

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): 30 October 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I-S, James L. Harris, Sr., SAM-2009-0803-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION: 7633 Creekwood Drive

State: Alabama County/parish/borough: Mobile City: Mobile
Center coordinates of site (lat/long in degree decimal format): Lat. 30.65107° N, Long. -88.22034° W.
Universal Transverse Mercator: Zone 16 X: 383072.85 Y: 3391568.12

Name of nearest waterbody: Unnamed Tributary to Second Creek

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

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

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

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

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

Office (Desk) Determination. Date: 7 October 2009

Field Determination. Date(s): 3 June 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: approximately 95 linear feet: approximately 10 width (ft) and/or acres.

Wetlands: 0.25 acres.

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

Elevation of established OHWM (if known):

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

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

Explain:

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

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

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

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

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

(i) General Area Conditions:

Watershed size: (8 digit HUC acreage) 560,998.88 acres

Drainage area: approximately 950 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 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.

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: The perennial unnamed tributary to Second Creek flows into Second Creek, which flows into Milkhouse Creek. Milkhouse Creek then flows into Halls Mill Creek which widens into a tidal water course after crossing under U.S. Highway 90, Halls Mill Creek then converges into the TNW Dog 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: Some segments of the unnamed tributary to Second Creek, particularly upstream (west) of the project site, have been straightened somewhat to facilitate drainage from developed commercial and residential areas and roadways along Schillinger Road.

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

Average width: 10 feet

Average depth: Unknown feet

Average side slopes: ~~3:1~~

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover:

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary appears to be relatively stable with little to no bank scour or channel incision in the immediate vicinity of the project site.

Presence of run/riffle/pool complexes. Explain: Unknown.

Tributary geometry: Meandering

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: Pick List

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

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

Other information on duration and volume: No other information specific to the unnamed tributary, such as USGS gage data, on flow volume and velocity, is available.

Surface flow is: Discrete and confined. Characteristics: Stream flow in the tributary is above ground and occurs within a defined channel that exhibits 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

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

Discontinuous OHWM.⁷ Explain:

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)

Mean High Water Mark indicated by:

survey to available datum;

physical markings;

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.

⁷ Ibid.

- physical markings/characteristics
- tidal gauges
- other (list):

- vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

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

Explain: The tributary has clear but dark naturally tannic water which had no cloudiness or turbidity at the time of field review.

Identify specific pollutants, if known: No known pollutants to the tributary have been identified.

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

Riparian corridor. Characteristics (type, average width): Predominantly hardwood forested wetland with sparsely scattered pines within the riparian corridor abutting the tributary drainage with upland areas dominated by commercial and residential development surrounding the wetland corridor along the tributary. In some areas, such as the lot to the west and in the Schillinger Road right of way, the wetland buffer along the tributary has been cleared of forest vegetation and is grassed or sodded.

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary helps convey organic carbon and nutrients from decomposing vegetation and 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 animals can utilize for hydration on a perennial basis.

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: 0.25 acres

Wetland type. Explain: Predominantly bottomland hardwood forested wetlands with some sparsley scattered pines throughout.

Wetland quality. Explain: Moderate/medium quality wetlands.

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: Wetlands treat and retain flood water and stormwater run-off as well as non-rainfall driven hillside seepage, providing perennial water storage and water re-charge to the unnamed perennial tributary.

Surface flow is: Overland sheetflow

Characteristics: Wetland and Floodplain flows (during rainfall events run-off water flows over the landscape toward and through the wetlands to the Unnamed Tributary to Second Creek) Also, when no rainfall is occurring, groundwater seeps out of surrounding upland hill sides and flows through the wetlands toward the RPW tributary.

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 5-10 river miles from TNW.

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

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 20 - 50-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 standing water in areas of the wetlands at the time of field review and evidence of water seepage flow from hillside slopes into the wetlands. The water in the wetlands was tannic colored but clear at the time of field review.

Identify specific pollutants, if known: No known chemical pollutants have been identified.

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

Riparian buffer. Characteristics (type, average width): Predominantly hardwood forested wetland with sparsely scattered pines within the wetland riparian buffer abutting the tributary drainage The total width of naturally vegetated wetland riparian buffer along the tributary varies significantly from an estimated total width of 130 feet through more densely developed commercial and residential areas to buffer areas approximately 500 feet wide near the convergence of the unnamed tributary into Second Creek.

Vegetation type/percent cover. Explain: The dominant plant species in the project area have Fac to Obl Region 2 wetland indicator status and include species such as *Nyssa biflora*, *Magnolia virginiana*, *Acer rubrum*, *Myrica cerifera*, *Itea virginica*, *Liriodendron tulipifera*, *Colocasia esculenta*, and *Woodwardia aerolata*.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The wetlands provide resting, nesting, refuge from predators, and foraging habitat for small amphibians, reptiles, birds, and mammals that reside in or periodically utilize the area.

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

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

Approximately (75) 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	75		

Summarize overall biological, chemical and physical functions being performed: The estimated 75 acres of wetlands being considered in the cumulative analysis for the unnamed tributary to Second Creek is the forested riparian wetland system in which the project area is located and which directly abuts the tributary drainage from its approximate headwaters west of Schillinger Road and just north of Grelot Road down to the convergence of the unnamed tributary into Second Creek. This area is being considered as a single wetland system abutting the tributary drainage. This wetland system provides a water source/area of water recharge to the tributary, it provides water purification functions to downstream RPWs and TNWs by moderating the flow of run-off water from impervious developed lands and providing capacity to receive and retain floodwater resulting in removal of sediment, trash, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from residential and commercial properties and roadways prior to entering the tributaries. This ability to receive and retain stormwater also provides flood attenuation functions. The similarly situated wetlands along the tributaries in this system also provide a natural corridor within an urban area that wildlife may utilize to carry out their daily functions such as foraging for food and water and seeking shelter for nesting or as refuge from predators. The fruits, nuts, and seeds of plants, and detritus and decomposition of organic matter from the wetlands also provide nutrients and organic carbon to the RPWs and downstream TNWs for use by wildlife and fish on-site and in 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: The wetlands and perennial RPW receive runoff water from adjacent undeveloped natural buffer lands, commercially and residentially developed lands, and roadways. The perennial-RPW in combination with its directly abutting palustrine forested wetlands have a significant nexus to the downstream RPWs and TNW by providing 1)- shading of the perennial-RPW helping prevent/reduce increase of water temperature in waters feeding into downstream RPWs and TNWs helping to keep these waters more habitable to aquatic wildlife and reducing the potential for in-stream algal blooms/growth spikes that often result from increased light exposure and water temperature 2)- a water source/contributing source of water recharge to the Unnamed tributary to Second Creek, Second Creek, and other downstream waterbodies 3)- provides capacity to receive, retain and treat rainfall run-off, and provides removal of sediment, trash, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from residential and commercial properties and roadways prior to entering the downstream tributary system and TNW 4)- detritus and decomposition of organic matter conveyed from the wetlands by perennial-RPW flows also provide

nutrients and organic carbon to the downstream waters for use by wildlife and fish in the downstream aquatic system and food chains 5)- the perennial-RPW drainage and its abutting wetlands create a small wildlife habitat corridor within a developed area of the City of Mobile that provides access to a source of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and small mammals that reside permanently in or periodically utilize the system of streams, wetlands, and uplands surrounding the unnamed tributary to Second Creek.

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 Second Creek is shown as a solid blue line on USGS topographic quadrangle maps, which typically indicates the presence of a perennially flowing stream. Second Creek also contained flowing water at the time of inspection and exhibits distinct bed and bank characteristics.
- 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: 95 linear feet 10 width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters:

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

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

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

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

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The forested wetlands within the review area, in combination with surrounding similarly situated wetlands, form a larger wetland complex which directly abuts the perennially flowing unnamed tributary to Second Creek. During field review no obvious or distinct upland berms, roadways or other physical barriers that sever hydrologic connectivity of the review area wetlands to the unnamed tributary were observed.**
- 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: **0.25** 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.

⁸See Footnote # 3.

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).

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.

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

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

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.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey, Mobile County, Alabama. Available online at <http://websoilsurvey.nrcs.usda.gov/> accessed [10/30/2009].
- National wetlands inventory map(s). Cite name: Spring Hill, AL (digital data).
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas Map No. 01097C0538 J effective July 6, 1998.
- 100-year Floodplain Elevation is: between 86 and 88 feet (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Color aerial photography from Google Earth, and color aerial photography available with downloaded NCSS web soil survey maps and data.
or Other (Name & Date): Color digital photographs taken by the USACE project manager during 3 June 2009 field review.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Authority for regulatory jurisdiction of these waters is found at 33 CFR Section 328.3(a)(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section and 33 CFR Section 328.3(a)(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (a)(6) of this section.

B. ADDITIONAL COMMENTS TO SUPPORT JD: