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): 02/11/2021
ORM Number: SAM-2020-00994-ES
Associated JDs: N/A
Review Area Location[1]: State/Territory: AL City: Fernland County/Parish/Borough: Mobile
Center Coordinates of Review Area: Latitude 30.472355 Longitude -88.284211

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
N/A.	N/A.	N/A	N/A.	N/A.

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
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
SB	5,885	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	During a 12/17/2020 site visit, the feature was observed to have flowing water, approximately 3"-6" in depth, and an OHW mark was observed throughout much of the channel. Utilizing historic aerial imagery dated 1950, overlaid onto modern imagery, the western portions of SB were found to align with previously existing natural tributaries of Franklin Creek. Later imagery from 1960 indicate the natural feature was altered by channelization associated with the agricultural use of the property. The feature, SB, was extended to the south and east

[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.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				where it continues to exhibit perennial flow. Under the NWPR, the alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to be perennial or intermittent and contributes surface water flow to a traditional navigable water or territorial sea, directly or indirectly, in a typical year. Considering the presence of flowing water, a continuous OHW mark, and bed and bank features within the channel, it is determined that SB is a perennial stream and within Corps jurisdiction under the NWPR.
SE	1,015	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	During a 12/17/2020 site visit, the feature was observed to have flowing water, approximately 3”-6”, and an OHW mark was observed throughout the channel. Surface water was also observed in aerial imagery obtained from Google Earth Pro dated 2019. Utilizing historic aerial imagery dated 1950, overlaid onto modern imagery, the western portions of SB were found to align with natural tributaries of Franklin Creek. Later imagery from 1960 indicate the natural feature was altered by channelization. Under the NWPR, the alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to be perennial or intermittent and contributes surface water flow to a traditional navigable water or territorial sea, directly or indirectly, in a typical year. SE is a perennial stream and within Corps jurisdiction under the NWPR.
SF2	1515	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Historic aerial imagery indicates SF2 was constructed in otherwise jurisdictional wetlands and previously existing natural tributaries of Bishop Manor Creek. Utilizing historic aerial imagery dated 1950, overlaid onto modern imagery, SF2 was found to align with historic aquatic resources. Later imagery from 1960 indicate the natural features were altered by channelization. Review of NOAA Lidar data and USGS DEMs found that current elevations within this portion of SF1 to still reflect characteristics of a depressional feature. During a 12/17/2020 site visit, the feature was observed to have flowing water, approximately 3”-4” in depth, and an OHW mark was observed throughout much of the channel.
SI	1,928	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or	The subject feature is a perennial upper tributary of Bayou La Batre, identified by the consultant and confirmed on-site by the USACE project manager. As specified by the NWPR, The term tributary includes a ditch that

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			indirectly to an (a)(1) water in a typical year.	either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of this definition. Surface water was observed within the channel during the 12/17/21 site visit and can be observed aerial imagery dated 2019.
SJ	3,095	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The subject feature is an intermittent upper tributary of Franklin Creek, identified by the consultant and confirmed on-site by the USACE project manager. Historic aerial imagery indicates the natural channel was altered by channelization associated with the agricultural use of the subject property. Review of elevation data, including Lidar imagery and USGS Digital Elevation Models, the subject channel was confirmed to be contiguously connected to downstream jurisdictional waters.
SL	6,329	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The subject feature is an intermittent upper tributary of Bishop Manor Creek, identified by the consultant and confirmed on-site by the USACE project manager. Review of elevation data, including Lidar imagery and USGS Digital Elevation Models, the subject channel was confirmed to be continuously connected to downstream jurisdictional waters.
SL2	1,915	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The subject feature is an intermittent upper tributary of Bishop Manor Creek, identified by the consultant and confirmed on-site by the USACE project manager. Review of elevation data, including Lidar imagery and USGS Digital Elevation Models, the subject channel was confirmed to be contiguously connected to downstream jurisdictional waters.
SM	442	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The subject feature is an intermittent upper tributary of Bishop Manor Creek, identified by the consultant and confirmed on-site by the USACE project manager. Review of elevation data, including Lidar imagery and USGS Digital Elevation Models, the subject channel was confirmed to be contiguously connected to downstream jurisdictional waters.
SN	651	linear feet	(a)(2) Intermittent tributary contributes surface water	The subject feature is an intermittent upper tributary of Bishop Manor Creek, identified by the consultant and confirmed on-site by the USACE project manager. Review of elevation data, including Lidar

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			flow directly or indirectly to an (a)(1) water in a typical year.	imagery and USGS Digital Elevation Models, the subject channel was confirmed to be continuously connected to downstream jurisdictional waters.
SO	486	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The subject feature is an intermittent upper tributary of Bishop Manor Creek. Historic aerial imagery dated 1960 and 1997 indicate the channel was created in wetlands. On site observations, coupled with historic aerial imagery, found the tributary exhibited intermittent flow characteristics. Review of elevation data, including Lidar imagery and USGS Digital Elevation Models, the subject channel was confirmed to be continuously connected to downstream jurisdictional waters.

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
WA	0.83	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The subject feature abuts the jurisdictional stream, SI.
WB	4.06	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The subject feature abuts the jurisdictional stream, SL.
WC	0.10	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The subject feature abuts the jurisdictional stream, SJ.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
SA	1,300	linear feet	(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	Although the subject channel intersects with the jurisdictional feature SB, it is indicated by historic aerial imagery dated 1950 and 1960 that the feature was constructed in uplands and was not an alteration of a natural tributary.

[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
			do not satisfy the conditions of (c)(1).	
SC	1,256	linear feet	(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).	Although the subject channel intersects with the jurisdictional feature SB, it is indicated by historic aerial imagery dated 1950 and 1960 that the feature was constructed in uplands and was not an alteration of a natural tributary.
SD	93	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Review of historic aerial imagery and on-site observations during the 12/17/20 site visit found that SD did not exhibit features indicating the channel experiences more than ephemeral flow.
SF1	1,160	linear feet	(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).	Although the northern reach of the subject channel intersects with the jurisdictional feature SB, it is indicated by historic aerial imagery dated 1950 and 1960 that this portion of SF was constructed in uplands.
SG	305	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Review of historic aerial imagery and on-site observations during the 12/17/20 site visit found that SG did not exhibit features indicating the channel experiences more than ephemeral flow.
SH	470	linear feet	(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).	Review of historic aerial imagery and on-site observations during the 12/17/20 site visit found that SH did not exhibit features indicating the channel experiences more than ephemeral flow. Furthermore, historic imagery did not indicate the feature was connected to a natural tributary prior to channelization.
SJ2	620	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch	Although the subject channel intersects with the jurisdictional feature SJ, it is indicated by historic aerial imagery dated 1950 and 1960 that the feature was constructed in uplands and was not an alteration of a natural tributary.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
			constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	
SK	142	linear feet	(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).	Although the subject channel intersects with the jurisdictional feature SJ, it is indicated by historic aerial imagery dated 1950 and 1960 that the feature was constructed in uplands and was not an alteration of a natural tributary.
SP	1,315	linear feet	(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).	Review of historic aerial imagery and elevation data found that the subject feature was constructed in an otherwise isolated, depressional wetland. Consistent with the NWPR, a ditch cannot render an otherwise isolated wetland an "adjacent wetland" and thus jurisdictional on that basis, unless the ditch itself is a tributary.
SQ	1,453	linear feet	(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).	It is indicated by historic aerial imagery dated 1950 and 1960, and Lidar imagery obtained from NOAA, that this portion of the feature was constructed in uplands and otherwise non-jurisdictional wetlands and was not an alteration of a natural tributary; therefore this section of the feature is non-jurisdictional.
SR	141	linear feet	(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).	Review of historic aerial imagery and elevation data found that the subject feature was constructed in an otherwise isolated, depressional wetland. Consistent with the NWPR, a ditch cannot render an otherwise isolated wetland an "adjacent wetland" and thus jurisdictional on that basis, unless the ditch itself is a tributary.

III. SUPPORTING INFORMATION

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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: Title(s) and date(s)
This information is and is not sufficient for purposes of this AJD.
Rationale: The originally submitted delineation report adequately identified the on-site ditches and tributaries; however, the consultant incorrectly asserted the jurisdictional status of some of the features. Following coordination of site visit findings with the consultant, revised delineation maps were provided that accurately identify the on-site aquatic resources.

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

☒ Photographs: Aerial and Other: Aerial Imagery obtained from Google Earth Pro 1997, 2012, 2015, 2017, 2019; Site photos (12/17/20)

☒ Corps site visit(s) conducted on: 12/17/2020

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

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

☒ USDA NRCS Soil Survey: SSURGO Websoil Survey .kmz (Export 05/29/20)

☒ USFWS NWI maps: The National Map – Advanced Viewer (Accessed 12/07/2020,)

☐ USGS topographic maps: Title(s) and/or date(s).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	The National Map – Advanced Viewer Web Application NHD; StreamStats Web Application
USDA Sources	N/A.
Other NOAA data (specify)	NOAA: Data Access Viewer (NOAA Office for Coastal Management, Mobile County, Alabama – 2014 Lidar)
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): Utilizing the Antecedent Precipitation Tool (APT), it was estimated that the 12/17/2020 site visit was performed during a month of dry conditions, but was preceded by two consecutive months of normal conditions. The APT calculated the site visit was performed during "normal conditions". Aerial imagery obtained from Google Earth Pro dated 2015, 2017, and 2019 indicate surface water within the subject channels. Considering these findings, combined with multiple years of historic aerial imagery and on-site observations, it is determined that the review findings are consistent with typical year conditions.

C. Additional comments to support AJD: Historic arial imagery obtained from the University of Alabama Air Photo archive dated 1950 and 1960 indicate tributaries of Bishop Manor Creek and Franklin Creek within the review area. By overlaying these historic air photos over modern aerial imagery in Google Earth Pro, it was determined that many of the existing channels align with the historic tributaries. Aerial imagery dated 1960 indicates the channelization of the features. Under the NWPR, the alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to be perennial or intermittent and contributes surface water flow to a traditional navigable water or territorial sea, directly or indirectly, in a typical year.