

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): 31 July 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I, Walters Development, L.L.C. - Scottie Walters, SAM-2008-1920-LET, JD 2 wetland and seasonal tributary that comprise bulk of the property

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Mississippi County/parish/borough: Jones City: Laurel
Center coordinates of site (lat/long in degree decimal format): Lat. 31.65913° N, Long. -89.15681° W.
Universal Transverse Mercator: Zone 16 X: 295505.67 Y: 3504675.16

Name of nearest waterbody: Unnamed Tributary to Country Club Tributary No. 1 to Tallahala Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 03170005 - Lower Leaf, MS

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: 30 December 2008

Field Determination. Date(s): 23 December 2008, 30 March 2009, and 10 July 2009

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: 1,180 linear feet: 7 width (ft) and/or acres.

Wetlands: 37.5 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: 1,167,114.09 acres
Drainage area: Approximately 160 acres
Average annual rainfall: 57.5 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 30 (or more) river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 30 (or more) 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 boundary.

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

Identify flow route to TNW⁵: Unnamed Tributary to Country Club Tributary No. 1 flows in a slight southwesterly direction through JD review area into Country Club Tributary No. 1 which flows into Tallahalla Creek which then flows in a southerly direction into the TNW Leaf River.

Tributary stream order, if known:

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

Tributary is: Natural
 Artificial (man-made). Explain:

Manipulated (man-altered). Explain: Segments of the naturally occurring tributary have been graded and allowed to only revegetate with herbaceous vegetation to accommodate utility line corridors, also the tributary has been culverted and slightly impounded due to the presence of a railroad track that runs along the entire southern boundary of the property.

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

Average width: 7 feet

Average depth: 2 feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: 80% vegetation coverage of tributary.

Vegetation on north portion of site is predominantly wetland forest species (*M. virginiana*, *Q. nigra*, *A. rubrum*) with herbaceous, fern, and forb understory, pipeline crossings of the tributary on the site are herbaceous, fern and forb vegetated with no forest canopy, and the south portion of the site is a mix of *T. sebiferum* forest and emergent vegetation including *Polygonum* sp., *Typha* sp. and *J. effusus*.

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable well vegetated drainageway.

Presence of run/riffle/pool complexes. Explain: No run/riffle/pool complexes observed in this seasonal RPW tributary due to generally flat gentle topography of the property.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: The tributary may have perennial flow, however at a minimum the tributary experiences continuous periods of flow during certain times of the year in response to the presence of a high water table or the combination of a high water table and precipitation.

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

Surface flow is: **Discrete**. Characteristics: Topography on the JD site is so gentle and flat that there is no channel with a distinct bed and bank although there is an observable swale like drainage channel which flows toward the southwest. At the southwest boundary of the property, water that flows through this tributary backs up and ponds on the property due to the water not flowing efficiently through culverts in the railroad track along the southern property boundary. Off the property on the south side of the culverts in the railroad track at the southwest side of the JD site, a channel with distinct bed and bank could be seen flowing off to the southwest through off-site forest and shrub vegetation.

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

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (check all indicators that apply):

clear, natural line impressed on the bank

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

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

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.

⁶ A 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.

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 has dark coloration from leaching of natural tannins from detritus and organic material in the tributary and abutting wetlands. The tributary also has a slight film on the surface that appeared to be due to stagnation of the water at the surface of the tributary; topographic relief across the site is so slight that there is not a strong flow or current in the tributary to move the water quickly and keep it well mixed and oxygenated, also several storm damaged trees appear to have fallen across the tributary impeding flow in the tributary.

Identify specific pollutants, if known: No known pollutants and no 303(d) impaired water listings for the Unnamed tributary to Country Club Tributary No. 1.

⁷Ibid.

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

Riparian corridor. Characteristics (type, average width): Riparian corridor width varies from 1,050 feet to widths in excess of 1,400 feet and is predominantly palustrine forested and scrub-shrub wetland. There are railroad tracks and several utility line corridors that pass through the riparian corridor.

Wetland fringe. Characteristics: Magnolia virginiana, Acer rubrum, Clethra alnifolia, Quercus nigra, Ilex glabra, Nyssa biflora.

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 wetland forest canopy plant material downstream to resident amphibians, reptiles, and aquatic vertebrates and invertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently or temporarily in the tributary and adjacent riparian lands. The tributary also provides a water source which mammals can utilize for hydration on at least a seasonal and possibly a perennial basis. Turtles, frogs, snowy egret, various songbirds, and small mammals were observed utilizing the site during field reviews, also, raccoon tracks as well as rabbit scat were observed during field reviews.

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: 37.5 acres

Wetland type. Explain: Predominantly palustrine forested and scrub-shrub with some areas of emergent herbaceous vegetation. The vegetative cover includes Magnolia virginiana, Acer rubrum, Clethra alnifolia, Quercus nigra, Ilex glabra, Nyssa biflora, Triadica sebiferum, Polygonum sp., Typha sp., Salix nigra, and Juncus effusus.

