

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): 23 July 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, SC Bodner, Inc. (Retreat Apartments), Mobile, Mobile County, Second Creek, SAM-2008-0894-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. 30.66272° N, Long. -88.22476° W.
Universal Transverse Mercator: Zone 16 X: 382662.2752 Y: 3392864.3173

Name of nearest waterbody: Second Creek

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

Name of watershed or Hydrologic Unit Code (HUC): (12 Digit HUC) 031602050203 Halls Mill 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: 24 June 2008

Field Determination. Date(s): 23 June 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There ~~are~~ 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: 1,050 linear feet: 5 width (ft) and/or 0.12 acres.

Wetlands: 3.8 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

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

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

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

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

(i) General Area Conditions:

Watershed size: (8 digit HUC) 619,248.4 ~~acres~~

Drainage area: 450 ~~acres~~

Average annual rainfall: 64 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are ~~5-10~~ river miles from TNW.

Project waters are ~~Pick List~~ river miles from RPW.

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

Project waters are ~~Pick List~~ 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: Second Creek flows into Milkhouse Creek, which flows into Halls Mill Creek which widens into a tidal water course after crossing U.S. Highway 90. Halls Mill Creek then converges into Dog 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:

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

Tributary is:

Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Second Creek north of the project site is a historically

straightened/channelized stream segment as it enters the site.

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

Average width: 5 feet

Average depth: 3 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: Second Creek spreads out into multiple small braided channels across its floodplain for the first hundred or so feet on the north end of the project site where a very channelized segment enters a very broad flat naturally vegetated area however the Creek re-consolidates into a single channel drainage within the project site. The overall tributary condition appears to be relatively stable on the project site due to dense vegetative cover. There are several segments of the creek upstream and downstream of the site which are degraded and somewhat unstable due to impacts of urban and suburban construction practices (e.g. filling within floodplain for development, relocation/channelization around or through developments, culverting for public roadways, etc.).

Presence of run/riffle/pool complexes. Explain: Stream appears to be maintaining natural channel morphology features including run/riffle/pool complexes within the project review area however many segments of the creek upstream and downstream of the site are degraded and somewhat unstable due to impacts of urban and suburban construction practices (e.g. filling within floodplain for development, relocation/channelization around or through developments, culverting for public roadways, etc.).

Tributary geometry: Meandering

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: Pick List

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

Describe flow regime: Second Creek is a continually flowing perennial stream which contained flowing water on the day of field evaluation.

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: Confined. Characteristics: Second Creek primarily exhibits defined bed and bank characteristics, although there are some limited reaches that have multiple small braided channels, and has a predominantly wetland flood plain of hardwood forest and dense shrub/mid-story cover. Flow is continuous (comes out of banks after heavy rain events).

Subsurface flow: Pick List. 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):

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: The tributary was turbid entering the project site from the north, carrying sediment load from recent rain events from developed areas upstream. The turbidity settled out of the water column noticeably as water flowed through the stream and wetlands on the project site and was clear with no cloudiness or turbidity as the tributary flowed off the project site to the south. There is turbidity after rain events.

Identify specific pollutants, if known: No known identified chemical pollutants and no 303(d) impaired water listing of the stream, however there appear to be significant inputs of off-site sediment and anthropogenic trash/litter based on observed mats of debris and areas of non-native sediment deposition along the stream and in wetlands on the north end of project review area.

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

Riparian corridor. Characteristics (type, average width): Hardwood forested predominantly wetland riparian corridor along stream. Some upper reaches of Second Creek are located in very commercially and residentially developed areas where the riparian corridor has a narrow (25 feet or less) to no natural riparian buffer. The reach of Second Creek within the review area has a natural riparian buffer that averages about 150 feet in total width.

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary helps convey organic carbon and nutrients from decaying riparian plant material downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the stream and adjacent riparian lands. Several fish were observed swimming in and utilizing various segments of the stream. Schools of smaller juvenile fish were observed in smaller more protected and shaded segments of the stream channel and braided side channels on the project site, while 2 larger fish varying from approximately 6 to 10 inches in length were observed in the stream at the southern end of the site where Second Creek exits the property.

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: 3.8 acres

Wetland type. Explain: Predominantly hardwood forested wetlands (sweetbay, red maple with black titi fringe).

Wetland quality. Explain: Medium quality wetland areas.

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: Wetlands feed Second Creek and also receive floodwater after storm events providing stormwater storage and filtration.

Surface flow is: Overland sheetflow

Characteristics: Floodplain flows (during rainfall events run-off water flows over the landscape toward and through the wetlands to Second Creek) and slope seepage.

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 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: Water varies from very turbid in the northern wetland areas on the project site to clear but dark colored naturally tannic on the southern portion of the project site. The watershed upstream and surrounding this site is highly developed commercial and residential property. A substantial volume of new construction is continuing to occur in this part of the watershed. These wetlands receive flash event flooding due to the fast drainage of water run-off from developed impervious surfaces upstream. Significant amounts of human generated trash, litter, and refuse, and sediment from off-site sources get trapped and retained in the wetlands at the north end of this project site.

Identify specific pollutants, if known: No known identified chemical pollutants to the wetlands, however there appear to be significant inputs of off-site sediment and anthropogenic trash/litter based on observed mats of debris and areas of non-native sediment deposition in the wetlands on the north end of project review area.

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

Riparian buffer. Characteristics (type, average width): Forested wetland +/- 150 ft width.

Vegetation type/percent cover. Explain: The dominant plant species in the project area have Fac to OBL Region 2 wetland indicator status and include species such as *Pinus elliottii*, *Magnolia virginiana*, *Woodwardia aerolata*, *Acer rubrum*, *Ligustrum sinense*, *Woodwardia virginica*, *Cliftonia monophylla*, *Arundinaria gigantea*, and *Liriodendron tulipifera*. *Peltandra virginica*, *Triadica sebiferum* and *Salix nigra* are present among the other vegetative species in previously disturbed areas 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: The wetlands provide resting, nesting, refuge from predators, and some foraging habitat for small amphibians, reptiles, birds, and mammals of the coastal plain that may reside in or periodically utilize the area; for instance, an armadillo foraging on the side of Grelot Road ran into the wetlands to seek refuge when startled by human presence.

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

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

Approximately (255) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)
Y

Size (in acres)
255

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: Water purification, stormwater detention, and wildlife habitat/corridor. The estimated 255 acres of wetlands being considered in the cumulative analysis for Second Creek are the forested riparian wetland floodplain system directly abutting the creek between its upstream origin and its convergence with Milkhouse Creek and has been considered as a single contiguous wetland area. This wetland system provides a water source/area of water recharge to the tributary, it provides capacity to receive and retain floodwater, and functions in removing and retaining or fixing sediment, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off prior to entering the creek. 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 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: Second Creek is shown as a solid blue line on USGS topographic quadrangle maps, which typically indicates the presence of a perennially flowing stream. Second Creek contained flowing water at the time of inspection, also based on USACE project manager knowledge of and familiarity with this waterway from working in this area of Mobile for 9+ years, Second Creek has consistently been observed to contain a continuously flowing volume of water.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

- Tributary waters: 1,050 linear feet 5 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 shrub and forested wetlands within the review area are situated within the floodplain of Second Creek and are not physically separated from the creek by upland berms, roadways or other physical barriers.**
 - 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: 3.8 acres.

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

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

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

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

- 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 "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.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 Minute Springhill, AL.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- 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 Rapanus.

- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas Map No. 01097C0536 J effective July 6, 1998.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Color aerial photographs provided by project consultant, EcoSolutions, in permit application.
or Other (Name & Date): Digital photos taken by Corps project manager during 23 June 2008 field review of site.
- 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 regulating this tributary 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: