

**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): May 12, 2020**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District CESAM-RD-A, Mr. Coby Lake - 57-acre property, SAM-2011-01597-JEB**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: Highway 59**

State: AL County/parish/borough: Baldwin City: Gulf Shores  
Center coordinates of site (lat/long in degree decimal format): Lat. 30.294049° N, Long. -87.688479° W.  
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Gulf Intracoastal Waterway (GIWW)

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Gulf Intracoastal Waterway (GIWW)

Name of watershed or Hydrologic Unit Code (HUC): HUC 12: Oyster Bay - 031602050208

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: 06/19/2019; 07/03/2019; 08/06/2019; 04/06/2020

Field Determination. Date(s): 06/20/2019; 08/13/2019; 09/02/2020; 03/10/2020

**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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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: 1,060 linear feet: 4-5 width (ft) and/or acres.

Wetlands: 0.97 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):<sup>3</sup>**

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

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **Three man-made ponds, with no surface connections to adjacent ditches, are located east of the powerline access road.**

### 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 waterbody<sup>4</sup> 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: 4,324 acres

Drainage area: 4,324 acres

Average annual rainfall: 66.06 inches

Average annual snowfall: >0.02 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

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

Project waters are 1 (or less) 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: .

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<sup>4</sup> 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 TNW<sup>5</sup>: Tributary 1 (T1) flows south to T2, which flows east to T3, which flows into the TNW. Waters from T1 also divert west behind Faulkner State Community College, into T4, which flows west to T5, which flows south into the TNW. Wetland 2 directly abuts T1 .  
Tributary stream order, if known: UNKNOWN.

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: T.1 is an excavated ditch feature which conveys stormwater and runoff to the TNW.  
 Manipulated (man-altered). Explain: .

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

Average width: 4-5 feet  
Average depth: 4 feet  
Average side slopes: **Vertical (1:1 or less).**

**Primary tributary substrate composition (check all that apply):**

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover: Hydrophytic herb stratum/15-30%  
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: All tributaries within review are artificial man-made features exhibiting primarily stable slopes with little evidence of erosion .

Presence of run/riffle/pool complexes. Explain: No.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 5 %

(c) Flow:

Tributary provides for: **Seasonal flow**  
Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: .

Subsurface flow: **Unknown.** Explain findings: UNKNOWN.

Dye (or other) test performed: .

**Tributary has (check all that apply):**

Bed and banks  
 OHWM<sup>6</sup> (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.<sup>7</sup> Explain: Excessive debris and leaf litter found in most channels.

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

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

**(iii) Chemical Characteristics:**

<sup>5</sup> 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.

<sup>6</sup>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.

<sup>7</sup>Ibid.

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

Explain: Surface water present within T1 was clear.

Identify specific pollutants, if known: UNKNOWN.

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

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: T1 includes approximately 0.2 acre of wetland fringe characterized by hydrophytic vegetation.
- 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 elemental organic carbon and nutrients from decaying riparian plant material downstream and provides habitat to the resident amphibians and aquatic invertebrates, and aquatic and terrestrial vertebrates, for spawning and foraging. T1 would also provide a water source for drinking and other life needs for terrestrial species in surrounding riparian corridor and undeveloped forest areas as well as for wildlife species that are more tolerant of humans and reside in the surrounding area (squirrels, raccoons, opossum).

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: W1 - 0.49 acre; W2 - 0.018 acre; W3 - 0.025 acre; W4 (directly abutting) - 0.24 acre; T1 Wetland Fringe 0.2 acres

Wetland type. Explain: W1, W2, W3, and W4 are characterized as bottomland hardwood with a tree stratum comprised primarily of *Taxodium ascendens* and *Acer rubrum* and an herb stratum of *Scirpus cyperinus* and *Lycopodiella appressa*. Wetlands associated with T1 are fringe, dominated by hydrophytic herb stratum.

Wetland quality. Explain: Medium Quality. Although the presence of invasive *Triadica sebifera* within the wetland area, and *Ligustrum Japonicum* outside of the wetland area, indicates the area has been disturbed in the past, the wetlands continue to exhibit a healthy canopy, and provide wildlife habitat. The wetlands are surrounded by mostly undeveloped, vegetated upland areas.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: The flow from the wetlands into SC1 and SC2 primarily depends on amount of rainfall and antecedent rain events.

Surface flow is: **Discrete and confined**

Characteristics: Flow would remain within SC.

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: W1, W2, and W3 are connected to the RPW via SC1 and SC2, the manmade drainage channels.

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **1-2** river miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **500-year or greater** 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: Surface waters within W1 were tannic/highly stained, not clear. Surface water within SC1 and SC2 absent during times of visits.

Identify specific pollutants, if known: Possible pollutants would include runoff associated with the nearby developments including single and multi-family residences, roadway runoff, and commercial activities.

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

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: Forested, with full canopy.

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 are connected to a large wildlife corridor to the west and south, with only minor development in those areas.

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

All wetland(s) being considered in the cumulative analysis: **8**

Approximately ( 66.38 ) 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>
N	0.49 acre (on-site)		
Y	0.20 acre (on-site)	Y	30 acres (off-site)
Y	0.24 acre (on-site)		
N	0.0178 (on-site)	Y	20 acres (off-site)
N	0.0253 (on-site)	Y	15 acres (off-site)

Summarize overall biological, chemical and physical functions being performed: An estimated 65 acres of similarly situated off-site forested wetlands are being considered in the cumulative analysis for relevant reach in this jurisdictional determination. These additional areas are being considered as a mostly contiguous wetland system, which directly abut the continuous surface connection, extending from the ditch/canal systems to the estimated wetland/upland boundary. These wetlands are entirely within the 100-year and 500-year floodplains of Oyster Bay. The similarly situated wetlands in this system near the Gulf Intracoastal Waterway (GIWW) 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 and reproduction, 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 TNW for use by wildlife and fish on-site and in downstream food chains. The 0.97-acre of on site wetlands, in combination with the similarly situated wetlands provides capacity to receive and retain floodwater including sediment, trash, fertilizers, pesticides, other chemicals, animal and other biological wastes, etc. that may be picked up in stormwater run-off that can enter the TNW from commercial/industrial properties, residential properties, utility ROWs, and roadways. The ability to receive and retain stormwater also provides flood attenuation functions for developed upland areas and the vegetation provides roughness to slow the velocity of floodwater that may flow across the floodplain.

### 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 RPW T1, as well as the downstream tributaries T4 and T5, are identified on the National Hydrography Dataset as canals/ditches with flow lines. T1 exhibited surface water during all sight visits and during two of the site inspections, 08/13/19 and 03/10/20, it was observed that waters flowing from W4 had scoured through the powerline access road, indicating a direct abutting connection between W4 and the RPW, T1. With an area of 0.24 acre and average elevation change of 0.8-feet, W4 has the estimated capacity to hold 8,293 cubic feet of stormwater and runoff. In addition to W4, T1 also includes



approximately 0.20 acre of directly abutting fringe wetlands. The abutting wetlands receive and naturally remove pollutants from runoff water from adjacent undeveloped natural buffer lands, residentially developed lands, and commercial/industrial developed lands, and roadways surrounding the review area. T1, in combination with this directly abutting wetlands in the JD review area have a significant nexus to the downstream TNW by providing the capacity to receive, retain and treat rainfall, and provides removal of sediment, trash, fertilizers, pesticides, animal wastes, etc. that may be picked up in stormwater run-off from commercial/industrial, and residential properties, and roadways prior to entering the downstream tributary system and TNW.

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: During inspection of the northern 0.49-acre wetland (W1), a network of manmade drainage channels (SC1 and SC2) were observed to connect the wetlands to adjacent stormwater conveyance ditches (T1). In W1, a shallow channel was found running north-to-south through the wetland where observations included high watermarks, approximately 6-8 inches up the base of saplings within and adjacent to the channel. The channel continued south (SC1), outside of the delineated wetland, where it turned southeast and continued for approximately 430-linear-feet where it connected to a second ditch feature running west-to-east. Two small depressional wetlands were identified within and adjacent to the channels (W2 and W3). Within the west-to-east channel (SC2), moss trim lines were observed at the base of saplings, further indicating frequent inundation of the area. SC2 continued east approximately 320 feet, where it intersected with the powerline access road. A culvert was found connecting SC2 to T1. The two channels (SC1 and SC2) provide a continuous hydrologic surface connection from W1 to the RPW (T1). Although the continuous surface connection lacked indicators of high velocity flow (wrack lines, sediment sorting, scouring, etc.), field observations concluded that the wetland and its associated channels experience at least seasonal periods of inundation and provide transportation of excess stormwater to the adjacent RPW (T1). Desktop calculations estimate that W1, with an average depth of 1.5 feet, has the capacity to store approximately 27,000 cubic feet of water. Utilizing a watershed modeling tool, it was estimated that the approximate area of W1 and the associated surface connection have the potential to infiltrate 397.4 cubic meters (14,034 cubic feet) of stormwater during a 24-hour, 3-inch rain event. With the relatively slight changes in topography, stormwater would exit the area of W1 slowly, allowing for an increased rate of infiltration and a decreased rate of runoff. W1, W2, and W3, in combination with the estimated 65 acres of similarly situated off-site forested wetlands being considered in the cumulative analysis for this jurisdictional determination, have the ability to provide water storage, flood water desynchronization, retention of particulates, pollutant removal, and nutrient cycling for a substantive amount of stormwater and runoff from nearby developed areas. These services would reduce eutrophic effects to downstream waters, improving overall water quality and biological diversity of the aquatic ecosystem, having more than a speculative effect on the chemical, physical and biological integrity of the TNW.

**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: Inspection of the subject property found a ditch, approximately 4 feet wide by 4 feet deep by 1,880-feet long, running north-to-south, located centrally on the property, parallel with the power line utility. During all site inspections, which were performed during summer, late-summer, and early spring months, the ditch (T.1) exhibited standing water, hydric soils, and hydrophytic vegetation within approximately 1,060 linear feet of the feature. Field inspections found that T1 flows south, parallel to the powerline easement for 0.34 miles, behind Faulkner State Community College (FSCC). After receiving permission to access from occupants at FSCC, the ditches west of the facility were inspected. It was found that T.1 continued to flow south through a culvert below an access road at FSCC and an abutting ditch turned west (T4). Desktop review found that T.1 continues to flow south 0.41 miles, then turns east approximately 152-feet parallel to W 28th Ave. (T2), where it then connects with a tidally influenced ditch (T3) which flows south into the TNW (Gulf Intracoastal Waterway). The western ditch (T4) was found to flow west for 1 mile, then turn south for 0.31 miles (T5) until intersecting with W 28th Ave. where a culvert connects the feature to a tidally influenced ditch which flows south for 0.21 miles into the TNW. T.1, T.4, and T.5 are identified on the National Hydrography Dataset as canals/ditches with flow lines. The network of channels described above provides water storage, flood flow desynchronization, pollutant removal, flow attenuation, and organic debris trapping and storage for the TNW to which they are directly and indirectly connected. Precipitation events for the Gulf Shores area, prior to the March 10, 2020 site inspection, included a total of 4.42 inches for the month of January 2020, 3.15 inches for the month of February 2020, and 0.29 inch on March 5.

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

- Tributary waters: ~1,060 linear feet 4-5 width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> 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: W4 directly abuts T1, an RPW. During two site inspections, 08/13/19 and 03/10/20, it was observed that waters flowing from W4 had scoured through the powerline access road. T1, T4, and T5 are identified on the National Hydrography Dataset as canals/ditches with flow lines. In addition to W4, T1 includes approximately 0.20 acre of directly abutting fringe wetlands.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.44** 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: **W1: 0.49 acre, W2: 0.018 acre, and W3: 0.025** 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.<sup>9</sup>**

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):<sup>10</sup>**

- 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:** .

<sup>8</sup>See Footnote # 3.

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

<sup>10</sup>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 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: **Three man-made ponds: P1 , P2, and P3, were found to have no surface connections to the adjacent ditches, are located east of the powerline access road.**
- 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: Approximately 0.5 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: Parcel map, wetland delineation maps.
- 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 TNM - National Hydrography Dataset - January 2020.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 - Gulf Shores, AL - 2018.
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO Websoil Survey Export: 09-17-2018.
- National wetlands inventory map(s). Cite name: U.S. Fish and Wildlife Service, National Standards and Support Team, wetlands\_team@fws.gov | USDA FSA, GeoEye, Maxar, CNES/Airbus DS | Esri, HERE, Garmin, iPC.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: FEMA National Flood Hazard Layer (PANEL 01003C0937M eff. 4/9/2019).
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth Pro: 1992, 1997, 2004, 2008, 2009.  
or  Other (Name & Date): Sites photos: 06/20/2019; 08/13/2019; 09/07/2019 .
- Previous determination(s). File no. and date of response letter: SAM-2011-01597-JEB // December 6, 2011.
- Applicable/supporting case law: RAPANOS.
- Applicable/supporting scientific literature: .
- Other information (please specify): Precipitation data: historic weather data (wunderground.com); watershed modeling tool (MapMyWatershed.org); USGS National Map Elevation Profile Tool .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The office concurs with the information provided in the data sheets for W1, W2, and W4 (as defined in the Corps wetland map); however, the delineation report submitted by the applicant's consultant asserted the W1, W2, and W3 were not jurisdictional without confirmation from the Corps. This office does not concur with the consultant's assumption of non-jurisdiction. Following several site visits and desktop review of the above resources, this office has determined that the manmade channels (SC1 and SC2) provide a continuous hydrologic surface connection from W1, W2, and W3, to the RPW (T1) and has a significant nexus to the TNW, to which T1 is indirectly connected; therefore W1, W2, and W3, are jurisdictional.