drainage/ditch into the wetland.

(d) Proximity (Relationship) to TNW

Project wetlands are 2-5 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 100-500-year floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: There was no ponded water in the wetland, however water from a roadside drainage ditch can overflow/flood into the wetland when sufficient rainfall is received.

Identify specific pollutants, if known: Due to urbanization of the area, typical pollutants include trash thrown from cars, petroleum compounds from road runoff, and sediment from any road and/or utility easement maintenance.

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: The 4.5 acre wetland area extending from the proposed project site to the non-TNW/RPW is dominated in the canopy/overstory by *Magnolia virginiana* 10%, *Nyssa sylvatica* 10%, and *Sapium sebiferum* 20%, in the shrub/midstory by *Ligustrum sinense* 50% and *Acer rubrum* 35%, in the vine/groundcover by *Woodwardia aerolata* 40%, *Rubus* sp. 20%, *Vitis rotundifolia* 2%, and various *Smilax* sp. 2% .

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 and foraging habitat for small amphibians, reptiles, birds, and mammals as evidenced by observation of a recently shed snake skin in the project area wetland, multiple observations of fresh rabbit scat in the wetlands and uplands on and adjacent to the proposed project area, and birds heard rustling tree branches.

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

All wetland(s) being considered in the cumulative analysis: 3

Approximately (6.0) 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>
N	4.5		
Y	0.5		
Y	1.0		

Summarize overall biological, chemical and physical functions being performed: The estimated 6 acres of wetlands along this tributary include hardwood forested wetland (4.5 acres), freshwater fringe (0.5 acre), and pine forested wetland (1.0 acre). This combination of wetland systems at the headwater of the tributary provide a water source/water recharge to the tributary, retention of stormwater/floodwater from developed urban areas, and initial treatment and removal of pollutants from urban road runoff prior to stormwater entering the tributary. Detritus and decomposition of organic matter from the wetlands also provides nutrients and organic carbon to the tributary for use by wildlife and fish in downstream food chains. These areas also provide natural lands in a highly developed, paved and urbanized area where wildlife may rest, forage, and 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 *Rapans* 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: The wetland and RPW receive and convey runoff and floodwater from streets and adjacent lands to the TNW, Dog River. The wetland areas provide 1) buffering along the RPW helping prevent/reduce the increase of water temperature in the tributary 2) pollutant filtration and sediment retention for stormwater/floodwater entering the RPW. The detritus and decomposition of organic material from the wetlands also provides a source of organic carbon and nutrients to the downstream foodchain that includes benthic invertebrates, fishes, crabs, birds, raccoons and eventually humans. 3) a water retention and recharge source for the tributary, Bolton Branch, and Dog River 4) spawning, forage, and refuge area for frogs and resting, foraging, and refuge areas for wildlife such as songbirds, wading birds, small mammals such as rabbits and racoons, reptiles such as turtles and snakes.

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-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: .
 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 jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.58 acres.

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

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

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

7. **Impoundments of jurisdictional waters.⁹**

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

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

⁸See Footnote # 3.

⁹To 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):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 "SILVANO," 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.

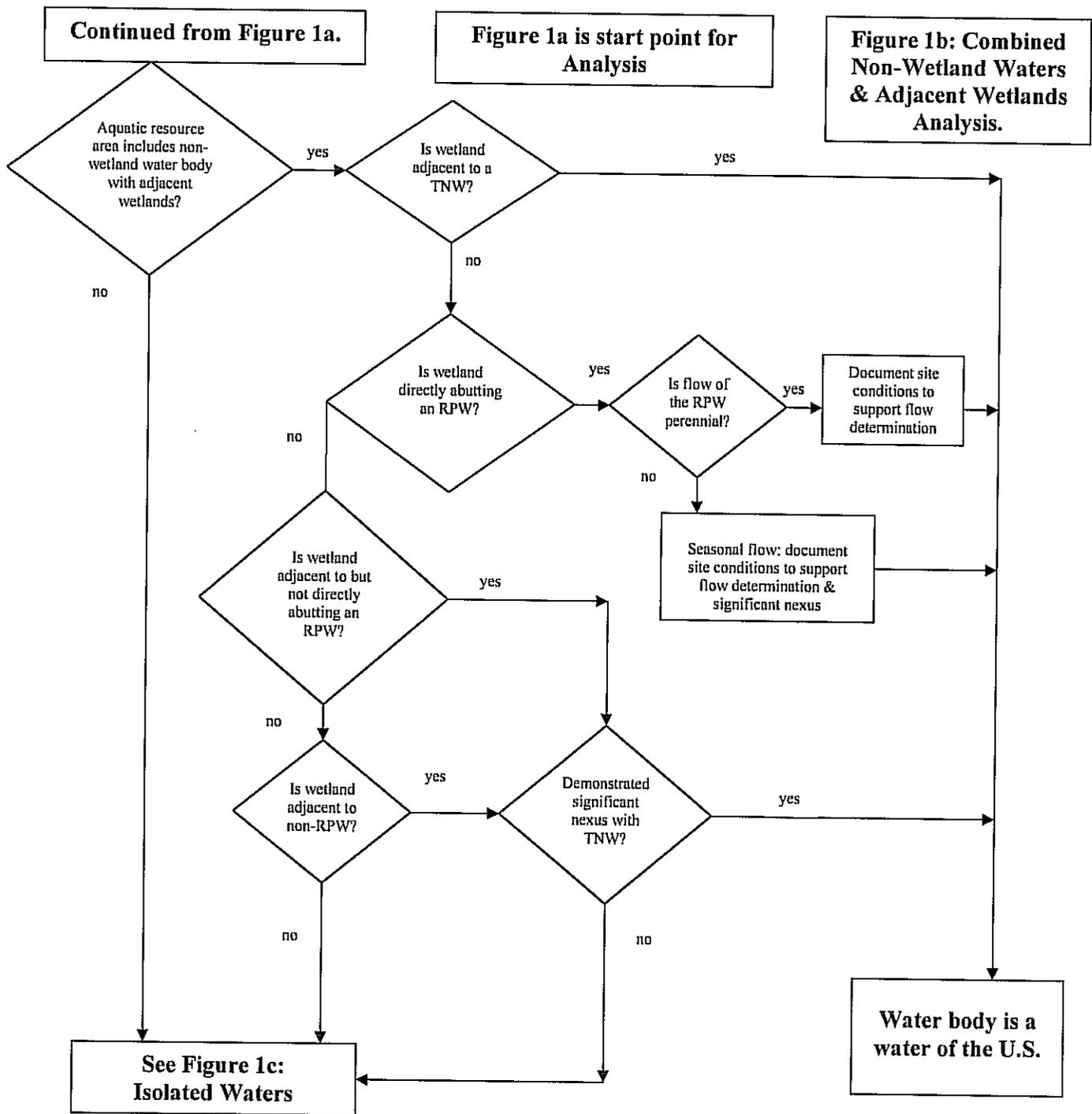
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- 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: 1:50,000 Mobile, AL.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Mobile County, AL.
- National wetlands inventory map(s). Cite name: .

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.

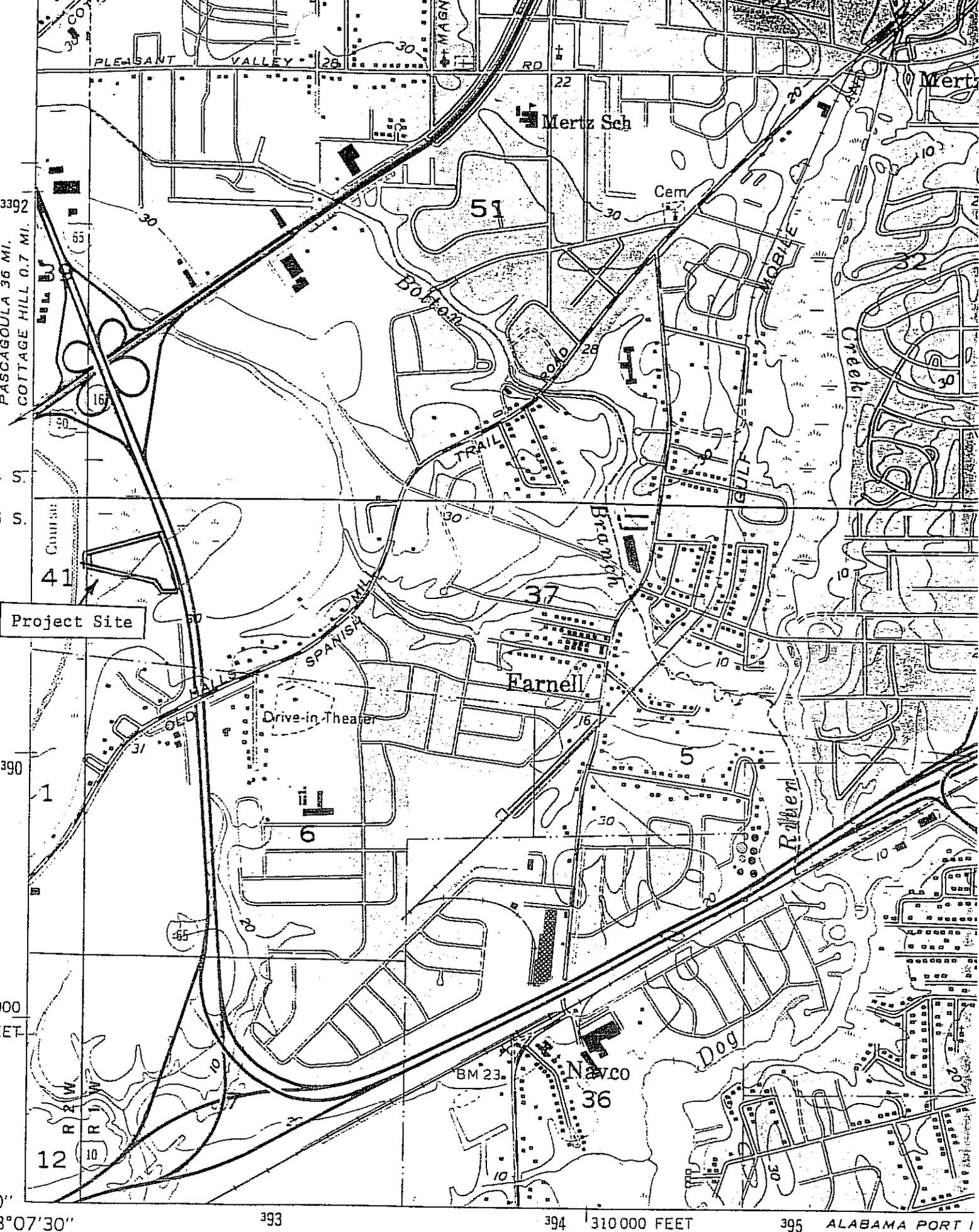
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Mobile County, AL Map No. 01097C0563 J effective 7/6/98.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): Digital photos taken by project manager during site inspection 22 June 2007.
- Previous determination(s). File no. and date of response letter: ALJ96-04364-K dated 13 December 1996.
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:



NOTES:

1. Non-wetland water bodies include traditional navigable waters (TNWs) and tributaries that flow directly or indirectly into TNWs. Additional information on TNWs is in Appendix D.
2. For a wetland adjacent to a TNW, adjacent means "bordering, neighboring or contiguous." Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.
3. Tributary is a natural, man-altered, or man-made water body. Examples include rivers, streams, and lakes that flow directly or indirectly into TNWs.
4. RPW is relatively permanent water, where flow is year-round or continuous at least "seasonally."
5. A wetland abuts a tributary if it is not separated from the tributary by uplands, a berm, dike, or similar feature.
6. Significant nexus assessment of the flow characteristics and functions of the tributary, itself, in combination with the functions performed by any wetlands adjacent to the tributary determines if they have more than an insubstantial or speculative effect on the chemical, physical and/or biological integrity of TNWs.
7. Additional coordination requirements for waters requiring significant nexus determination are presented in Figure 2.
8. Photographic examples of these water bodies follow.



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ALABAMA PORT 1
 CEDAR POINT 2

