

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): 24 May 2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-I-S, Mobile County Commission - Billy Walker Road E Bennett Creek bridge replacement, SAM-2010-0327-LET

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alabama County/parish/borough: Mobile City: Citronelle
Center coordinates of site (lat/long in degree decimal format): Lat. 31.12560° **N**, Long. -88.28407° **W**.
Universal Transverse Mercator: Zone 16 X: 377571.03 Y: 3444230.85

Name of nearest waterbody: Bennett Creek

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

Name of watershed or Hydrologic Unit Code (HUC): (12-digit) 031700080203 Escatawpa River-Bennett Creek

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

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

- Office (Desk) Determination. Date: 24 May 2010
 Field Determination. Date(s): 29 March 2010

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~~ **no** "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: 140 linear feet: approximately 35 width (ft) and/or acres.
Wetlands: 0.45 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) 442,519.59 **acres**

Drainage area: Over 1,000 **acres**

Average annual rainfall: approximately 65.5 inches

Average annual snowfall: < 0.5 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: The project waters do not cross or serve as State boundaries although the TNW Escatawpa River to which it drains crosses back and forth across the Alabama/Mississippi state line multiple times before the Escatawpa River flows west draining into the Pascagoula River in Mississippi.

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: Bennett Creek flows into the Escatawpa River in Alabama which flows into the state of Mississippi where it is a Section 10 TNW of the State of Mississippi.
Tributary stream order, if known:

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

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

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

Average width: 35 feet

Average depth: Depth unknown, did not have an adequate measuring device for this parameter, but greater than 3 feet

Average side slopes: **4:1 (or greater)**.

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 has a wide stable channel with low banks that have little slope and are almost flat within a 100 year floodplain. The road fill approaches to the bridge to be replaced are the highest bank slopes along the creek within the review area.

Presence of run/riffle/pool complexes. Explain: The tributary is a tannic blackwater system with sufficient water depth that presence of run/riffle/pool complexes within the channel was not readily observable from ground observation (such as standing on the bridge structure looking upstream and downstream at the approximate midpoint of the channel) although these types of typical stream morphology features are assumed to exist in the creek due to its predominantly natural condition which appears to be relatively unimpacted by routine dredging activities or residential and commercial development.

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: Bennett Creek is a continually flowing, tannic water, perennial stream which contained flowing water on the day of field evaluation. There were also several areas of drainage patterns in wetlands observed that drain from the wetland into Bennett Creek.

Other information on duration and volume: No other tributary specific information or gage station data is available for Bennett Creek.

Surface flow is: **Discrete and confined**. Characteristics: Bennett Creek exhibits a defined bed and bank morphology with a predominantly hardwood forested wetland riparian corridor within a 100-year floodplain.

Subsurface flow: **Pick List**. Explain findings: Subsurface flow was not evaluated.

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

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

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.

High Tide Line indicated by:

- oil or scum line along shore objects
- fine shell or debris deposits (foreshore)
- physical markings/characteristics
- tidal gauges
- other (list):

Mean High Water Mark indicated by:

- survey to available datum;
- physical markings;
- 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 water flowing in Bennett Creek is naturally tannic and dark colored as a result of release of tannic acid during the natural decomposition of organic material and vegetation in the creek and along its floodplain. The water observed flowing in the tributary at the time of field review was clear with no turbidity or cloudiness from suspended sediment, no film or sheen, and no discoloration other than naturally occurring tannins in the water.

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

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

Riparian corridor. Characteristics (type, average width): Mixed pine, scrub-shrub, and broad-leaf deciduous and needle-leaf evergreen hardwood forested wetland riparian corridor within a 100-year floodplain along tributary Riparian corridor has natural forested vegetative cover and on average is approximately 650 to 700 feet wide (approximately 325-350 ft. wide each side of the creek).

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary helps convey organic carbon and nutrients from decaying

riparian plant material downstream to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates spawning, foraging, seeking shelter from predators, and/or residing permanently in the stream and adjacent riparian lands. There was evidence of utilization of the tributary and its wetland drainages by reptiles, amphibians and some fish through observation of frogs jumping from wetlands into the creek and turtles sliding from creek banks and logs in the creek upon human approach. Also unidentified juvenile fish were observed swimming in the waters of the creek near a shallow shelf along the north bank Other indications of wildlife use, such as deer and raccoon tracks and rabbit scat were also observed while on-site.

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: 0.45 acres

Wetland type. Explain: Broad-leaf deciduous and needle-leaf evergreen forested mixed with scrub-shrub.

Wetland quality. Explain: Wetlands immediately adjacent to Billy Walker Road are low to moderate quality wetlands with more exotic species presence (Cogon grass, privet, tallow tree, and japanese climbing fern) due to disturbance when the area was cleared and non-native fill materials introduced to construct and maintain the road and continuing periodic deposition of sediment into these areas due to sediment run-off from the maintained dirt road. Areas beginning 10 to 15 feet beyond the road disturbance are moderate to higher quality hardwood and scrub-shrub forested wetlands composed of mostly desirable species such as T. distichum, N. biflora, M. virginiana, A. rubrum, C. racemiflora, L. tulipifera, W. aerolata, and W. virginica.

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

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Water flows from the wetlands in discrete drainage patterns when there is sufficient saturation from seasonal high water table that the water seeps along the ground surface as overland flow, or when surface water run-off from storm events flows from uplands through the wetlands to the creek. Water also flows through the wetlands when water in the creek rises out of its banks and flows across the wetland floodplain.

Surface flow is: Overland sheetflow

Characteristics: Water flow through the wetlands is most commonly overland flow from run-off from precipitation events or from sufficient groundwater saturation to the soil surface that the water forms shallow flows across the ground down gradient toward the creek.

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 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 50 - 100-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: Areas of standing water and water flowing in discrete drainages in the wetlands consisted of clear but in some locations naturally tannic (orangish-brown tinted) water.

Identify specific pollutants, if known: No known identified chemical pollutants, however areas of deposition of sediment from the dirt road into the wetlands can be observed in some locations along the road.

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

Riparian buffer. Characteristics (type, average width): Mixed pine, scrub-shrub, and broad-leaf deciduous and needle-leaf evergreen hardwood forested wetland riparian corridor within a 100-year floodplain along tributary. Riparian corridor has natural forested vegetative cover and on average is approximately 650 to 700 feet wide (approximately 325-350 ft. wide each side of the 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 *Taxodium distichum*, *Nyssa biflora*, *Magnolia virginiana*, *Myrica cerifera*, *Itea virginica*, *Woodwardia virginica*, *Woodwardia aerolata*, *Acer rubrum*, *Cyrilla racemiflora*, *Ligustrum sinense*, *Sapium sebiferum*, and *Liriodendron tulipifera*. *Imperata cylindrica*, which is a prevalent noxious invasive along the margins of the existing road and bridge structure has a Region 2 indicator status of NI or Upl.

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 small to large 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 (43+) 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	43		

Summarize overall biological, chemical and physical functions being performed: The estimated 43 acres of wetlands being considered in the cumulative analysis for relevant reach of Bennett Creek for this jurisdictional determination consist of the forested riparian wetland system directly abutting the creek along an approximately 1.25 mile segment of creek between a perennial tributary convergence into Bennett Creek northeast of the Billy Walker Rd. bridge and a perennial tributary convergence into Bennett Creek southwest of the bridge and temporary bypass road location. This area is being considered as a single wetland system abutting the creek drainage. This wetland system provides a groundwater discharge source/area of water recharge to the tributary, it provides water purification functions to downstream RPWs and TNWs by moderating the flow of water 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 properties and periodic silvicultural activities on surrounding lands that can enter the creek. The ability to receive and retain stormwater also provides flood attenuation functions, the vegetation provides roughness to slow the velocity of floodwater that may flow across the floodplain. The similarly situated wetlands along the tributaries in this system also provide a natural corridor for wildlife to utilize while carrying 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:
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: Bennett Creek is shown as a solid blue line on USGS topographic quadrangle maps, which typically indicates the presence of a perennially flowing stream. Bennett Creek contains sufficient water volume and flow on a perennial basis that it has an associated FEMA mapped 100-year floodplain with a determined base flood elevation. Perennial flow of Bennett Creek was also confirmed by USACE project manager observation of flowing water on the date of field review.

Further Nexus discussion to addressing 11th Circuit Court decision from United States v. McWane case concluding that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos: The wetlands and perennial RPW receive runoff water from adjacent undeveloped natural buffer lands, residentially developed lands, silviculture 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 groundwater discharge source/contributing source of water recharge to the Bennett 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 properties, silvicultural tracts, 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 provide and maintain a wildlife habitat corridor along Bennett Creek within a still rural area of Mobile County northwest of Citronelle that provides access to a source of water, resting, nesting, refuge, and foraging habitat for amphibians, reptiles, birds, and small to large mammals that reside permanently in or periodically utilize the system of streams, wetlands, and uplands surrounding Bennett Creek.

- 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: **approximately 140** linear feet **approximately 35** 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 hardwood forested and scrub-shrub wetlands within the review area are situated within the FEMA mapped 100-year floodplain directly abutting Bennett Creek and contain discrete wetland seepage conveyances that flow directly into the tributary. The wetlands within the review area and are not physically separated from the tributary by upland berms, roadways or other physical barriers. See Section III D 2 above regarding perennial 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:

⁸See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.45** 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).

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.

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.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 7.5 minute Deer Park and Citronelle West, 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 [5/13/2010].
- National wetlands inventory map(s). Cite name: Deer Park and Citronelle West, AL digital data from USFWS NWI on-line wetlands mapper at <http://www.fws.gov/wetlands/Data/mapper.html>.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: Mobile County, Alabama and Incorporated Areas, Map Nos. 01097C0135K and 01097C0020K, Maps Revised March 17, 2010.
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): Color digital photographs taken by USACE project manager during 29 March 2010 field review.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .