APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

RELEVANT REACH: SOUTH BRANCH

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): 1/6/15

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Jacksonville District, Asturia (fka Behnke), SAJ-2005-10602 (JD-TEH)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: FL County/parish/borough: Pasco City: Odessa
Center coordinates of site (lat/long in degree decimal format): Lat. 28.196356° N, Long. 82.569124° W.
Universal Transverse Mercator:
Name of nearest waterbody: South Branch of the Anclote River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Anclote River
Name of watershed or Hydrologic Unit Code (HUC): Crystal-Pithlachascotee (0310020705)
☒ 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:
☒ Field Determination. Date(s): 6/17/14

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 F, FB-1, FB-2, J, K)
      ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs (Wetlands F3, L, O, P, R, T)
      ☐ 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: 134.09 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: Wetlands D, E, M, G, H,I and S were found to be isolated and non-jurisdictional (see Item IV(b) of this document). Water N is a borrow pit excavated completely in uplands and therefore not a water of the US. The following ditches were found to be non-waters of the US per the preamble of the 1986 CWA Final Rule (p.41217): FA-1, J, and Z, as they are upland-dug and terminate in (drain only) wetlands.

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[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: 269 square miles
Drainage area: 500 acres
Average annual rainfall: 55 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 **5-10** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **5-10** 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 TNW[5]: See attached map. South Branch (RPW) > Anclote River (RPW) > Anclote River (TNW)
South Branch is the relevant reach.

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[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.

Tributary stream order, if known: Second.

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

Tributary is:
- ☒ Natural
- ☒ Artificial (man-made). Explain: wetlands often connected by ditches.
- ☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
- Average width: 5-10 feet
- Average depth: 1-2 feet
- Average side slopes: **4:1 (or greater).**

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: minimal.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): <1 %

(c) Flow:

Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: >3mo.
Other information on duration and volume: .

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

Subsurface flow: **Unknown**. Explain findings: .
- ☐ 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: Fairly clear, but tannic water.
Identify specific pollutants, if known: .

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[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): +/-500 feet / freshwater and forested wetlands.
- ☒ Wetland fringe. Characteristics: Hardwood and cypress forest.
- ☒ Habitat for:
  - ☒ Federally Listed species. Explain findings: potential wood stork foraging habitat.
  - ☐ Fish/spawn areas. Explain findings: .
  - ☒ Other environmentally-sensitive species. Explain findings: amphibians, reptiles.
  - ☒ Aquatic/wildlife diversity. Explain findings: amphibians, reptiles, wading birds.

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: 134.09 acres (Wetlands F, F3, FB-1, FB-2, J, K, L, O, P, R, T)

Wetland type. Explain: Cypress and freshwater marsh.

Wetland quality. Explain: moderate/ some impacts due to cattle grazing.

Project wetlands cross or serve as state boundaries. Explain: NA.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: >3mo.

Surface flow is: **Discrete**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting (Wetlands F, FB-1, FB-2, J, K)

☒ Not directly abutting (Wetlands F3, L, O, P, R, T)

☒ Discrete wetland hydrologic connection. Explain: Wetlands F3 and T have non-jurisdictional flowways that connect them hydrologically to the RPW. Aerial signature of saturated conditions can be seen for Wetlands L, O, P, and R. See Attachment 7.

☒ Ecological connection. Explain: herps/reptiles/wading birds.

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **100 - 500-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: generally clear/tannic.

Identify specific pollutants, if known: .

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

- ☒ Riparian buffer. Characteristics (type, average width): palustrine forested.
- ☒ Vegetation type/percent cover. Explain: herbaceous/forested freshwater wetlands ~80%.
- ☒ Habitat for:
  - ☒ Federally Listed species. Explain findings: potential wood stork & Eastern indigo snake foraging habitat .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☒ Other environmentally-sensitive species. Explain findings: herps/reptiles.
  - ☒ Aquatic/wildlife diversity. Explain findings:herps/reptiles, wildlife corridor.

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

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

Approximately (100+) 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)
F (Y)	118.80		
F3 (N)	0.14		
FB-1 (Y)	0.09		
FB-2 (Y)	0.12		
J (Y)	6.21		
K (Y)	5.56		
L (N)	0.12		
O (N)	0.08		
P (N)	2.39		
R (N)	0.14		
T (N)	0.44		

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 seasonal/baseflows, 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), support diverse community of benthic invertebrates, a major food source for vertebrates.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW ~~but that do not directly abut the RPW~~ (see note below).** 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:

Note: On 1 December 2008, the US Supreme Court declined to hear the McWane/Robison case. This case involved a federal appeals court (11th Circuit) ruling that had the effect of overturning a criminal conviction of an industrial pipe manufacturer found guilty of illegally dumping oil, lead, zinc, grease and other pollutants into Avondale Creek in Alabama, a permanently flowing stream that eventually flows into the navigable Black Warrior River. The appeals court overturned the case because they interpreted the Rapanos decision as requiring a significant nexus determination on all waters except TNWs and wetlands adjacent to the TNWs, and in this case, a SND was not performed on Avondale Creek, an RPW.

The 2 December 2008 Rapanos guidance acknowledges (footnote 16, bottom of page 3) the Supreme Court's refusal to hear the McWane/Robison case. Therefore, in the 11th Circuit (Florida, Georgia, and Alabama) the McWane/Robison decision, which contradicted the June 2007 Rapanos Guidance concerning jurisdiction of RPWs and wetlands directly abutting RPWs, is final. Therefore, when performing an approved JD, the Corps must perform a significant nexus determination on ALL waters and wetlands except for TNWs and wetlands adjacent to TNWs.

The following represents the significant nexus findings for the South Branch tributary (RPW) and its adjacent wetlands (Wetlands F, F3, FB-1, FB-2, J, K, L, O, P, R, T) as identified above:

Physical: The wetlands perform important flow maintenance functions including storage of flood waters[1,2] and a release of these waters into the tributary in a more even and consistent manner[2]. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water[2]. The wetlands reduce local flooding[1]. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters[1]. These wetlands offer the following benefits to downstream aquatic resources: reduction of downstream peak discharge and volume, recharge of aquifers, maintenance of seasonal/baseflows, maintenance of groundwater supplies[1]. Cypress swamps (such as are contained on the project site) appear to have lower evapotranspiration rates than surrounding ecosystems and may, therefore, provide more recharge to the aquifer[3].

Chemical: The wetlands improve water quality by removing sediment and nutrients (particularly phosphorous and nitrogen) that would otherwise reach downstream waters and have a negative effect on aquatic resources[1,2,3]. In general, almost all organic matter and nutrients from wastewater flows inflows are removed or stored within the substrate of the wetland[1].

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[1]. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle[1]. 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[2]. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species[2]. These wetlands have a diverse community of benthic invertebrates, a major food source for vertebrates[3].

References

[1] The Clean Water Act Jurisdictional Handbook. 2007. Environmental Law Institute, Washington, DC, 77 pp.

[2] Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States. 2007. US Department of the Army and US Environmental Protection Agency. 12 pp.

[3] Ewel, K.C. 1990. Multiple demands on wetlands. Bioscience, 40:660-666.

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: Flow exceeds 3 mo/yr.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   The acreage of the RPW (South Branch) within the project area is included with the overall acreage for Wetland F.
   - ☐ Tributary waters: linear feet 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: 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: All of these directly abutting wetlands are part of the slough system that directly abuts South Branch.

Provide acreage estimates for jurisdictional wetlands in the review area: **130.78** acres. **Wetlands F, FB-1, FB-2, J, K**

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: **3.31** acres. **Wetlands F3, L, O, P, R, T**

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.

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[8] See Footnote # 3.

[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.***

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. "Surface Water T" contributed to the significant next determination for Wetland T, but was not jurisdictional itself. It did not exhibit the 3 parameters of a wetland nor did it have an OHW mark. Similarly, "Surface Water F3" contributed to the significant next determination for the small Wetland F marshes, but was not jurisdictional itself. It did not exhibit the 3 parameters of a wetland nor did it have an OHW mark
- ☒ 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: 9.78 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.

SECTION IV: DATA SOURCES.

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

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report. (as revised by Corps in field)
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☒ U.S. Geological Survey Hydrologic Atlas: .
  - ☒ USGS NHD data.
  - ☒ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name: Pasco County.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). Cite name: Google Earth Pro layer.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro 1995-present.
  or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Jurisdictional Wetlands - Adjacent	
Wetland ID	Acreage
F	118.80
F3	0.14
FB-1	0.09
FB-2	0.12
J	6.21
K	5.56
L	0.12
O	0.08
P	2.39
R	0.14
T	0.44
TOTAL	**134.09**

Non-Jurisdictional Wetlands	
Wetland ID	Acreage
D	0.02
E	1.04
G	0.05
Hs	0.01
I	0.03
M	8.45
S	0.18
TOTAL	**9.78**

Wetlands D and E are considered isolated and not adjacent because:

1. There is not an unbroken or shallow sub-surface connection to jurisdictional waters.
2. They are not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like. Wetlands D and E are separated from Wetland F by upland pasture.
3. Their proximity to a jurisdictional water is not reasonably close. Wetlands D and E are approximately 400 feet from Wetland F and roughly 2,000 feet the tributary of South Branch.

Furthermore, Wetlands D and E could not affect interstate or foreign commerce because they do not contain such waters:
a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
c. Which are used or could be used for industrial purpose by industries in interstate commerce..

Wetlands G, H, and I are considered isolated and not adjacent because:

1. There is not an unbroken or shallow sub-surface connection to jurisdictional waters.
2. They are not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like. Wetlands G, H, and I are separated from Wetland J by upland pasture.
3. Their proximity to a jurisdictional water is not reasonably close. Wetlands G, H, and I are approximately 130 feet from Wetland J and over 500 feet the tributary of South Branch.

Furthermore, Wetlands G, H, I could not affect interstate or foreign commerce because they do not contain such waters:
a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
c. Which are used or could be used for industrial purpose by industries in interstate commerce..

Wetland M is considered isolated and not adjacent because:

1. There is not an unbroken or shallow sub-surface connection to jurisdictional waters.
2. It is not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like. Wetland M is separated from Wetland F by a vast expanse of upland pasture.
3. Their proximity to a jurisdictional water is not reasonably close. This wetland does not drain under SR-54 & there is no culvert at this location. Wetland M lies approximately 950 feet from the closest water - the tributary of South Branch.

Furthermore, Wetland M could not affect interstate or foreign commerce because it does not contain such waters:
a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
c. Which are used or could be used for industrial purpose by industries in interstate commerce..

Wetland S is considered isolated and not adjacent because:

1. There is not an unbroken or shallow sub-surface connection to jurisdictional waters.
2. It is not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like. Wetland S is separated from Wetland F by upland pasture. Its position on the landscape does not allow for positive flow into the adjacent flowway.
3. Its proximity to a jurisdictional water is not reasonably close. Wetland S lies approximately 500 feet from the closest water - the tributary of South Branch.

Furthermore, Wetland S could not affect interstate or foreign commerce because it does not contain such waters:
a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
c. Which are used or could be used for industrial purpose by industries in interstate commerce..

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

RELEVANT REACH: UNNAMED TRIBUTARY OF SOUTH BRANCH

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): 1/6/15

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Jacksonville District, Asturia (fka Behnke), SAJ-2005-10602 (JD-TEH)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: FL County/parish/borough: Pasco City: Odessa
Center coordinates of site (lat/long in degree decimal format): Lat. 28.196356° N, Long. 82.569124° W.
Universal Transverse Mercator:
Name of nearest waterbody: UT South Branch of the Anclote River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Anclote River
Name of watershed or Hydrologic Unit Code (HUC): Crystal-Pithlachascotee (0310020705)
☒ 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:
☒ Field Determination. Date(s): 6/17/14

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 acres.
Wetlands: 42.72 acres (Wetlands A and B).

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: Water C is a borrow pit excavated completely in uplands and therefore not a water of the US.

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[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: 200 acres
Drainage area: 200 acres
Average annual rainfall: 55 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 **5-10** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **5-10** 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 TNW[5]: See attached map. UT South Branch (RPW) > South Branch (RPW) > Anclote River (RPW) > Anclote River (TNW)
UT South Branch is the relevant reach.

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[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.

Tributary stream order, if known: Second.

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

Tributary is:
- ☒ Natural
- ☒ Artificial (man-made). Explain: wetlands often connected by ditches.
- ☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 5-10 feet
Average depth: 1-2 feet
Average side slopes: **4:1 (or greater).**

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.
Presence of run/riffle/pool complexes. Explain: minimal.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): <1 %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: >3mo.
Other information on duration and volume: .

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

Subsurface flow: **Unknown**. Explain findings: .
- ☐ 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: Fairly clear, but tannic water.
Identify specific pollutants, if known: .

[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): +/-500 feet / freshwater and forested wetlands.
- ☒ Wetland fringe. Characteristics: Hardwood and cypress forest.
- ☒ Habitat for:
  - ☒ Federally Listed species. Explain findings: potential wood stork foraging habitat.
  - ☐ Fish/spawn areas. Explain findings: .
  - ☒ Other environmentally-sensitive species. Explain findings: amphibians, reptiles.
  - ☒ Aquatic/wildlife diversity. Explain findings: amphibians, reptiles, wading birds.

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: 42.72 acres

Wetland type. Explain: cypress and freshwater marsh.

Wetland quality. Explain: moderate – impacts from cattle grazing to cypress fringe and marsh.

Project wetlands cross or serve as state boundaries. Explain: NA.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: >3mo.

Surface flow is: **Discrete and confined**

Characteristics: excavated ditch (the RPW in this case) connects Wetland A to South Branch.

Subsurface flow: **Unknown**. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting (Wetland A)
- ☒ Not directly abutting (Wetland B)
  - ☒ Discrete wetland hydrologic connection. Explain: Aerial signature of saturated conditions – see Attachment 7.
  - ☒ Ecological connection. Explain: herps/reptiles/wading birds.
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **100 - 500-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: generally clear/tannic.

Identify specific pollutants, if known: .

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

- ☒ Riparian buffer. Characteristics (type, average width): palustrine forested.
- ☒ Vegetation type/percent cover. Explain: herbaceous/forested freshwater wetlands ~80%.
- ☒ Habitat for:
  - ☒ Federally Listed species. Explain findings: potential wood stork & Eastern indigo snake foraging habitat .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☒ Other environmentally-sensitive species. Explain findings: herps/reptiles.
  - ☒ Aquatic/wildlife diversity. Explain findings:herps/reptiles, wildlife corridor.

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

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

Approximately (42.72) 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)
A (Y)	42.51		
B (N)	0.21		

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 seasonal/baseflows, 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), support diverse community of benthic invertebrates, a major food source for vertebrates..

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW ~~but that do not directly abut the RPW~~ (see note below).** 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:

Note: On 1 December 2008, the US Supreme Court declined to hear the McWane/Robison case. This case involved a federal appeals court (11th Circuit) ruling that had the effect of overturning a criminal conviction of an industrial pipe manufacturer found guilty of illegally dumping oil, lead, zinc, grease and other pollutants into Avondale Creek in Alabama, a permanently flowing stream that eventually flows into the navigable Black Warrior River. The appeals court overturned the case because they interpreted the Rapanos decision as requiring a significant nexus determination on all waters except TNWs and wetlands adjacent to the TNWs, and in this case, a SND was not performed on Avondale Creek, an RPW.

The 2 December 2008 Rapanos guidance acknowledges (footnote 16, bottom of page 3) the Supreme Court's refusal to hear the McWane/Robison case. Therefore, in the 11th Circuit (Florida, Georgia, and Alabama) the McWane/Robison decision, which contradicted the June 2007 Rapanos Guidance concerning jurisdiction of RPWs and wetlands directly abutting RPWs, is final. Therefore, when performing an approved JD, the Corps must perform a significant nexus determination on ALL waters and wetlands except for TNWs and wetlands adjacent to TNWs.

The following represents the significant nexus findings for the UT South Branch tributary (RPW) and its adjacent wetlands (Wetlands A & B) as identified above:

Physical: The wetlands perform important flow maintenance functions including storage of flood waters[1,2] and a release of these waters into the tributary in a more even and consistent manner[2]. Therefore, the wetlands directly affect the duration, frequency, and volume of flow in the tributary and the downstream navigable water[2]. The wetlands reduce local flooding[1]. Storage of surface waters provides groundwater recharge that contributes to baseflow in the tributary that is vital to sustain aquatic life in downstream waters[1]. These wetlands offer the

following benefits to downstream aquatic resources: reduction of downstream peak discharge and volume, recharge of aquifers, maintenance of seasonal/baseflows, maintenance of groundwater supplies[1]. Cypress swamps (such as are contained on the project site) appear to have lower evapotranspiration rates than surrounding ecosystems and may, therefore, provide more recharge to the aquifer[3].

Chemical: The wetlands improve water quality by removing sediment and nutrients (particularly phosphorous and nitrogen) that would otherwise reach downstream waters and have a negative effect on aquatic resources[1,2,3]. In general, almost all organic matter and nutrients from wastewater flows inflows are removed or stored within the substrate of the wetland[1].

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[1]. These wetlands provide breeding grounds for species that cannot reproduce in faster-moving water and move between wetlands and uplands over their lifecycle[1]. 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[2]. The wetlands also maintain a more consistent water temperature in tributaries, which is important to many aquatic species[2]. These wetlands have a diverse community of benthic invertebrates, a major food source for vertebrates[3].

References

[1] The Clean Water Act Jurisdictional Handbook. 2007. Environmental Law Institute, Washington, DC, 77 pp.

[2] Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States. 2007. US Department of the Army and US Environmental Protection Agency. 12 pp.

[3] Ewel, K.C. 1990. Multiple demands on wetlands. Bioscience, 40:660-666.

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

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

3. **Non-RPWs[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: 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: Wetland A directly surrounds the RPW.

   Provide acreage estimates for jurisdictional wetlands in the review area: 42.51 acres (Wetland A).

[8] See Footnote # 3.

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: 0.21 acres (Wetland B).

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): Water C is a borrow pit excavated completely in uplands and therefore not a water of the US.

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):

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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.***

☐ 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.

SECTION IV: DATA SOURCES.

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

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  ☒ Office concurs with data sheets/delineation report. (as revised by Corps in field)
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
  ☒ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
☐ U.S. Geological Survey map(s). Cite scale & quad name: Pasco County.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: Google Earth Pro layer.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro 1995-present.
  or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Water C is a borrow pit excavated completely in uplands and therefore not a water of the US.

Jurisdictional Wetlands - Adjacent	
Wetland ID	Acreage
A	42.51
B	0.21
TOTAL	**42.72**