

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): 14 July 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, Economic Development Partnership of Alabama, SAM-2008-0019-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Contiguous parcel in the northwest quadrant of the intersection of U.S. Hwy. 43/AL Hwy. 13 and Mobile County Rd. 84/Salco Road.

State: Alabama County/parish/borough: Mobile City: Salco
Center coordinates of site (lat/long in degree decimal format): Lat. 30.97138° N, Long. -88.03371° W.
Universal Transverse Mercator: Zone 16 X: 401282.8781 Y: 3426888.4876

Name of nearest waterbody: Cold Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 8 digit HUC - 03160204; 12 digit HUC - 031602040106 Cold 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: 14 July 2008

Field Determination. Date(s): 21 May 2008 and 9 June 2008

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: 4,227 linear feet: approximately 12 width (ft) and/or approximately 1.16 acres.

Wetlands: 47.21 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

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

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

³ Supporting documentation is presented in Section III.F.

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the 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 size 619,248.4 acres

Drainage area: Approximately 2,000 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 Pick List tributaries before entering TNW.

Project waters are 2.5 river miles from TNW.

Project waters are 1 (or less) 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.

Identify flow route to TNW⁵: Cold Creek flows northeasterly through the site to the Mobile River.

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

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

Tributary stream order, if known: 2nd order.

(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: 12 feet
Average depth: 4 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: The overall tributary condition appears to be relatively stable although there are signs of increased bank scour or erosion immediately upstream of the railroad bridge across Cold Creek.

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): Unknown %

(c) Flow:

Tributary provides for: Pickle List

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

Describe flow regime: Cold Creek is a continuously flowing perennial stream.

Other information on duration and volume: No other tributary specific information, such as USGS gage data, on flow and volume is available.

Surface flow is: Discrete and confined. Characteristics: Cold 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.

Subsurface flow: Unknown. Explain findings: Subsurface flow was not evaluated.

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.
 tidal gauges
 other (list):

(iii) Chemical Characteristics:

⁶A 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.

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

Explain: The tributary contained clear water through which the channel substrate and presence of woody instream structure can be seen. The water has a slightly orangish naturally tannic coloration but no cloudiness or turbidity were observed during field review. The State identified water use category of Cold Creek is Fish & Wildlife.

Identify specific pollutants, if known: Cold Creek occurs on Alabama's 2006 303(d) list of impaired waters due to elevated presence of Metals (specifically Mercury [Hg]). The source(s) of increased metals presence is attributed to contaminated sediments and flow regulation/modification. The segment of Cold Creek identified on the 303(d) list is approximately 4.21 miles from a dam 1.5 miles west of U.S. Highway 43 to its convergence into the Mobile River.

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

- Riparian corridor. Characteristics (type, average width): Riparian corridor is hardwood forested, predominantly Tupelo swamp, 200 feet + in width. Representative riparian corridor vegetation also includes *Nyssa sylvatica*, *Taxodium distichum*, *Magnolia virginiana*, *Acer rubrum*, *Itea virginica*, *Ilicium floridanum*, *Ligustrum sinense*, *Osmunda regalis*.
- Wetland fringe. Characteristics:
- Habitat for:
- Federally Listed species. Explain findings:
- Fish/spawn areas. Explain findings: Areas of good instream woody vegetation structure (e.g. fallen trees, medium to larger sized limbs and branches) were observed. These areas of instream structure potentially provide good fish nesting and spawning habitat within the creek.
- 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 Cold Creek and its adjacent riparian lands. Evidence of utilization of the area by deer, rabbits, and raccoons were observed while on-site through indicators such as recent tracks and scat. Also several young fish were observed swimming in areas of Cold Creek during field review of the site.

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: 47.21 acres

Wetland type. Explain: Forested Wetland.

Wetland quality. Explain: High and medium quality. Most of the wetlands would be considered high quality forested bottomland hardwood wetland on the flood plain of a perennial stream, however there are some areas of the wetlands, predominantly along the disturbed edges of the railroad track right of way and maintained road and utility right of ways that have less mature trees, a dense shrub/mid-story vegetative layer, and increased growth of exotic and nuisance species such as privet.

Project wetlands cross or serve as state boundaries. Explain: Wetlands do not cross or serve as State boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Wetlands provide stormwater storage/retention and contribute water back to base flow of Cold Creek.

Surface flow is: Overland sheetflow

Characteristics: Floodplain flows (during rainfall events surface run-off water and high instream water volumes flow over the landscape through the wetlands toward Cold Creek).

Subsurface flow: Pick List. Explain findings: Subsurface flow was not evaluated.

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are 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 standing water in the review area wetlands at the time of either field review.

Identify specific pollutants, if known: Although Cold Creek occurs on Alabama's 2006 303(d) list of impaired waters due to elevated presence of metals attributed to contaminated sediments and flow regulation/modification, there do not appear to be any obvious sources of such contaminants originating from this site.

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

Riparian buffer. Characteristics (type, average width): Predominantly hardwood forested Tupelo swamp wetland, 200 feet + in width. Representative riparian corridor vegetation also includes *Nyssa sylvatica*, *Taxodium distichum*, *Magnolia virginiana*, *Acer rubrum*, *Itea virginica*, *Ilicium floridanum*, *Ligustrum sinense*, *Osmunda regalis*.

Vegetation type/percent cover. Explain: Hardwood forested wetland system dominated by vegetation consisting of *Nyssa sylvatica*, *Taxodium distichum*, *Magnolia virginiana*, *Acer rubrum*, *Itea virginica*, *Ilicium floridanum*, *Ligustrum sinense*, and *Osmunda regalis*. Most of the wetlands have a mature closed hardwood canopy with sparse ground cover vegetation. Disturbed wetland edges have dense shrub/mid-story and groundcover 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. Evidence of utilization of the area by deer, rabbits, and raccoons were observed while on-site through indicators such as recent tracks and scat. There were also posted signs in areas of the site indicating that portions of the property may have been used in the past as a hunting reserve.

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

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

Approximately (400) 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	400		

Summarize overall biological, chemical and physical functions being performed: The estimated 400 acres of wetlands being considered in the cumulative analysis for Cold Creek are the forested riparian wetland floodplain system directly abutting the creek between a large man made impoundment with side canals approximately 0.7 mile upstream of the jurisdictional determination site and the Creek's convergence with the Mobile River. These wetlands are being considered as a single contiguous wetland area 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, other chemical contaminants, 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 particularly important to Cold Creek given its 303(d) listing as an impaired water. 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 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: Cold Creek is shown as a solid blue line on USGS topographic quadrangle maps, which typically indicates the presence of a perennially flowing stream. Furthermore, during all field observations by the Corps project manager and delineation consultants, Cold Creek contained water and was flowing.
- 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: 4,227 linear feet 12 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 forested wetlands within the review area are situated within the floodplain of Cold Creek and there are no impediments such as berms, levees, roadways or other physical barriers separating the wetlands from the creek or preventing the creek from overflowing through the wetlands during high water and flood events.**
 - 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: It is connected by a culvert system that flows south and under interstate. The water then flows into Griffin Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **47.21** 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.⁹**

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

⁸See Footnote # 3.

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

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

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

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

Identify water body and summarize rationale supporting determination:

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

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

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource:
- Wetlands: acres.

SECTION IV: DATA SOURCES.

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- 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.

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*.

- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 Minute Creola, 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/> accessed [05/21/2008].
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas Map No. 01097C0325 J effective July 6, 1998.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): Color digital photographs taken by Corps project manager during field reviews conducted on 21 May 2008 and 9 June 2008.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Jurisdictional authority for regulation of this tributary and its abutting wetlands is found at 33 CFR Section 328.3(a)(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section and 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.

B. ADDITIONAL COMMENTS TO SUPPORT JD: