

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): 03/14/2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Mobile District, D.R. Horton - Harvest Creek Subdivision, SAM-2021-00948-ES (Drainage Area 2 - W2)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: AL County/parish/borough: Baldwin City: Fairhope

Center coordinates of site (lat/long in degree decimal format): Lat. 30.476070° N, Long. 87.834270° W.

Universal Transverse Mercator:

Name of nearest waterbody: Green Branch

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

Name of watershed or Hydrologic Unit Code (HUC): Fish River - Frontal Mobile Bay (0316020502)

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: 11/04/2021; 12/30/2021; 01/14/2022

Field Determination. Date(s): 11/30/2021

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Pick List** "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 **Pick List** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: 1.2 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

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

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

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 195,176.33 acres

Drainage area: 0.38 square miles

Average annual rainfall: 67.81 inches

Average annual snowfall: 0.01 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

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

Project waters are 1-2 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: .

Identify flow route to TNW⁵: Waters from W2 flow south, off-site, via Tributary D through a culvert under County Road 32, then southwest under Danne Road, then flows into Tributary E which flows southwest into Tributary F (Green

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

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Branch). Tributary F flows southeast through a culvert under Danne Rd. then continues to flow southeast where it drains into the nearest TNW Fish River.
 Tributary stream order, if known: First order.

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: Much of the unnamed tributary of Green Branch has been altered as a result of single family residential development and agricultural land-use in the surrounding area; however, the stream retains a hydrologic surface connection to the downstream TNW through under-road culverts.

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

Average width: feet
 Average depth: feet
 Average side slopes: **3:1**.

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: Aerial imagery indicates the downstream tributary is mostly stable, with some areas where the channel has been manipulated and removed of natural vegetation.

Presence of run/riffle/pool complexes. Explain: Unknown. The downstream tributary is off-site and the presence of run/riffle/pool complexes is not visible from aerial imagery.

Tributary geometry: **Meandering**
 Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**
 Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: As the downstream tributaries are located outside of the subject parcel, the flow regime can only be estimated from aerial imagery. Aerial imagery of tributaries within the relevant reach of W1 indicate presence of flow on multiple dates, however channels are poorly developed lacking evidence of sediment sorting, with moderate vegetation present, and moderate incising of the soil profile within manipulated channels. Although surface water could be identified on multiple dates of aerial imagery and site photos, presence was inconsistent, indicating the features exhibit intermittent flow.

Other information on duration and volume: Site specific streamflow data is not available for the features due to a lack of gauges within proximity of the review area; however statistical data obtained for the 243.2-acre drainage area described above, estimates that the subject features provide an estimated mean annual flow of 0.898-cubic-feet-per-second, with a 50-percent annual exceedance probability (AEP) peak flow of 109 cubic-feet-per-second, which would occur at least once every two-years. Flow within the above described tributaries is experienced for a duration sufficient to exhibit evidence of surface water, vegetative differences, and/or channel incising discernable from multiple dates of aerial imagery.

Surface flow is: **Pick List**. Characteristics: .

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

Dye (or other) test performed: .

Tributary has (check all that apply):

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

Discontinuous OHWM.⁷ Explain: .

⁶A 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.

⁷Ibid.

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

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

(iii) Chemical Characteristics:

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

Explain: Water color observed in aerial imagery was cloudy brown/gray and dark/brown.

Identify specific pollutants, if known: Uplands surrounding the tributary have historically been single family development and agricultural-use. Pollutants within the subject waters would be those typical to agricultural production, including phosphates and sulfates associated with use of pesticides, herbicides and fertilizers. The downstream TNW, Fish River was identified as an EPA 303(d) Listed Impaired Water, for recreation, due to the presence of Fecal Coliform associated with agriculture and urban-related runoff/stormwater. Considering the historic agricultural-use of the property, potential pollutants within the subject drainage area would likely include those typically associated with phosphorus- and nitrogen-based fertilizers and pesticides and animal waste effluents.

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

Riparian corridor. Characteristics (type, average width): About 1,100 linear feet of the lower reach of the tributary provides a forested riparian corridor of approximately 100-feet.

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The tributary and adjacent wetlands are expected to provide a foraging resource to wildlife species in the surrounding environment.

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: 1.2 acres

Wetland type. Explain: Forested.

Wetland quality. Explain: Wetlands are estimated to be low- to medium-quality considering adjacent development and past and present land-use.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The subject wetlands did not exhibit surface water during the 11/30/2021 site visit; however, aerial imagery from the Baldwin County Parcel Viewer Eagle View map tool, dated 2008, shows inundation of W2 and subsequent imagery also indicates periodic flow from W2. The 11/30/2021 site visit found additional evidence of hydrology including moss trim lines, sediment deposits, water-stained leaves, and water marks, indicating frequent inundation.

Surface flow is: **Discrete and confined**

Characteristics: Elevation data indicates flow within the subject wetland would be mostly confined.

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:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **1-2** 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: As mentioned above, surface water was not observed during the site visit.

Identify specific pollutants, if known: Uplands surrounding the tributary have historically been agricultural-use. Pollutants within the subject waters would be those typical to agricultural production, including phosphates and sulfates associated with use of pesticides, herbicides and fertilizers.

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

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 and adjacent wetlands are expected to provide a foraging resource to wildlife species in the surrounding environment.

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

All wetland(s) being considered in the cumulative analysis: **3**

Approximately (7.3) 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	1.2		
Y	1.7		
Y	4.3		

Summarize overall biological, chemical and physical functions being performed: The relevant reach considered in this analysis encompasses the approximately 3,300-linear-foot unnamed intermittent tributary of Green Branch and three adjacent wetlands, which includes W2 (1.2 acre) and two off-site wetlands identified as W3 (1.7 acre) and W4 (4.3 acre) for this analysis. The area of the off-site wetlands were estimated utilizing desktop resources described below. W2 is connected to the downstream stream and adjacent wetlands via a culvert connection under County Road 32. The three wetlands considered in this analysis provide attenuation and storage of surface water runoff associated with precipitation events and irrigation within the associated drainage area, which encompasses 243.2 acres. Runoff within the review area would likely include pollutants typical to fertilizer and pesticides associated with agricultural operations within the drainage area. The 7.3 acres of subject wetlands are indirectly connected to the nearest TNW, Fish River, via intermittent and perennial tributaries. The wetlands within this analysis would provide filtration of sediments and excess nutrients within surface water runoff. In addition, all features are expected to provide primary habitat for various life-stages of macroinvertebrates, aquatic and semi-aquatic reptiles, and foraging habitat for wildlife in the surrounding area (deer, racoon, birds, etc.).

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 subject wetland is identified by USGS National Hydrography Dataset and topographic maps as an intermittent unnamed tributary of Green Branch. The USFWS National Wetlands Inventory Mapper indicated a stream and palustrine forested wetlands within the footprint of W2. Further review of elevation data found topography indicative of wetland or stream conditions, with a visibly incised channel flowing south from the delineated boundaries of W2. Aerial imagery showed inundation of W2 and the abutting incised channel, which was observed to flow off-site through a culvert under CR 32 into a wetland area estimated to be 1.7-acre. Flow from this area was observed to continue off site in aerial imagery, through a culvert under Danne Road, where it transitions to an intermittent tributary of Green Branch. Desktop resources show the waters continue to flow indirectly through intermittent and perennial tributaries to the downstream TNW, Fish River. Physical functions provided by W2 includes flood attenuation, sediment trapping, and flow management of irrigation and precipitation runoff for the subject drainage area, encompassing 243.2 acres. Hydrologic inputs in the review area would likely contain chemicals associated with waste, fertilizers, and pesticide-use, typical to agricultural and silvicultural production and those typical to residential developments. Resources considered in the cumulative analysis would provide absorption of excess nutrients and

filtration of pollutants, prior to waters reaching the downstream, Fish River, which was identified as an EPA 303(d) Listed Impaired Water due to the presence of Fecal Coliform associated with agriculture and urban-related runoff/stormwater. On site observations, aerial imagery, photos, and elevation data indicate a continuous hydrologic surface connection from W2 to the downstream TNW Fish River. Review of streamflow data and aerial imagery found that the tributary associated with W2 provides an estimated mean annual flow of 0.898-cubic-feet-per-second, with a 50-percent annual exceedance probability (AEP) peak flow of 109 cubic-feet-per-second, which would occur at least once every two-years, sufficient flow to reach the downstream TNW. The features are expected to provide nesting and foraging habitat for nearby wildlife (deer, racoon, fox, etc.) and primary habitat for various life-stages of macroinvertebrates, aquatic and semi-aquatic reptiles. Considering the combination of functions described above, the relevant reach of W2 and its adjacent resources were found to have a significant nexus to the downstream TNW, Fish River.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
- Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- 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-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - 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: 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.

⁸See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: **1.2** acres.

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

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

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

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: .
 Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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

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

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

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

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.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following *Rapanos*.

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:Wetland Sciences, Inc. Delineation Report (Received 08/18/2021).
- 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: National Regulatory Viewer (NRV) - NHD and Watershed Boundary Dataset layers.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 2020 Magnolia Springs 1:24000.
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO Websoil Survey (Export: 09/13/2021) .
- National wetlands inventory map(s). Cite name: NRV - USFWS NWI Map Layers.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Baldwin County Parcel Viewer 2020 aerial imagery and Eagle View Map Tool (2008, 2013, 2016, 2018,2020); Google Earth Pro (2011, 2015, 2019).
or Other (Name & Date):Baldwin County Parcel Viewer.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):USGS StreamStats Web Application (03/14/2022, 03/15/2022).

B. ADDITIONAL COMMENTS TO SUPPORT JD: Prior to the site visit, desktop review of the USGS National Hydrography Dataset and USGS topographic maps indicated an intermittent blue line stream through the review area south of W2, which the agent, Wetland Sciences, Inc., asserted was isolated in the delineation report submitted on 08/18/2021. Further review of elevation data found topography indicative of wetland or stream conditions, with a visibly incised channel flowing south from the delineated boundaries of W2. Aerial imagery showed inundation of W2 and the abutting incised channel, which was observed to flow off-site through a culvert under CR 32 into a wetland area estimated to be 1.7-acre. Flow from this area was observed to continue off site in aerial imagery, through a culvert under Danne Road, where it transitions to an intermittent tributary of Green Branch. Desktop resources show the waters continue to flow indirectly through intermittent and perennial tributaries to the downstream TNW, Fish River. During the 11/30/2021 site inspection, the USACE Regulatory project manager identified wetland parameters outside of the boundaries for W2 identified in the original 08/18/2021 delineation report submitted by the applicant's agent. Wetland indicators identified outside of the boundaries included: Hydrology - Water Marks, sediment deposits, water-stained leaves, sparsely vegetated concave surface, moss trim lines; Soils - Redox Dark Surface; Vegetation - Cliftonia monophylla (OBL). Considering the site visit findings and results of desktop review, the USACE did not concur with the submitted data and requested a revised delineation. The agent provided a revised delineation on 01/26/2022, to which the USACE Regulatory project manager concurred.