Wetland quality. Explain: Wetlands within JD area are of moderate to low quality due to commercial/retail development impacts on surrounding lands, impacts of repeated disturbance associated with maintenance of multiple utility corridors that cross the site, impacts from road construction and installation of roadside ditches to route drainage, and hydrology impacts from a railroad line along the entire southern boundary of the property.

Project wetlands cross or serve as state boundaries. Explain: Project area wetlands DO NOT cross or serve as State boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Run-off from rainfall events flows from the surrounding wetlands within the JD review area to the Unnamed tributary to Country Club Tributary No.1.

Surface flow is: **Overland sheetflow**

Characteristics: Overland sheetflow from rainfall events and high water/flood flows (during rainfall events run-off water flows over the landscape toward and through the wetlands to the Unnamed tributary to Country Club Tributary No.1, also high water/flood flows rise in the tributary and flow out across the wetlands abutting the tributary.

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 **30 (or more)** river miles from TNW.

Project waters are **30 (or more)** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **2 - 5-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: There was only standing water in the wetlands at the southern end of the property along the railroad track. The water varied from clear but dark and naturally tannic in some locations to being turbid and orangish in color due to presence of suspended solids in the water column, particularly in an area of the wetland just upstream of 2 culvert pipes where obvious sediment deposition is occurring. The specific source of the sediment deposition could not be determined.

Identify specific pollutants, if known: None Known.

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

Riparian buffer. Characteristics (type, average width): Predominantly palustrine forested and scrub-shrub wetland comprises the riparian buffer which varies in width from 1,050 feet to in excess of 1,400 feet.

Vegetation type/percent cover. Explain: Approximately 80% vegetation coverage within the JD site wetlands. Vegetation on north portion of site is predominantly wetland forest species (*M. virginiana*, *Q. nigra*, *A. rubrum*) with herbaceous, fern, and forb understory, pipeline crossings of the tributary on the site are herbaceous, fern and forb vegetated with no forest canopy, and the south portion of the site is a mix of *T. sebiferum* forest, *S. nigra*, and emergent vegetation including *Polygonum* sp., *Typha* sp. and *J. effusus*.

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 a source of plant material and woody debris that decay and provide organic carbon and nutrients to the resident amphibians and invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the tributary and its abutting wetlands. Turtles, frogs, snowy egret, various songbirds, and small mammals were observed utilizing the site during field reviews, also, raccoon tracks as well as rabbit scat were observed during field reviews.

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

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

Approximately (300) 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	300		

Summarize overall biological, chemical and physical functions being performed: The estimated 300 acres of similarly situated wetlands being considered in the cumulative analysis (which includes the 37.5 acres within the proposed project area) is within the riparian corridor along the entire reach (from headwater of the Unnamed tributary to Country Club Tributary No. 1 to its convergence into Country Club Tributary No. 1) of the Unnamed Tributary to Country Club Tributary No. 1. This wetland system provides a water source/water recharge area to the unnamed tributary, Country Club Tributary No. 1, Tallahala Creek, and other downstream waterbodies, it provides capacity to receive, retain, and convey rainfall run-off that cannot immediately infiltrate, and provides removal of sediment that may be picked up in overland sheet flow across lands disturbed by development prior to entering Country Club Tributary No. 1 and Tallahala Creek. Detritus and decomposition of organic matter from the abutting wetlands also provide nutrients and organic carbon for use by wildlife and fish in downstream food chains. These areas also provide natural lands adjacent to a 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:
- 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 Unnamed Tributary to Country Club Tributary No. 1 is shown as a broken blue line on USGS topographic quadrangle maps, which typically indicates the presence of an intermittent or seasonally flowing RPW. Based on observations of this tributary on the 23 December 2008 and 30 March 2009 dates of field review the flow regime appears to be at least seasonal but may be perennial. On the December and March review dates the tributary contained flowing water although there had been no precipitation recorded by the NOAA National Weather Service office at Hattiesburg within the preceding 24 hour period.

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

- Tributary waters: **1,180** linear feet **7** width (ft).
 - Other non-wetland waters: _____ acres.
- Identify type(s) of waters: _____

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: _____
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: The palustrine forested, scrub-shrub, and herbaceous emergent wetlands abutting the seasonal RPW tributary to Country Club Tributary No. 1 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: **37.5** 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 USGS 7.5 minute topographic quad Laurel West, MS .

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, Jones County, Mississippi. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [8/11/2008] and provided by delineation consultant.
- National wetlands inventory map(s). Cite name:Laurel West, MS (scanned data).
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Jones County, Mississippi Unincorporated Areas, Community Panel No. 280222 0110B Effective February 16, 1990 and City of Laurel, Mississippi Jones County, Community Panel No. 280092 0005C Map Revised October 13, 1978.
- 100-year Floodplain Elevation is:Zone AE or A2 subject to inundation by the 1-percent-annual-chance flood event. base flood elevation appears to be between 212 and 214 feet across the site. (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Aerial photographs provided by delineation consultant; 1996 USGS Terra Server color infrared photo and Microsoft Virtual Earth color areial photo, date unknown.
or Other (Name & Date):Color digital photographs taken by USACE project manager during 23 December 2008 and 30 March 2009 field reviews.
- 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: