

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): 4 August 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, Economic Development Partnership of Alabama, SAM-2008-0019-LET (wetland in SW corner of site at head of Unnamed drainage to Turtle Branch)

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. 30.96957° N, Long. -88.03927° W.
Universal Transverse Mercator: Zone 16 X: 400750.3110 Y: 3426693.3227

Name of nearest waterbody: Turtle Branch

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

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: 15 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: linear feet: width (ft) and/or acres.
Wetlands: 1.13 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 420 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 2-5 river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 2-5 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: The 1.13 acre of wetlands in the review area are the headwater of an unnamed tributary drainage to Turtle Branch which flows southerly from the site through a road culvert beneath Salco Road to a

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.

convergence with another unnamed tributary to Turtle Branch which flows into Turtle Branch which then flows into the TNW Gunnison Creek.

Tributary stream order, if known:

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

Tributary is:

Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: The tributary to Turtle Branch includes segments that have

been channelized through silvicultural and residential yards, and segments that have been culverted beneath roadways. There are also downstream areas where the tributary appears to flow through excavated pond areas.

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

Average width: 4 feet

Average depth: 1 foot

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 condition of the non-RPW tributary drainage appears to be relatively stable.

Presence of run/riffle/pool complexes. Explain: Due to the irregular flow of the non-RPW tributary, it does not have typical stream morphology features such as run/riffle/pool complexes until reaching a point approximately 4 miles downstream of the project review area where there is finally enough hydrologic input in the system for RPW flow to begin in the drainage channel.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: The non-RPW tributary to Turtle Creek appears to flow primarily in response to rainfall events, most likely events of an inch or more in volume. Based on observation of water stained leaves in some segments of the channel, areas of the tributary appear to continue holding water for a period of time following rainfall events.

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: A swale like wetland conveyance channel originates on the south side of the review area wetland. Water flows from this conveyance swale toward Salco Road and through a culvert pipe under the road. Immediately south of the Salco Road maintained right of way the channel of the drainage conveyance becomes a more defined topographic feature with abutting wetlands.

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

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.⁷ Explain:

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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

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.

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input 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: No standing water was observed in the non-RPW tributary during 21 May and 9 June inspections.

Identify specific pollutants, if known: No known identified chemical pollutants and no 303(d) impaired water listing of the unnamed tributary.

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

Riparian corridor. Characteristics (type, average width): Riparian corridor is mixed pine and hardwood forested wetland and upland land that also contains significant privet colonization (Canopy vegetation of corridor includes *Nyssa biflora*, *Magnolia virginiana*, *Acer rubrum*, *Ligustrum sinense*). On average the width of the canopy vegetated riparian corridor is over 100 feet in total width because much of the tributary flows through silvicultural or undeveloped forest land. There are small segments that flow through residentially developed land where the natural forest vegetation has been cleared and the drainage is now a grassed, mowed drainage swale.

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: This non-RPW and its abutting wetlands provide an organic nutrient "sink" where detritus builds up due to infrequent removal of material by flowing water, yet the area retains sufficient continuous moisture to help the material decompose and release nutrients to the soil and plants relatively quickly. When water flows through the tributary it conveys organic carbon and nutrients from the decaying plant material downstream to resident amphibians, reptiles, and aquatic vertebrates and invertebrates in RPWs spawning, foraging, seeking shelter from predators, and/or residing permanently or temporarily in Turtle Branch, its tributaries, and adjacent riparian lands.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.13 acres

Wetland type. Explain: Forested Wetland.

Wetland quality. Explain: Low to medium quality wetlands abutting non-RPW tributary to Turtle Creek. The wetland is overrun by exotics and is surrounded on all sides by farm fields.

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: A wetland swale conveys rainfall run-off and ponded water from the wetland within the project review area through a culvert beneath Salco Road and into the non-RPW channel with abutting wetlands located south of Salco Road. Water has not been observed flowing in the non-RPW during field reviews, however ponding of water at the Salco Road culvert has been observed, also indications of water flow have been observed such as washing and rafting of leaf litter, sediment deposition patterns, and water staining of leaves in the drainage channel.

Surface flow is: **Discrete**

Characteristics: A swale like wetland conveyance channel originates on the south side of the review area wetland.

Water flows from this conveyance swale toward Salco Road and through a culvert pipe under the road. Also, overland sheetflow run-off from uplands adjacent to the wetland area flow into the wetland.

Subsurface flow: **Unknown**. 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 **5-10** river miles from TNW.

Project waters are **5-10** 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: A small amount of standing water was observed in the wetland review area during 21 May site visit. The water color was dark and tannic due to the breakdown of leaf litter within the wetland.

Identify specific pollutants, if known: No known identified chemical pollutants to the wetland

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

Riparian buffer. Characteristics (type, average width):
 Vegetation type/percent cover. Explain: 50% cover within the wetland itself. Forested wetland system dominated by *Nyssa biflora* with *Cyrilla racemiflora*, *Acer rubrum*, and *Quercus alba* along the edges of the wetland.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Numerous young frogs were observed in the wetland on 21 May providing evidence that the wetland helps support the reproduction and growth cycle of these amphibians. Furthermore the concentrated presence of the frogs provides a setting and location where other animals such as snakes, raccoons, birds, etc. which may be predators of the frogs can feed.

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

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

Approximately (91.13) 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	1.13		
Y	90		

Summarize overall biological, chemical and physical functions being performed: The estimated 91.13 acres of similarly situated forested wetlands being considered in the cumulative analysis (which includes the 1.13 acres within the proposed project area and approximately 90 acres of wetlands abutting the unnamed tributary to Turtle Branch downstream of the project area) is within the riparian corridor along the entire reach (from headwater of the unnamed tributary to Turtle Branch to its convergence into Turtle Branch). This wetland system provides a water source/water recharge area to the unnamed tributary, Dry Prong, and other downstream waterbodies, it provides capacity to receive, retain, and convey rainfall run-off that cannot immediately infiltrate, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by development prior to entering Turtle Branch. Detritus and decomposition of organic matter from the abutting wetlands also provide nutrients and organic carbon for use by wildlife and fish on-site and in downstream food chains. These areas also provide natural lands adjacent to a seasonal water source where wildlife may rest, forage, nest, or seek refuge from predators.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapuos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The wetlands and non-RPW receive runoff water from adjacent undeveloped natural lands, residentially developed lands, and streets. The non-RPW in combination with its directly abutting hardwood forested wetlands have a significant nexus to the downstream RPWs and TNW by providing 1)- shading of the non-RPW helping prevent/reduce increase of water temperature in waters feeding into downstream RPWs and TNWs 2)- a water source/contributing source of water recharge to Turtle Branch and other downstream waterbodies 3)- provides capacity to receive, retain and treat rainfall run-off, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by silvicultural and agricultural activities, residential development activities, and road and utility right of way maintenance prior to entering the downstream tributary system and TNW 4)- detritus and decomposition of organic matter conveyed from the wetlands by non-RPW flows also provide nutrients and organic carbon to the downstream waters for use by wildlife and fish in the downstream aquatic system and food chains 5)- the non-RPW drainage and its abutting wetlands create a wildlife habitat corridor that provides access to a periodic source of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and mammals that may live in or periodically utilize this system located in the northern region of Mobile County, which is already experiencing and anticipating significant additional new development as a result of a major new industrial facility currently under construction in the area.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: The RPW in this case is a tributary to Griffin Creek, it flows year round and is jurisdictional. .
 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: 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: 1.13 acres.

⁸See Footnote # 3.

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

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

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

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

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: There are four (4) pockets of wetlands/waters located within the review area which have no surface connection to RPWs or TNWs and according to current FEMA FIRM mapping are located outside the 500-year floodplain; therefore these four wetlands are isolated and non-jurisdictional.
- Other factors. Explain:

Identify water body and summarize rationale supporting determination: Four (4) separate isolated wetland pockets that .

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.

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

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

- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 Minute Creola, AL.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Mobile County, Alabama issued May 1980 (major field work completed 1969-1977), Sheet Numbers 31 and 38.
- 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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Although the 1.13 acre wetland area is located only approximately 950 feet away from Cold Creek, upon field review of the wetland and its drainage path, it was found that the wetland does not have a surface hydrology connection to Cold Creek as indicated on USGS topographic quadrangle maps, but instead connects to an unnamed tributary to Turtle Branch located to the south as documented in the May 1980 Soil Survey of Mobile County, Alabama developed by the USDA-Soil Conservation Service in cooperation with the Alabama Agricultural Experiment Station and Alabama Department of Agriculture and Industries. Field observations at random road crossings that have been constructed across the tributary drainage appear to confirm that there exists a continuous wetland and drainage conveyance connection between the 1.13 acre wetland within the review area and the downstream RPW Turtle Branch. Authority for regulatory jurisdiction of these waters 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.