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): April 22, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CESAJ-RD-WT, Villages of Lakewood Ranch, SAJ-2015-02859

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:FL County/parish/borough: Sarasota City: Lakewood Ranch
Center coordinates of site (lat/long in degree decimal format): Lat. 27.368322° **N**, Long. 82.409276° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Cooper Creek-Braden River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Manatee River
Name of watershed or Hydrologic Unit Code (HUC): Upper Braden River (HUC12:031002020202)
☒ 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: April 22, 2016
☒ Field Determination. Date(s): March 31, 2016

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 and are not** "*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 waters[2] (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 7.95 acres.
      Wetlands: *70.75* 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: **Project area includes wetlands (32.95 acres, see** IV B**) which appear isolated and non-jurisdictional. In addition, the site contains 11.74 acres of upland cut ditches and 501 acres man-made lakes, which would be considered pre-amble waters as they were dug in uplands and do not drain waters of the US** .

[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 waterbody[4] 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: 30321 **acres**
Drainage area: 30321 **acres**
Average annual rainfall: 52 inches
Average annual snowfall: 0 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **10-15** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **10-15** 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: NO.

Identify flow route to TNW[5]: Onsite tributary to Cooper Creek to Braden River to Manatee River a TNW..
Tributary stream order, if known: .

[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.

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

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Some portions of the tributary have been ditched for agriculture.

Tributary properties with respect to top of bank (estimate):
Average width: 6 feet
Average depth: 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: Relatively stable.
Presence of run/riffle/pool complexes. Explain: No.
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: **20 (or greater)**
Describe flow regime: intermittent to perennial in nature.
Other information on duration and volume: .

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

Subsurface flow: **Unknown**. Explain findings: Subsurface flow is likely due to the high prescence of wetlands and surface waters in the area .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (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: .

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:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water is relatively clear.
Identify specific pollutants, if known: unknown.

[6]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.
[7]Ibid.

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

☒ Riparian corridor. Characteristics (type, average width): corridor includes both forested and scrub-shrub habitats. The width varies from 10 feet to >500 feet in some areas.

☒ Wetland fringe. Characteristics: The tributary contains areas where it is more wetland than tributary, but has numerous abutting or adjacent wetlands..

☒ Habitat for:

☒ Federally Listed species. Explain findings: some portion of the tributary may provide habitat for the Wood Stork.

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: the multiple habitats found along this tributary would provide habitat for many species that are dependent on aquatic resources as part of the life cycle.

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:70.75 acres

Wetland type. Explain:both forested and scrub-shrub.

Wetland quality. Explain:varies from good to low quality depending on location, particularly in relation to areas that were previously mined.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Adjacent wetlands tend to have small swale like paths that connect to the tributary during rain or high water events.

Surface flow is**: Discrete and confined**

Characteristics: swale.

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: small swale to RPW.

☐ Ecological connection. Explain: .

☒ Separated by berm/barrier. Explain: small berm along portions of the RPW/non-RPWs may or may not be man-made.

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **50 - 100-year** 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 is relatively clear.

Identify specific pollutants, if known: .

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

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

☒ Vegetation type/percent cover. Explain:laurel oaks, maidencane, penny wort, juncus, etc. depending on type and stratum .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Reptiles, amphibians, small mammals.

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

All wetland(s) being considered in the cumulative analysis: **30 (or more)**

Approximately (250+) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
AA (Y)	0.66	L (N)	0.70
AAAA (N)	0.06	M (N)	0.92
AAAAA (N)	0.01	N (N)	4.87
BB (N)	0.53	NNN (N)	0.07
BBBB (Y)	0.02	OOO (Y)	0.13
BBBBB (N)	0.01	P (N)	0.46
CC (N)	0.78	PITI (N)	1.67
CCCC (N)	0.23	PPP (Y)	0.45
CCCCC (N)	0.02	Q (N)	5.00
DD (N)	0.39	QQQ (Y)	0.33
DDDD (N)	0.01	R (N)	1.73
EE (Y)	2.56	S (N)	0.63
EEEE (N)	0.02	T (N)	4.00
GG (N)	0.36	V (N)	7.01
HH (Y)	5.72	W (N)	2.81
I (N)	5.56	X (Y)	15.79
J (N)	6.38	ZZZ (N)	0.22
K (N)	0.63	MS-55 (CP)	0.01
Wetlands to North (Y&N)	25+/-	Wetlands to South (Y&N)	150 +/-

Summarize overall biological, chemical and physical functions being performed: storage of flood waters, reduction of downstream peak discharge and volume, recharge of aquifers/ maintenance of groundwater supplies, sediment and nutrients removal, provide breeding grounds, assist in maintenance of a more consistent water temperature in the tributary, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young).

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: Physical: The wetlands perform important flow maintenance functions including storage of flood waters and a release of these waters into the tributary in a more even and consistent manner. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water. The wetlands reduce local flooding. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters.
3.

4. Chemical: The wetlands improve water quality by removing sediment and nutrients that would otherwise reach downstream waters and have a negative effect on aquatic resources.

5.

6. Biological: The wetlands are of utmost importance biologically since the majority of other non-wetland areas in the watershed have been altered for agriculture, residential, or other purposes. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle. The wetland, along with the tributary system, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young) for many aquatic species that live in traditional navigable waters. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species .

7. 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:

8. Florida is in the Eleventh Circuit and the Eleventh Circuit has concluded that the Kennedy standard is the sole method of determining CWA jurisdiction in that Circuit. Therefore, unless the aquatic resources are traditional navigable waters or wetlands adjacent to traditional navigable waters, the Corps needs to conduct a significant nexus determination on all other waters in order to determine jurisdiction under the CWA. United States v. McWane, Inc., et al., 505 F.3d 1208 (11th Cir. 2007). The Corps has determined that for this review, Horse Creek and Wetlands E, F, G, H and K have more than an insubstantial or speculative effect on the physical, chemical, and biological integrity of the downstream TNWs, as described in Section III(C) of this form.

9.

10. Physical: The wetlands perform important flow maintenance functions including storage of flood waters and a release of these waters into the tributary in a more even and consistent manner. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water. The wetlands reduce local flooding. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters.

11.

12. Chemical: The wetlands improve water quality by removing sediment and nutrients that would otherwise reach downstream waters and have a negative effect on aquatic resources.

13.

14. Biological: The wetlands are of utmost importance biologically since the majority of other non-wetland areas in the watershed have been altered for agriculture, residential, or other purposes. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle. The wetland, along with the tributary system, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young) for many aquatic species that live in traditional navigable waters. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species .

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: The tributary flows through a mitigaiton area and flows seasonally, if not perennially. Regular monitoring data supports this.

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☒ Tributary waters: **5000** linear feet **6** width (ft).
- ☐ Other non-wetland waters: acres.
  Identify type(s) of waters: .

3. Non-RPWs[8] 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):

[8]See Footnote # 3.

☐ Tributary waters: linear feet width (ft).
☒ Other non-wetland waters: **7.95** acres.
Identify type(s) of waters: **ditches.**

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: wetlands are interconnected with the tributary.

Provide acreage estimates for jurisdictional wetlands in the review area: **26.25** 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 jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **1.95** 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: **42.55** 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):

[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.*

☐ 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: 32.95 acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:Eco Consultants.
☒ 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:RAR layer Google Earth.
  ☐ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:RAR layer Google Earth.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:RAR layer Google Earth.
☒ National wetlands inventory map(s). Cite name:RAR layer Google Earth.
☒ State/Local wetland inventory map(s):FLUCCS Map.
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):Google Earth, 1995-2016.
  or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. and date of response letter:1996-00220.
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:
A site visit was conducted on March 31, 2016 to verify the wetland limits and jurisdictional status of onsite wetlands. In addition, a desk review was completed using current and historical aerial imagery, the National Hydrography Dataset flow lines, and other remotely sensed data available using the Districts Resources at Risk database to determine presence and proximity of wetlands and surface waters.

Non-jurisdictional Waters: Wetlands AN, AS, BN, BS, CN, CS, D, DDDDD, EEEEE, EN, ES, FN, FS, GN, GS, H, RRR, and U are considered isolated with no significant nexus to downstream waters. These wetlands are largely remnants left over from past mining activities on the site. Any past flow has effectively been cut-off and they now appear to be depressional features in the landscape.

There is 1 upland cut lake/borrow pit that would be considered a pre-amble water as it is excavated from uplands for the purpose of obtaining fill material/mining and is located wholly within uplands. In addition, there are 11.74 acres of upland cut ditches onsite that would be considered a pre-amble water. None of these waters convey water from a wetland or other water to a water of the US. Therefore these waters are not regulated by the Corps.

Jurisdictional Waters: Wetlands AA, AAAA, BB, BBBB, EE, HH, OOO, PPP, QQQ, and X are abutting the unamed tributary (RPW) that flows into Cooper Creek which flows downstream to the Manatee River (a TNW). Wetlands R and ZZZ are adjacent to the unnamed tributary (RPW) that flows into Cooper Creek. These wetlands are considered jurisdictional as they have a significant nexus to downstream waters.

Wetlands AAAAA, BBBBB, CC, CCCC, CCCCC, DD, DDDD, EEEE, GG, I, J, K, L, M, N, NNN, P, PITI, Q, S, T, V, W, WP-54 and WP-55 are adjacent to non-RPWs that flow into the unamed tributary and on downstream to the TNW. These wetlands are considered jurisdictional as they have a significant nexus to downstream waters. .

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): April 22, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:CESAJ-RD-WT, Villages of Lakewood Ranch, SAJ-2015-02859

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:FL County/parish/borough: Sarasota City: Lakewood Ranch
Center coordinates of site (lat/long in degree decimal format): Lat. 27.368322° **N**, Long. 82.409276° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Gum Slough-Philippee Creek/Cow Pen Slough
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Sarasota Bay
Name of watershed or Hydrologic Unit Code (HUC): Cow Pen Slough (HUC12:031002010203)
☒ 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: April 22, 2016
☒ Field Determination. Date(s): March 31, 2016

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 and are not** "*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 waters[2] (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 7.31 acres.
      Wetlands: *162.25* 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: **Project area includes wetlands (9.84 acres, see** IV B**) which appear isolated and non-jurisdictional. In addition, the site contains 2.21 acres of upland cut ditches and 76 acres man-made lakes, which would be considered pre-amble waters as they were dug in uplands and do not drain waters of the US** .

[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 waterbody[4] 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: 18372 **acres**
Drainage area: 18372 **acres**
Average annual rainfall: 52 inches
Average annual snowfall: 0 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **2** tributaries before entering TNW.

Project waters are **10-15** river miles from TNW.
Project waters are **1-2** river miles from RPW.
Project waters are **10-15** aerial (straight) miles from TNW.
Project waters are **1-2** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: NO.

Identify flow route to TNW[5]: Onsite non-RPWs to Gum Slough to Philippee Creek to Sarasota Bay.
Tributary stream order, if known: .

[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.

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

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Some portions of the tributary have been ditched.

Tributary properties with respect to top of bank (estimate):
Average width: 10 feet
Average depth: 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: Relatively stable.
Presence of run/riffle/pool complexes. Explain: No.
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: **20 (or greater)**
Describe flow regime: ephemeral to intermittent in nature.
Other information on duration and volume: .

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

Subsurface flow: **Unknown**. Explain findings: Subsurface flow is likely due to the high prescence of wetlands and surface waters in the area .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (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: .

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:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water is relatively clear.
Identify specific pollutants, if known: unknown.

[6]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.
[7]Ibid.

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

☒ Riparian corridor. Characteristics (type, average width): corridor includes both forested and scrub-shrub habitats. The width varies from 8 feet to 100 feet in some areas.

☒ Wetland fringe. Characteristics: The tributary contains areas where it is more wetland than tributary, but has numerous abutting or adjacent wetlands..

☒ Habitat for:

☒ Federally Listed species. Explain findings: some portion of the tributary may provide habitat for the Wood Stork.

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: the multiple habitats found along this tributary would provide habitat for a long list of species that are dependent on aquatic resources as part of the life cycle.

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:162.25 acres

Wetland type. Explain:both forested and scrub-shrub.

Wetland quality. Explain:varies from good to low quality depending on location, particularly in relation to areas that were previously mined.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Adjacent wetlands tend to have small swale like paths that connect to the tributary during rain or high water events.

Surface flow is**: Discrete and confined**

Characteristics: swale.

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: small swale to non-RPW.

☐ Ecological connection. Explain: .

☒ Separated by berm/barrier. Explain: small berm along portions of the non-RPWs may or may not be man-made.

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **50 - 100-year** 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 is relatively clear.

Identify specific pollutants, if known: .

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

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

☒ Vegetation type/percent cover. Explain:laurel oaks, maidencane, penny wort, juncus, etc. depending on type and stratum .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Reptiles, amphibians, small mammals.

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

All wetland(s) being considered in the cumulative analysis: **30 (or more)**

Approximately (260+) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
BBB (N)	68.20	OO (N)	0.56
DDD (N)	0.66	PP (N)	3.70
EEE (N)	9.37	QQN (N)	0.80
FFF (N)	0.04	QQS (N)	4.85
HHH (N)	27.17	RR (N)	8.39
IIIE (N)	0.33	SS (N)	5.34
IIIW (N)	0.82	TT (N)	0.28
JJJ (N)	2.85	UU (N)	0.75
KK (N)	13.89	WW (N)	3.85
LL (N)	1.60	XX (N)	0.26
MM (N)	3.69	YY (N)	4.71
NN (N)	0.14	Wetlands to South (Y&N)	80+/-
Wetlands to North (Y&N)	20 +/-		

Summarize overall biological, chemical and physical functions being performed: storage of flood waters, reduction of downstream peak discharge and volume, recharge of aquifers/ maintenance of groundwater supplies, sediment and nutrients removal, provide breeding grounds, assist in maintenance of a more consistent water temperature in the tributary, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young).

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: Physical: The wetlands perform important flow maintenance functions including storage of flood waters and a release of these waters into the tributary in a more even and consistent manner. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water. The wetlands reduce local flooding. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters.
3.
4. Chemical: The wetlands improve water quality by removing sediment and nutrients that would otherwise reach downstream waters and have a negative effect on aquatic resources.
5.

6. Biological: The wetlands are of utmost importance biologically since the majority of other non-wetland areas in the watershed have been altered for agriculture, residential, or other purposes. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle. The wetland, along with the tributary system, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young) for many aquatic species that live in traditional navigable waters. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species .

7. **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:

8. Florida is in the Eleventh Circuit and the Eleventh Circuit has concluded that the Kennedy standard is the sole method of determining CWA jurisdiction in that Circuit. Therefore, unless the aquatic resources are traditional navigable waters or wetlands adjacent to traditional navigable waters, the Corps needs to conduct a significant nexus determination on all other waters in order to determine jurisdiction under the CWA. United States v. McWane, Inc., et al., 505 F.3d 1208 (11th Cir. 2007). The Corps has determined that for this review, Horse Creek and Wetlands E, F, G, H and K have more than an insubstantial or speculative effect on the physical, chemical, and biological integrity of the downstream TNWs, as described in Section III(C) of this form.

9.

10. Physical: The wetlands perform important flow maintenance functions including storage of flood waters and a release of these waters into the tributary in a more even and consistent manner. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water. The wetlands reduce local flooding. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters.

11.

12. Chemical: The wetlands improve water quality by removing sediment and nutrients that would otherwise reach downstream waters and have a negative effect on aquatic resources.

13.

14. Biological: The wetlands are of utmost importance biologically since the majority of other non-wetland areas in the watershed have been altered for agriculture, residential, or other purposes. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle. The wetland, along with the tributary system, provide wildlife habitat (e.g. feeding, nesting, spawning, rearing of young) for many aquatic species that live in traditional navigable waters. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species .

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: The tributary flows seasonally, if not perennially based on historical aerial imagery.

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☒ Tributary waters: **8500** linear feet **8** width (ft).
- ☐ Other non-wetland waters: acres.
  Identify type(s) of waters: .

3. **Non-RPWs[8] 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: **7.31** acres.
  Identify type(s) of waters: **ditches.**

[8]See Footnote # 3.

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 jurisidictional. Data supporting this conclusion is provided at Section III.C.

   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: **162.25** 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.

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[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.*

☐ 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: 9.84 acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:Eco Consultants.

☒ 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:RAR layer Google Earth.

☐ USGS NHD data.

☒ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name:RAR layer Google Earth.

☒ USDA Natural Resources Conservation Service Soil Survey. Citation:RAR layer Google Earth.

☒ National wetlands inventory map(s). Cite name:RAR layer Google Earth.

☒ State/Local wetland inventory map(s):FLUCCS Map.

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date):Google Earth, 1995-2016.
or ☐ Other (Name & Date): .

☒ Previous determination(s). File no. and date of response letter:1996-00220.

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

A site visit was conducted on March 31, 2016 to verify the wetland limits and jurisdictional status of onsite wetlands. In addition, a desk review was completed using current and historical aerial imagery, the National Hydrography Dataset flow lines, and other remotely sensed data available using the Districts Resources at Risk database to determine presence and proximity of wetlands and surface waters.

Non-jurisdictional Waters: Wetlands AAA, CCC, SSS, TTT, and ZZ are considered isolated with no significant nexus to downstream waters. These wetlands are largely remnants left over from past mining activities on the site. Any past flow has effectively been cut-off and they now appear to be depressional features in the landscape.

There is 1 upland cut lake/borrow pit that would be considered a pre-amble water as it is excavated from uplands for the purpose of obtaining fill material/mining and is located wholly within uplands. In addition, there are 2.21 acres of upland cut ditches onsite that would be considered pre-amble waters. None of these waters convey water from a wetland or other water to a water of the US. Therefore these waters are not regulated by the Corps.

Jurisdictional Waters: Onsite wetlands are adjacent to non-RPWs that flow into Gum Slough and on downstream to Sarasota Bay (the TNW). Offsite wetlands are adjacent or abutting Gum Slough. These wetlands are considered jurisdictional as they have a significant nexus to downstream waters. .