

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): 12 December 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, City of Mobile Public Works - maintenance sediment removal from TwelveMile Creek upstream of Museum Drive, SAM-2008-1835-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. 30.7017° N, Long. -88.1631° W.
Universal Transverse Mercator: Zone 16 X: 388609.5933 Y: 3397124.8714

Name of nearest waterbody: Twelvemile Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 8 digit HUC - 03160204; 12 digit HUC - 031602040504 ThreeMile 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: 12 November 2008

Field Determination. Date(s): 12 November 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: 1,670 linear feet: 26 width (ft) and/or 3.68 acres.

Wetlands: approximately 0.8 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: 619,248.375 acres

Drainage area: 1,200 +/- 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 ~~Pick List~~ 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: TwelveMile Creek flows through an impounded segment along its reach, which is near the Mobile Botanical Gardens, directly into an impounded segment of Threemile Creek located at Mobile Municipal Park

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.

(a.k.a. Langan Park). Threemile Creek becomes a TNW approximately 4.75 miles downstream of the impoundment at the Park.

Tributary stream order, if known:

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

Tributary is: Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Historically, a sheetpile stormwater detention weir structure

was placed across TwelveMile Creek just upstream of Museum Drive and a section of the Creek was enlarged into an approximately 3.68 + acre holding pond immediately upstream of the weir. Most of the length of TwelveMile Creek upstream of the holding pond has been channelized into a trapezoidal shaped urban drainage channel or has been enclosed and piped below ground.

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

Average width: 26 feet

Average depth: 1.0 feet

Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover:

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary is relatively unstable. The banks of the channelized creek are very sandy and erosive. Much of the instream sedimentation appears to be from scour of the creek banks. Several lateral stormwater discharge pipes from various developed areas outfall directly into Twelvemile Creek and the creek banks are typically very scoured and erosive around and beneath these outfall pipes.

Presence of run/riffle/pool complexes. Explain: Natural stream channel features were eliminated when the creek was channelized for urban drainage purposes, however sediment in the system continues to shoal and create sand bars within the channelized drainage in attempt to re-establish a more natural sediment and water flow equilibrium.

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pickle List

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

Describe flow regime: TwelveMile Creek is a continuously flowing perennial waterway.

Other information on duration and volume: TwelveMile Creek is a perennial stream.

Surface flow is: Confined. Characteristics: Flow is normally confined to within the banks of the channelized stream.

Subsurface flow: Unknown. Explain findings: No subsurface flow investigation was conducted.

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):

High Tide Line indicated by:

oil or scum line along shore objects

fine shell or debris deposits (foreshore)

physical markings/characteristics

Mean High Water Mark indicated by:

survey to available datum;

physical markings;

vegetation lines/changes in vegetation types.

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.

- tidal gauges
- other (list):

(iii) Chemical Characteristics:

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

Explain: Water flowing in TwelveMile Creek is generally clear such that the channel substrate is easily visible; however there is frequently turbidity during or as a result of storm events. The TwelveMile Creek watershed is both urban and suburban in nature including a college campus, significant commercial and retail development, numerous paved roads, highways and parking surfaces, many high density single-family residential developments and a golf course adjacent to the creek. There are several lateral stormwater discharge pipes from various developed areas that outfall directly into Twelvemile Creek.

Identify specific pollutants, if known: Potential pollutants include nutrients, hydrocarbon compounds, chemical contaminants and pathogens associated with fertilizers and pesticides used on the golf course, residential lawns, and landscaped areas of commercial/retail developments, household pet wastes and potential discharges from a gravity based sanitary sewer main along the eastern creek bank, and materials spilled or discharged on road surfaces.

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

Riparian corridor. Characteristics (type, average width): Most of TwelveMile Creek has little to no buffered riparian corridor; however, there appear to be three disconnected areas of naturally forested land between the headwater of the creek and the in-stream holding pond, each approximately 25-35 acres in size and providing a buffer that is approximately 850 feet wide (approx. 180 feet on one side of creek and approx. 670 on the other side of the creek).

Wetland fringe. Characteristics: The holding pond area of TwelveMile Creek contains approximately 0.8 acre of emergent wetland that has established on areas of accumulated sedimen.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Due to the heavy development of most of this watershed, the naturally forested buffer areas described above provide important resting, nesting, spawning and foraging habitat for any aquatic and terrestrial wildlife (e.g. raccoons, opossum, songbirds, snakes, turtles, amphibians, etc.) that can adapt to and survive in developed areas.

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: 0.8 acres

Wetland type. Explain: Emergent Typha (cattail) dominated marsh that has established on accumulated sediment in the northwest corner of the holding pond area on TwelveMile Creek.

Wetland quality. Explain: Emergent marsh areas are typically considered high quality resources due to their ability to trap sediment, initially treat and fix pollutants in the water thereby removing them from the water column, decompose and provide organic carbon to food chains, and provide spawning, refuge, and foraging habitat for aquatic organisms and for terrestrial organisms that feed on the aquatic organisms.

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: Perennial flow. Explain: The wetland is almost constantly inundated by or receiving flow of water from TwelveMile Creek.

Surface flow is: Overland sheetflow

Characteristics: Because the emergent wetland area is in the holding pond area of TwelveMile Creek the flow of water through these wetlands is more similar to overland sheetflow.

Subsurface flow: Unknown. Explain findings: No subsurface flow investigation was conducted.

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 2-5 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 2-year or less 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 flowing in TwelveMile Creek is generally clear such that the channel substrate is easily visible; however there is frequently turbidity during or as a result of storm events. The TwelveMile Creek watershed is both urban and suburban in nature including a college campus, significant commercial and retail development, numerous paved roads, highways and parking surfaces, many high density single-family residential developments and a golf course adjacent to the creek. There are several lateral stormwater discharge pipes from various developed areas that outfall directly into Twelvemile Creek.

Identify specific pollutants, if known: Potential pollutants include nutrients, hydrocarbon compounds, chemical contaminants and pathogens associated with fertilizers and pesticides used on the golf course, residential lawns, and landscaped areas of commercial/retail developments, household pet wastes and potential discharges from a gravity based sanitary sewer main along the eastern creek bank, and materials spilled or discharged on road surfaces.

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: Predominantly *Typha. sp* (cattail) marsh with some *Salix nigra* along the upper edge, approximately 90% aerial cover of vegetation.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings: Frequently to constantly inundated marsh areas have the ability to provide spawning, refuge, and foraging habitat for fish and also through the loss and decomposition of above-ground vegetation provide organic carbon to the aquatic food chain.
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: Due to the heavy development of most of this watershed, the emergent wetlands described above provide resting, nesting, spawning and foraging habitat for any fish or other aquatic species in Twelve Mile Creek and terrestrial wildlife that feed on these aquatic species.

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

All wetland(s) being considered in the cumulative analysis: 4

Approximately (27.8) 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	0.8		
Y	approx. 9		
Y	approx. 9		
Y	approx. 9		

Summarize overall biological, chemical and physical functions being performed: The estimated 27.8 acres of wetlands being considered as 4 separate wetland areas in the cumulative analysis includes the approximately 0.8 acre of emergent wetlands within the holding pond area of TwelveMile Creek, and an estimated 9 acres of possible wetlands (based on review of web soil survey soil data reports) within each of 3 disconnected natural forested areas along TwelveMile Creek over the entire length of its flow reach. These wetland areas would have the ability to capture sediment and filter pollutants from runoff from surrounding commercial/retail developments, residential developments and highways. They also provide habitat for any aquatic and terrestrial wildlife that can adapt to and survive in developed areas.

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 *Rapams* 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: TwelveMile Creek is shown as a solid blue line on USGS topographic quadrangle maps, which indicates the presence of a perennially flowing stream. Furthermore the stream and impoundment have been observed to contain perennial water flow.
- 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: **1,670** linear feet **26** width (ft).
- Other non-wetland waters: **+/- 3.68** acres.

Identify type(s) of waters: **Perennial RPW Twelvemile Creek and an approximately 3.68-acre impounded area of Twelvemile Creek immediately upstream (south) of the Museum Drive bridge across the creek. The northwest corner of the impounded area contains emergent marsh wetlands that have established on sediment that has collected in the impounded area.**

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: **Wetland area consists of emergent vegetation dominated by Typha sp. (cattail) which has grown on sediment that has collected in a portion of the holding pond section of TwelveMile Creek being maintained by City Public Works Department.**
 - 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: **approximately 0.8** 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 Springhill, 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: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey 2.0, Mobile County, Alabama. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [12/12/2008].

National wetlands inventory map(s). Cite name:

State/Local wetland inventory map(s):

FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas, Map No. 01097C0533 J Effective date: July 6, 1998.

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

Photographs: Aerial (Name & Date): NCSS Web Soil Survey.

or Other (Name & Date): Digital photographs taken by Corps project manager during 12 November 2008 field

review.

Previous determination(s). File no. and date of response letter: SAM-2008-0161-LET dated 10 March 2008.

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Regulatory authorities for jurisdiction over the review area waters is found at 33 CFR Section 328.3(a)(5) Tributaries of waters identified in paragraphs (a)(1) through (a)(4) of this section and 33 CFR Section 328.3(a)(4) All impoundments of waters otherwise defined as waters of the United States under the definition.