

**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): 9 November, 2021**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESAM-RD-A, Greenfield Environmental Trust (Wetland 1), SAM-2021-00401-DCH**

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

State: Alabama County/parish/borough: Mobile City: Mobile  
Center coordinates of site (lat/long in degree decimal format): Lat. 30.543614° **N**, Long. -88.138783° **W**.  
Universal Transverse Mercator:

Name of nearest waterbody: Middle Fork Deer River

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

Name of watershed or Hydrologic Unit Code (HUC): HUC-8: 03160205, Mobile Bay

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: 11/8/2021

Field Determination. Date(s): 9/9/2021

**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: linear feet: width (ft) and/or acres.

Wetlands: 2.5 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>**

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

Explain: .

<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.

### 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: 544,805 acres

Drainage area: 328.65 acres

Average annual rainfall: 67 inches

Average annual snowfall: 0.1 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **1 (or less)** 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: N/A.

Identify flow route to TNW<sup>5</sup>: Middle Fork Deer River (perennial) flows 0.81 miles southeast directly to the Theodore Industrial Canal and Mobile Bay, which are TNWs subject to the ebb and flow of the tide.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<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.

Tributary stream order, if known: 1st Order.

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: A majority of Middle Fork Deer River has been historically

cleared and ditched beginning from just south of its headwaters at the project site until its confluence with Mobile Bay to the southeast. A portion of Middle Fork Deer River was excavated ca. 1976 to extend the Theodore Industrial Channel westward. This portion of Middle Fork Deer River is now a TNW subject to the ebb and flow of the tide.

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

Average width: 7 feet  
Average depth: 2 feet  
Average side slopes: **2:1**.

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

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable channel (man-made ditch) with steep, vegetated grade.

Presence of run/riffle/pool complexes. Explain: None observed.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): Unknown %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Middle Fork Deer River appears to be a seasonal/perennial flowing stream which appears to maintain the most consistent flow during late winter through early spring.

Other information on duration and volume: Mean annual flow volume is 1.18 cfs. Stream time of travel is 0.18 days.

Surface flow is: **Discrete and confined**. Characteristics: Middle Fork ditch is a single tributary with confined flow.

Subsurface flow: **Pick List**. Explain findings: No evaluation of subsurface flow was conducted.

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: .

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>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: Water flowing in the Middle Fork ditch dark with tannic discoloration.

Identify specific pollutants, if known: Middle Fork Deer River is listed on the 2020 Alabama 303(d) list of impaired waterways for Organic Enrichment (BOD) due to collection system failures and urban runoff/storm sewers.

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

Riparian corridor. Characteristics (type, average width): Riparian corridors are present along a majority of Middle Fork Deer River, including the ditched portion south of the site.

Wetland fringe. Characteristics: Bayhead drain and wet pine flats wetland systems abut and adjacent to upper reaches of Middle Fork Deer River.

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 conveys organic carbon and nutrients from decaying riparian plant material downstream to the resident amphibians and aquatic invertebrates, and provides areas for foraging and shelter from predators for aquatic and terrestrial vertebrates. Having seasonal flow, this tributary also provides a seasonally consistent water source for drinking and other life needs for terrestrial species in surrounding riparian corridor and undeveloped forest areas.

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: 2.5 acres

Wetland type. Explain: Wet Pine Flats, with some indications of transition to Bayhead Drain. Predominately forested with pine and sweetbay, with some open herbaceous areas along the powerline ROW to the west and south.

Wetland quality. Explain: Wetland 1 is considered medium quality, based on the results of the Modified Wetland Rapid Assessment Procedure (M-WRAP) conducted by requestor and reviewed by Corps. Ground cover scored low for wet pine flats, due to high percentage of canopy coverage. Wetland canopy scored low to moderate due to presence of undesirable tree species. Wildlife utilization, hydrology, and water quality input/treatment were moderate to high scoring factors.

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: **Ephemeral flow**. Explain: Wetland exhibits typical hydrology of wet pine flats and/or bayhead drain, with ephemeral to intermittent flow as a result of the high water table and flat topography.

Surface flow is: **Overland sheetflow**

Characteristics: Flow through the wetlands is overland flow from groundwater saturation and seepage and upland runoff, forming shallow downgradient flow from Wetland 1 to Middle Fork Deer River to the southeast.

Subsurface flow: **Pick List**. Explain findings:

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 **1 (or less)** 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: Water within Wetland 1 is brown/tannic, with some surface sheen from iron reduction.

Identify specific pollutants, if known: Wetland 1 is potential recipient of organic nutrient runoff, as the abutting Middle Fork Deer River is listed on the 2020 Alabama 303(d) list of impaired waterways for Organic Enrichment (BOD) due to collection system failures and urban runoff/storm sewers. Wetland 1 is adjacent to three (3) iron oxide surface impoundments associated with the former Kerr-McGee Synthetic Rutile Beneficiation Plant Site. While these impoundments do not directly discharge to Wetland 1, there is potential for contaminants (primarily chlorides) to reach the wetlands through groundwater contact if any contamination is present in surficial aquifers. However, no groundwater or surface water data has been provided to confirm the presence of any target contaminants in Wetland 1.

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

Riparian buffer. Characteristics (type, average width): Wetland 1 functions as a part of a larger forested wetland buffer for Middle Fork Deer River. The riparian buffer consists of forested and herbaceous wetland vegetative cover (utility ROW) on the

north side of Middle Fork Deer River. On average, the wetland riparian buffer along Middle Fork Deer River measures approximately 300 feet in width.

Vegetation type/percent cover. Explain: Dominant wetland plant species are FAC and FACW species including: *Pinus ellioti* (25%), *Magnolia virginiana* (15%), *Athyrium filix-femina* (15%), and *Vitis rotundifolia* (10%).

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: Wetlands provide resting, nesting, refuge from predators, foraging habitat for birds, small amphibians, reptiles, and small to medium sized mammals that utilize the area.

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

All wetland(s) being considered in the cumulative analysis: **2**

Approximately ( 205.5 ) 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	137.5		
N	68		

Summarize overall biological, chemical and physical functions being performed: There are estimated 205.5 acres of abutting and adjacent wetlands within the drainage area of the relevant reach of Middle Fork Deer River. The 2.5 acre review area wetlands (Wetland 1) are part of a larger 137.5-acre similarly situated, abutting wetland complex located to the south, west, and southeast, which in combination provide the following functions and services to the downstream TNW: 1) groundwater discharge source or area of water recharge to the relevant reach of Middle Fork Deer River; 2) water purification functions (i.e. removal of nutrients associated with urban runoff) to the relevant reach and downstream waters to the TNW; 3) habitat for resting, nesting, refuge from predators, and foraging, as well as a source of nutrients and detritus that contribute to the downstream food web; 4) retention and prevention of downstream sediment deposition. The relevant reach of Middle Fork Deer River provides the additional services to the downstream TNW: 1) conveyance of organic carbon and nutrients from decaying riparian plant material to incumbent and downstream amphibians and aquatic invertebrates; 2) areas for foraging and shelter from predators for aquatic and terrestrial vertebrates.

### 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: The review area wetland (Wetland 1) receives and naturally removes pollutants from runoff water from adjacent urban and industrial lands and roadways surrounding the review area. The relevant reach of Middle Fork Deer River, in combination with the abutting wetlands in the JD review area have a significant nexus to the downstream TNW by providing: 1) a groundwater discharge source that contributes recharge of the tributary and all its connected downstream and other downstream waterbodies; 2) capacity to receive, retain and treat rainfall run-off, and provides removal of sediment, nutrients, pesticides, herbicides, animal wastes, etc. that may be picked up in stormwater run-off from urban and industrial lands and roadways prior to entering the downstream tributary system and TNW; 3) detritus, nutrients, and organic carbon conveyance to downstream waters used by downstream aquatic food webs; and, 4) habitat for amphibians, reptiles, birds, and small to medium mammals that reside permanently in or periodically utilize the stream and wetland system access to sources of water, resting, nesting, refuge, and

foraging habitat. The ability of upstream waterways such as Middle Fork Deer River to provide and perform these identified functions directly affects and prevents or reduces the degradation of the chemical, physical, and biological integrity of the TNW receiving waters. Although a Significant Nexus determination is not typically required for wetlands abutting an RPW, a Significant Nexus determination was made in this case due to the 11th Circuit Court of Appeals decision in U.S. v. Robison et.al. (October 24, 2007). The US v. Robison decision concluded that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos and Clean Water Act jurisdiction for all waters that are not TNWs or wetlands adjacent to TNWs, and therefore all affirmative AJDs in the State of Alabama require a Significant Nexus analysis, except for TNWs and their adjacent or abutting wetlands.

**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: .

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: .

**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: **Wetland 1 is part of a larger off-site wetland complex which directly abuts Middle Fork Deer River directly to the south of the review area. There are no physical or topographic barriers separating Wetland 1 from Middle Fork Deer River, and recent LiDAR data indicate Wetland 1 is located at the same elevation as Middle Fork Deer River. Middle Fork Deer River is shown on USGS topographic maps as a blue-line stream, is shown on the USGS National Hydrography Dataset as perennial, and is coded as R2UBH (Lower Perennial) in the National Wetlands Inventory. The stream is consistently shown to have surface flow in areal imagery during winter months and is therefore 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: .

Provide acreage estimates for jurisdictional wetlands in the review area: **2.5** 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.

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



Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<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:** .

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

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

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

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

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

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

<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.

**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 Theodore, Ala, 2020.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey, National Cooperative Soil Survey Version 15, September 16, 2021, Mobile County, Alabama. Available online at <http://websoilsurvey.nrcs.usda.gov/>.
- National wetlands inventory map(s). Cite name:NWI data viewer. Available online at: <https://www.fws.gov/wetlands/Data/Mapper.html>.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: Map 01097C0667L.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):1974, 1997, and 2020 aerial photos obtained from GoogleEarth.  
or  Other (Name & Date):Site specific photographs taken by CESAM-RD-A project manager during September 9, 2021 field visit.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): 2014 LiDAR data obtained from NOAA (1-ft Interval Contours, NAD83/NAVD88).

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** As noted in Section C.3, although a Significant Nexus determination is not typically required for wetlands abutting an RPW, a Significant Nexus determination was made in this case due to the 11th Circuit Court of Appeals decision in U.S. v. Robison et.al. (October 24, 2007). The US v. Robison decision concluded that Justice Kennedy's "significant nexus" test provides the governing rule of Rapanos and Clean Water Act jurisdiction for all waters that are not TNWs or wetlands adjacent to TNWs, and therefore all affirmative AJDs in the State of Alabama require a Significant Nexus analysis, except for TNWs and their adjacent or abutting wetlands .