

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): 17 November 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, Halstead, L.L.C. - CVS at Grelot and Hillcrest Roads, SAM-2008-1614-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: New CVS site at northwest corner of Hillcrest and Grelot Roads

State: Alabama County/parish/borough: Mobile City: Mobile
Center coordinates of site (lat/long in degree decimal format): Lat. 30.66148° N, Long. -88.19087° W.
Universal Transverse Mercator: Zone 16 X: 385908.2600 Y: 3392691.1690

Name of nearest waterbody: Unnamed Tributary to Milkhouse Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 031602050203 Halls Mill Creek (12-digit HUC) 3160205 (8-digit HUC)

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 4 November 2008

Field Determination. Date(s): 28 October 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~~ 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: 150 linear feet: approximately 8 width (ft) and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

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) 560,998.875 ~~acres~~

Drainage area: Approximately 387 ~~acres~~

Average annual rainfall: Approximately 64 inches

Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

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

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

Project waters are ~~5-10~~ 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: The unnamed tributary flows into Milkhouse Creek which flows into Second Creek which flows into Halls Mill Creek which becomes a TNW subject to tidal influence near the U.S. Hwy. 90 crossing of Halls

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.

Mill Creek which is approximately 3 miles upstream from its convergence into Dog River which is identified as a Section 10 Water (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: The unnamed tributary has experienced significant human

alteration within the project review area as well as several hundred linear feet upstream and downstream of the review area since the late 1970's and early 1980's. The headwater reach of the UT has been channelized, roughly in-place, into box-culverts from near Southern Way through the Grelot-Hillcrest Road intersection to the west side of the entrance drive into the Cimmaron Ridge apartment complex in order to accommodate commercial and retail developments. The remaining length of the UT to its convergence into Milkhouse Creek is a mix of open natural channel that has been straightened and open natural channel with minimal human alteration.

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

Average width: 7 feet

Average depth: 1.5 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: Rock riprap At the lower terminus of the box culverting, there is rock riprap placed across the

stream to protect the box culvert and associated wing walls from scour and to create a stilling basin to slow velocity of water flow exiting the box culvert into the natural stream channel.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Downstream of the box culvert, the UT channel shows signs of scour and some evidence of entrenchment that prevents the stream from being able to fully accessing a natural floodplain.; however other segments downstream of a scour area around the culverted crossing of Crystal Drive appear relatively stable and show less evidence of channel scour and little evidence of channel entrenchment.

Presence of run/riffle/pool complexes. Explain: A few segments of run/riffle/pool complex were observed in open channel sections of the UT that could be observed from utility easements and public roadways. The box-culverted segment within the project area has no natural stream channel features.

Tributary geometry: ~~Relatively straight~~

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: ~~Seasonal flow~~

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

Describe flow regime: The UT Milkhouse Creek appears to be a continuous seasonally flowing water within the box culverted headwater segment and for approximately 180-200 feet downstream from the box culvert; however the UT appears to be a perennially flowing waterway from that point down to its convergence with Milkhouse Creek. On the date of field review (28 October 2008) perennial flow was observed to exist both upstream and downstream from the culverted road crossing on Crystal Drive, which is approximately 800 feet downstream from the lower terminus of the box culvert. Within the box culvert there was no flow but shallow standing water across the bottom of the box along the length of culvert the project manager was able to walk into (approx. 190 l.f.) before available light and a small flashlight were insufficient to proceed further. Box culvert and wing walls have clearly stained ordinary high water line approximately 5-inches up walls of culvert although that volume of water was not observed at the time of inspection.

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: The headwater segment of the unnamed tributary to Milkhouse Creek is confined within a box culvert and immediately downstream of the culvert exhibits a defined channel with bed and bank characteristics.

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

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.

- | | |
|---|---|
| <input checked="" type="checkbox"/> changes in the character of soil | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input checked="" type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away | <input checked="" type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input checked="" type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
- Discontinuous OHWM.⁷ Explain:

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

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

(iii) Chemical Characteristics:

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

Explain: Water in the channel was clear with no discoloration during 28 October 2008 USACE project manager field review, however the surrounding area is very developed with paved roads, paved parking lots, residential and commercial buildings and other impervious surfaces that have drop inlets which discharge directly to the UT. These surfaces can receive petroleum and other chemical discharges from vehicles, sediment, litter, substances containing human and animal bacterial and viral pathogens, all of which are discharged to the tributary and other downstream waters in run-off from rainfall events.

Identify specific pollutants, if known: Milkhouse Creek and its tributaries are not listed as impaired waters on the State's 303(d) list and therefore has no specifically identified pollutants of concern.

⁷Ibid.

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

Riparian corridor. Characteristics (type, average width): The riparian corridor of the natural open channel segments of the UT to Milkhouse Creek appears to consist of both wetland and upland land areas but is dominated by a narrow wetland buffer abutting the UT. The land uses are dominated by high density commercial and retail development at the headwater reach of the UT and some remaining undeveloped natural areas interspersed among moderately dense single-family residential and multi-family residential suburban development. There is approximately 3,310 linear feet of naturally vegetated riparian corridor with canopy cover remaining along the reach of the UT to Milkhouse Creek and the corridor width varies from as little as 95 feet in total width (approx. 47.5 feet each side of tributary) passing through existing residentially developed areas to as much as 420 feet in total width (approx. 210 feet each side of tributary) along some less developed segments.

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 conveys 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 that may spawn, forage, seek shelter from predators, and/or reside permanently in the stream 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: acres

Wetland type. Explain: .

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Pick List. Explain:

Surface flow is: Pick List

Characteristics:

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 Pick List river miles from TNW.

Project waters are Pick List aerial (straight) miles from TNW.

Flow is from: Pick List.

Estimate approximate location of wetland as within the Pick List 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:

Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings:

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

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

Approximately (8) 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	8		

Summarize overall biological, chemical and physical functions being performed: The estimated 8 acres of wetlands being considered in the cumulative analysis is within the naturally vegetated riparian corridor along the open channel segment of the unnamed tributary to Milkhouse Creek which extends from Grelot Road at the access drive to Cimmaron Ridge apartments to its convergence with Milkhouse Creek. This amount of wetland provides some source water/water recharge to the unnamed tributary to Milkhouse Creek, it provides an area having capacity to receive and retain floodwater and ameliorate velocity of runoff flows through the tributaries, and provides some retention and removal of sediment, petroleum, and other pollutants that may be picked up in overland sheet flow across developed impervious lands and lands currently under development prior to entering Milkhouse Creek. Detritus and decomposition of organic matter from the abutting wetlands also provide some nutrients and organic carbon for use by wildlife and fish along the tributary and in other downstream food chains.

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: The Unnamed Tributary to Milkhouse Creek is shown as having been a solid blue line on USGS topographic quadrangle maps prior to below ground culverting/channelization of the headwater of the drainage to accommodate commercial/retail development. Solid blue lined waterbodies on USGS topographic maps are typically indicative of perennially flowing tributaries. Furthermore, during field inspection, perennially flow was found to exist within the UT approximately 200 feet or less downstream from the headwater reach of the tributary that is culverted below ground.
- 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: The below ground box-culverted segment at the headwater of the tributary contained a small amount of standing water, but not flowing water during field inspection; however the walls of the box culvert and its wing walls have a clearly visible line of water staining, at approximately 5-inches high, which indicates there is water flowing through the culverted channel for a sufficient continuous duration to cause permanent water staining of the concrete.

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

- Tributary waters: 150 linear feet 8width (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: The scrub and hardwood forested wetlands abutting the unnamed seasonal RPW tributary to Cahaba River are not physically separated from the tributary channel by upland berms, roadways or other physical barriers

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: 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

⁸See Footnote # 3.

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

- 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.
 USGS 8 and 12 digit HUC maps.
 U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 Minute Spring Hill, AL.

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.

USDA Natural Resources Conservation Service Soil Survey. Citation: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 [11/04/2008] and the Soil Survey of Mobile County, Alabama issued May 1980 Sheet Number 76, fieldwork completed 1969-1977.

National wetlands inventory map(s). Cite name:Spring Hill, Alabama (digital data).

State/Local wetland inventory map(s):

FEMA/FIRM maps:Mobile County, Alabama and Incorporated Areas, Map No. 01097C0537 J, Effective July 6, 1998.

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

Photographs: Aerial (Name & Date):

or Other (Name & Date):Color digital photographs taken by the Corps project manager during 28 October 2008 field

review.

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: