U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 3/2/2021
ORM Number: SAM-2018-00574-LET
Associated JDs: PJD SAM-2004-03402-MBM, issued 11/8/2010
Review Area Location[1]: State/Territory: AL City: Orange Beach County/Parish/Borough: Baldwin County
Center Coordinates of Review Area: Latitude 30.294849 Longitude -87.634923

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☒ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
GIWW	3,130	linear feet	RHA Tidal water is subject to the ebb and flow of the tide	National Wetland Inventory maps indicate the Gulf Intracoastal Waterway (GIWW) has a Cowardin classification of E1UBLx, which is Estuarine and Marine Deepwater habitat. GIWW connects Mobile Bay and Pensacola Bay, both of which are tidally influenced. GIWW between Mobile Bay and Pensacola Bay is on the District's Section 10 navigable waters list.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
GIWW	3,130	linear feet	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the	National Wetland Inventory maps indicate the GIWW has a Cowardin classification of E1UBLx, which is Estuarine and Marine Deepwater habitat. GIWW connects Mobile Bay and Pensacola Bay, both of which are tidally influenced. GIWW between Mobile Bay and Pensacola Bay is on the District's Section 10 navigable waters list.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
			ebb and flow of the tide.	
Wetland 6	0.17	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	Emergent tidal fringe wetland abuts GIWW to the south and is subject to the ebb and flow of the tide.
Wetland 7	0.02	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	Emergent tidal fringe wetland abuts GIWW to the south and is subject to the ebb and flow of the tide..
Wetland 8	0.03	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	Emergent tidal fringe wetland abuts GIWW to the south and is subject to the ebb and flow of the tide.
Wetland 9	0.0029	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	Emergent tidal fringe wetland abuts GIWW to the south and is subject to the ebb and flow of the tide.
Wetland 10 (a-f)	0.0297	acre(s)	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide.	Emergent tidal fringe wetland abuts GIWW to the south and is subject to the ebb and flow of the tide. Wetland 10 consists of multiple, small patches of unconsolidated wetlands (a-f) which are considered as a single feature for the purposes of this evaluation.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A.	N/A.	N/A

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 1	0.17	acre(s)	(b)(1) Non-adjacent wetland.	Feature is a non-adjacent wetland on the east side of a cleared powerline right-of-way located on the west border of the subject parcel. Wetland 1 appears to abut a large wetland area offsite to the west; however, there is no evidence to support adjacency to any (a)(1) – (a)(3) water. Historic aerial imagery and 3DEP digital elevation models show two elevated road crossings along the powerline ROW to the south and Roan Ave to the west, which indicate that any connection between Wetland 1 and the (a)(1) water (GIWW) to the south would be severed by artificial barriers. NHD data do not show any linear water features in the vicinity of Wetland 1 which could be considered (a)(1) – (a)(3) waters. NWI maps show the larger wetland area to the west as geographically isolated and not abutting any (a)(1) – (a)(3) water. The subject wetland is located at an approximate elevation of 10-13 ft. MSL, which is not subject to inundation during a typical year, as USGS water level data from nearby stations at Weeks Bay, AL and Pensacola, FL indicate the highest floods in recent years were at 4-7 ft. above MLLW.
Wetland 2	0.04	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of	Feature is a man-made ditch on north side of subject parcel and provides outflow from a man-made pond to the west (Other Water) to a roadside ditch on the west side of Foley Beach

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Express. Although the feature contains wetlands with hydrologic connection to an (a)(1) water, the feature was not constructed within an (a)(4) water or tributary and does not relocate a tributary. Historic aerials indicate the entire subject parcel was disturbed/filled between the 1980s and 1990s. USGS topos indicate the area near Wetland 2 was historically uplands, with a large wetland to the west (as described in Wetland 1 above). Soil maps show a combination of hydric and non-hydric soils throughout the review area (Plummer and Scranton series); however, there are no definitive data demonstrating the subject ditch was constructed in an adjacent wetland or tributary.
Wetland 3	0.28	acre(s)	(b)(1) Non-adjacent wetland.	Feature is a non-adjacent wetland that does not abut any (a)(1) – (a)(4) water, is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year, and is physically separated from the (a)(1) water (GIWW) to the south by artificial barrier (historic fill) without any direct hydrologic surface connection to the (a)(1) water. Historic aerials indicate the entire subject parcel was extensively disturbed and filled between the 1950s and 1990s, during which time Wetland 3 was likely excavated and/or created as a result of earthmoving and development activities on-site. Historic imagery indicates that dredged material from original construction of the GIWW to the south was placed throughout the subject property and along the banks between Wetland 3 and the GIWW. A site visit by the USACE on September 2, 2020 confirmed there are no direct hydrologic connections between Wetland 3 and the GIWW to the south. Wetland 3 is located at approximate elevation of 11-12 ft. MSL, which is not subject to inundation during a typical year, as USGS water level data from nearby stations at Weeks Bay, AL and Pensacola, FL indicate the highest floods in recent years were at 4-7 ft. above MLLW.
Wetland 4	0.17	acre(s)	(b)(1) Non-adjacent wetland.	Feature is a non-adjacent wetland that does not abut any (a)(1) – (a)(4) water, is not inundated by flooding from an (a)(1) – (a)(3) water in a typical year, and is physically separated from the (a)(1) water (GIWW) to the south by artificial barrier (historic fill) without any direct hydrologic

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				surface connection to the (a)(1) water. Historic aerials indicate the entire subject parcel was extensively disturbed and filled between the 1950s and 1990s, during which time Wetland 4 was likely excavated and/or created as a result of earthmoving and development activities on-site. Historic imagery indicates that dredged material from original construction of the GIWW to the south was placed throughout the subject property and along the banks between Wetland 4 and the GIWW. A site visit by the USACE on September 2, 2020 confirmed there are no direct hydrologic connections between Wetland 4 and the GIWW to the south. Wetland 4 is located at approximate elevation of 11-12 ft. MSL, which is not subject to inundation during a typical year, as USGS water level data from nearby stations at Weeks Bay, AL and Pensacola, FL indicate the highest floods in recent years were at 4-7 ft. above MLLW.
Wetland 5	0.17	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Feature is a man-made ditch near the south-central portion of the subject parcel which provides site drainage via culvert under a dirt road south towards the GIWW. Although the feature contains wetlands with hydrologic connection to an (a)(1) water, the feature was not constructed within an (a)(4) water or tributary and does not relocate a tributary. Historic aerials indicate the entire subject parcel was disturbed/filled between the 1980s and 1990s. Aerials dating back to 1950 show deposition of dredged material from the GIWW on the subject parcel at the location of Wetland 5. More recent aerial imagery between 2006-2008 show the area around Wetland 5 was filled and a ditch constructed to provide site drainage. USGS topos indicate the area near Wetland 5 was historically uplands. Soil maps indicate the area is “Made Land” which supports the finding of historic deposition of dredged material.
Other Water	0.58	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake	Feature is a man-made pond near the northeast portion of the subject parcel. Although the feature has hydrologic connection to an (a)(1) water (GIWW) via Wetland 2 (ditch) and other ditches to the east, the feature was not constructed within nor impounds any jurisdictional water. Historic aerials indicate the entire subject parcel was disturbed/filled

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			or pond is not an impoundment of a jurisdictional water that meets (c)(6).	between the 1980s and 1990s prior to construction of the pond (Other Water). USGS topos indicate the area near the pond was historically uplands, with a large wetland to the west (as described in Wetland 1 above). Soil maps show a combination of hydric and non-hydric soils throughout the review area (Plummer and Scranton series); however, there are no definitive data demonstrating the subject pond was constructed in an adjacent wetland or impounds a jurisdictional water.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Wetland Data Sheets, dated 10/24/18; Revised JD Maps, received 2/22/21

This information is sufficient for purposes of this AJD.

Rationale: Wetland data was collected within 2 years of the JD review. Wetland boundaries were verified on-site by the USACE on 9/2/20.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: 1955, 1981, and 1992 historic aerials from UA Library; 2006, 2008, 2011, and 2019 satellite imagery from GoogleEarth; Site photos from USACE site visit 9/2/20 and from applicant 7/2/2020

☒ Corps site visit(s) conducted on: 9/2/2020

☒ Previous Jurisdictional Determinations (AJDs or PJDs): Previous delineation/PJD – File: SAM-2004-03402-MBM, 11/8/2010

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: Web Soil Survey, National Cooperative Soil Survey, Baldwin County, Alabama. Available online at http://websoilsurvey.nrcs.usda.gov/

☒ USFWS NWI maps: NWI Project ID: RO4Y09P04; Baldwin County, AL; Digital 2001 CIR 1-meter Resolution

☒ USGS topographic maps: 1921 Bon Secour, AL; 1941 Foley, AL; 1980 Gulf Shores, AL; 2018 Gulf Shores, AL

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	1. USGS National Hydrography Dataset (https://viewer.nationalmap.gov/advanced-viewer/index.html?p=nhd) 2. USGS 3DEP Digital Elevation Models
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	USACE, Mobile District Section 10 Navigable Waterways List
State/Local/Tribal Sources	N/A.

Data Source (select)	Name and/or date and other relevant information
Other Sources	N/A.

B. Typical year assessment(s): A typical year assessment was performed in order to determine if the non-jurisdictional (b)(1) and (b)(8) waters are inundated by flooding from an (a)(1) – (a)(3) water during a typical year. As a result of the assessment, the USACE determined that the listed (b)(1) and (b)(8) waters are not subject to inundation by flooding from (a)(1) – (a)(3) waters based on the following factors:

i. Elevations throughout the subject parcel (above top of bank along the GIWW) range from approximately 10-15 ft. mean sea level, based on historic elevation surveys of the property from 2010 prepared in support of the original DA permit SAM-2004-03402-MBM for construction of the 47 Canal Place marina development. USGS water level data from nearby stations at Weeks Bay, AL and Pensacola, FL indicate the highest floods in recent years were at 4-7 ft. above MLLW

ii. During the USACE field visit on 9/2/2020, no evidence of inundation by flooding from the GIWW was documented in any of the (b)(1) or (b)(8) waters identified within the review area..

iii. Aerial imagery between 1955 to 2019 do not show evidence of inundation within the (b)(1) and (b)(8) waters identified within the review area.

This typical year assessment was not performed on the (a)(4) wetlands and (b)(5) ditches within the review area. The (a)(4) wetlands were all determined to be jurisdictional due to abutting an (a)(1) water (the GIWW), and therefore did not require a typical year assessment. Likewise the (b)(5) ditches did not require a typical year assessment to determine a flow regime, as these features were not constructed in an (a)(2) tributary, (a)(4) wetland, nor did they relocate any (a)(2) tributary.

C. Additional comments to support AJD: N/A or provide additional discussion as appropriate.