

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): June 17, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Nashville, Westhaven Development-West Permit Area A, Open Area 1, and Open Area 2, LRN-2018-00577

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Tennessee County/parish/borough: Williamson City: Franklin

Center coordinates of site (lat/long in degree decimal format): 35.924694, -86.940696

Universal Transverse Mercator: 16S/NAD 83

Name of nearest waterbody: unnamed tributary to Harpeth River

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

Name of watershed or Hydrologic Unit Code (HUC): West Harpeth Lower - 051302040204

- 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. Preliminary Jurisdictional Determination (PJD) Form (LRN-2018-00577)

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: May 29, 2020
 Field Determination. Date(s): August 9, 2018 and June 04, 2019

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 NO** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known): .

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

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

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

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

³ Supporting documentation is presented in Section III.F.

Wetland 1 measures approximately 0.17 acres and is located in the 1.2 acre Study Area (N 35.929809, W - 86.942933). During site visits, the feature lack inlet and outlet features, and NRCS soil survey for Williamson County indicates that the feature was excavated in Hampshire silty clay loam, a soil type that forms on gently sloping to steep uplands. The nearest waterbody is an unnamed tributary to Harpeth River (0.04 miles West). The data does not indicate a surface connection or shallow groundwater connection to waters of the U.S, and is geographically isolated. Wetland 1 is not known to be used by interstate or foreign travelers for recreation or other purposes, does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not known to be used for industrial purposes in interstate commerce. Wetland 1 was determined to be non-jurisdictional under the CWA because it is isolated and lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction.

Wetland 2: A 0.26 acre, emergent wetland positioned in a depression area located near the Northern boundary of Open Area 1 and the Southern boundary of West Permit Area A. Wetland 2 contains sparse herbaceous and woody vegetation and appears to have been constructed as an agricultural pond by the creation of a berm at the downslope end. Observations cited in the JD report (dated December 12, 2018) and made during the field investigation on June 4, 2019 indicate that water drains from the wetland 2 through the outlet channel identified as S4. Wetland 2 appears to receive hydrology only from runoff conveyed downslope by features identified as S2 and S6/S3 on Figure 2A of this document, and its outlet channel (S4) only exhibits weak and discontinuous OHWM for approximately 230 feet before dissipating approximately 375 feet from the nearest waters of the U.S. (S40A). Wetland 2 is not in the 100 year floodplain or 500 year floodplain of the nearest RPW S12/UT to West Harpeth River. The data does not indicate a surface connection or shallow groundwater connection to waters of the U.S, and is geographically isolated. Wetland 2 is not known to be used by interstate or foreign travelers for recreation or other purposes, does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not known to be used for industrial purposes in interstate commerce. Wetland 2 was determined to be non-jurisdictional under the CWA because it is isolated and lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction. Wetland 2 is depicted on Figure 2A of this document.

Wetland 3 measures approximately 0.15 acre and is located in the Northwestern corner of Open Area 1 (N 35.924619, W - 86.947144). Wetland 3 receives drainage from the feature identified as S1 (Figure 2A), but it lacks an outlet channel. The nearest waterbody is an unnamed tributary to Harpeth River (0.21 miles Northeast). The data does not indicate a surface connection or shallow groundwater connection to waters of the U.S, and is geographically isolated. Wetland 3 is not known to be used by interstate or foreign travelers for recreation or other purposes, does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce, and is not known to be used for industrial purposes in interstate commerce. Wetland 3 was determined to be non-jurisdictional under the CWA because it is isolated and lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction.

S1 drains into Wetland 1 in the Northwest corner of Open Area 1 (35.924601, -86.947018). S1 did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on a review of information submitted by Lord and Winter, LLC. in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S1 does not exhibit the physical characteristics of OHWM as defined by 33 CFR Part 328.3. No OHWM indicators were observed. Based on the assessment, S43 does not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S1 is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act does not meet the definition of a waters of the United States (WOUS) as defined by 33 CFR Part 328.

S2 is located near the center of the boundary line between West Permit Area A and Open Area 1 (35.924780, -86.944378). S2 did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on a review of information submitted by Lord and Winter, LLC. in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S2 does not exhibit the physical characteristics of OHWM as defined by 33 CFR Part 328.3. No OHWM indicators were observed. Based on the assessment, S2 does not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S2 is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act does not meet the definition of a waters of the United States (WOUS) as defined by 33 CFR Part 328.

S4 is an ephemeral feature that begins at the Southern boundary of Wetland 2 (35.924850, -86.944780) and exhibits weak and discontinuous OHWM for 230 feet before dissipating into overland flow through uplands consisting of hardwood forests. Approximately 375 feet northeast of the S4 terminus, S40A begins, but no indicators of hydrologic connection between the 2 features were observed. The stream does not carry flow directly or indirectly into a traditional navigable water. Therefore, the feature does not meet the definition of a tributary. Also, the feature does not meet the definition of a wetland. I have determined S4 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a)

S5 begins 161 feet east of the midpoint of S6/S3 and exhibits OWHM based on the presence of scour, disturbed leaf litter, and destruction of terrestrial vegetation. No water was observed in the channel during the field investigation on June 4, 2019 or cited in the JD report (dated December 10, 2018). No macro-invertebrates, crayfish, amphibians or algae/periphyton were observed within S5, and the feature does not appear on USGS Topographic Maps, NWI Maps, or the current National Hydrography Dataset map. S5 appears to convey overland sheet flow downslope to S6/S3, which drains into Wetland 2. Flow exits Wetland 2 through S4, but S4 only exhibits weak OWHM before dissipating 375 feet from the nearest tributary, S40A. The stream does not carry flow directly or indirectly into a traditional navigable water. Therefore, the feature does not meet the definition of a tributary. I have determined S5 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a).

S6/S3 is approximately 494 feet in length and conveys drainage into Wetland 2. The channel exhibits an OWHM based on the presence of defined bed and bank, scour, and destruction of terrestrial vegetation, but no water was observed in the channel during the field investigation on June 4, 2019 or cited in the JD report (dated December 10, 2018). No macro- invertebrates, crayfish, amphibians or algae/periphyton were observed within the channel. The feature does not appear on USGS Topographic Maps, NWI Maps or the current National Hydrography Dataset map. S6/S3 appears to convey runoff downslope into Wetland 2, which then exits Wetland 2 through S4, but S4 only exhibits weak OWHM before dissipating 375 feet from the nearest tributary, S40A. The stream does not carry flow directly or indirectly into a traditional navigable water. Therefore, the feature does not meet the definition of a tributary. I have determined S6/S3 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a)

S7 is a 72-foot long ephemeral feature that begins Northeast of S5 (35.924100, -86.943870) and exhibits OWHM based on the presence of scour, litter and debris, changes in soil character, and destruction of terrestrial vegetation. Neither water nor macro- invertebrates, crayfish, amphibians and algae/periphyton were observed within the channel during the field investigation on June 4, 2019 or cited in the JD report (dated December 10, 2018). The feature does not appear on USGS Topographic Maps, NWI Maps, or the the current National Hydrography Dataset map. S7 appears to convey overland sheet flow to S5, which flows downslope into S6/S3, which drains into Wetland 2. The flow then exits Wetland 2 through S4, but S4 only exhibits weak OWHM before dissipating 375 feet from the nearest tributary, S40A. The stream does not carry flow directly or indirectly into a traditional navigable water. Therefore, the feature does not meet the definition of a tributary. I have determined S7 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a).

S8 begins within hardwood forested area approximately 731 feet south of the OWHM of S12/UT to West Harpeth River (35.925262, -86.942066) and flows north for 172 feet before dissipating, after which no indicators of hydrologic connection were observed. The feature does not appear on USGS Topographic Maps, NWI Maps, or the current National Hydrography Dataset map, and no macro- invertebrates, crayfish, amphibians or algae/periphyton were observed within the channel. The nearest tributary is located 370 LF southeast of the start of S8. The stream does not carry flow directly or indirectly into a traditional navigable water. Therefore, the feature does not meet the definition of a tributary. Also, S8 does not meet the definition of a wetland. I have determined S8 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a).

S40A is located near the center of West Permit Area A (35.929969, -86.945272). S40A did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on Based on a review of information submitted by Lord and Winter, LLC. in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S40A does not exhibit the physical characteristics of OWHM as defined by 33 CFR Part 328.3. Based on the assessment, S40A does not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S40A is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.

S43 is located near the northeastern boundary of West Permit Area A (35.926396, -86.944593). S43 did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on a review of information submitted by Lord and Winter, LLC. in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S43 does not exhibit the physical characteristics of OWHM as defined by 33 CFR Part 328.3. Based on the assessment, S43 does not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S43 is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.

S44A is located near the northern boundary of West Permit Area A (35.927643, -86.946384). S44A did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on a review of information submitted by Lord and Winter, LLC. in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S44A does not exhibit the physical characteristics of OWHM as defined by 33 CFR Part 328.3. Based on the assessment, S44A does

not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S44A is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.

S46A is located near the southeastern boundary of West Permit Area A (35.925775, -86.938928). S46A did not meet the definition of a wetland and lacked lateral limits of jurisdiction. Based on a review of information submitted by Lord and Winter, LLC, in JD report (dated June 07, 2018) and Addendum to AJD Request (dated September 19, 2018), including assessment forms, photographs, and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined that S46A does not exhibit the physical characteristics of OHWM as defined by 33 CFR Part 328.3. Based on the assessment, S46A does not meet the definition of a wetland and lack lateral limits of jurisdiction. Therefore, S44A is not a Water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.

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 *Reganios* have been met.

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

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

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

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

(i) General Area Conditions:

Watershed size: **square miles**

Drainage area: **acres**

Average annual rainfall: **inches**

Average annual snowfall: **inches**

(ii) Physical Characteristics:

(a) Relationship with TNW:

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

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
 Project waters are **Pick List** river miles from RPW.
 Project waters are **Pick List** aerial (straight) miles from TNW.
 Project waters are **Pick List** aerial (straight) miles from RPW.
 Project waters cross or serve as state boundaries. Explain: .
 Identify flow route to TNW⁵: .
 Tributary stream order, if known: .

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

- Tributary is:**
- Natural
 - Artificial (man-made). Explain: .
 - Manipulated (man-altered). Explain: .

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

Average width: .
 Average depth: .
 Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: . | |
| <input type="checkbox"/> Other. Explain: . | | |

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

(c) Flow:

Tributary provides for: **Pick List**
 Estimate average number of flow events in review area/year: **Pick List**
 Describe flow regime: .
 Other information on duration and volume: .

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

Subsurface flow: **Pick List**. Explain findings: .
 Dye (or other) test performed: .

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: . | |

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

- | | |
|--|---|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |

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.

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.

⁷Ibid.

- 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: .

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width): .
 Wetland fringe. Characteristics: .
 Habitat for:
 Federally Listed species. Explain findings: .
 Fish/spawn areas. Explain findings: .
 Other environmentally-sensitive species. Explain findings: .
 Aquatic/wildlife diversity. Explain findings: .

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 .
 Wetland type. Explain: .
 Wetland quality. Explain: .
 Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

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

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
 Not directly abutting
 Discrete wetland hydrologic connection. Explain: .
 Ecological connection. Explain: .
 Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.
 Project waters are **Pick List** aerial (straight) miles from TNW.
 Flow is from: **Pick List**.
 Estimate approximate location of wetland as within the **Pick List** 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: .

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: .
 Habitat for:
 Federally Listed species. Explain findings: .
 Fish/spawn areas. Explain findings: .
 Other environmentally-sensitive species. Explain findings: .
 Aquatic/wildlife diversity. Explain findings: .

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

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

Approximately () 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)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

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

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

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

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

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

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

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

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

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

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

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

7. Impoundments of jurisdictional waters.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.

⁸See 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.
- 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) **Based on a review of information submitted by Lord and Winter, LLC. in multiple JD reports (dated June 07, 2018, September 19, 2018, December 10, 2018) including assessment forms and photographs and maps of the project site, and field investigations on August 9, 2018 and June 4, 2019, I have determined S1, S2, S3, S4, S5, S6, S7, S8, S40A, S43, S44A, and S46A are not waters of the U.S. I have also determined that Wetlands 1 Wetland 2, and Wetland 3 are not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFR Part 328.3(a). For further discussion See Section II B.2**

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

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

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

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

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: “Figures 2A – Aquatic Resources, 2B – Aquatic Resources, 2C – Aquatic Resources and 2D – Aquatic Resources” (September 30, 2019)
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. “Request for Approved Jurisdictional Determination, Southern Land Company – Natural Resource Inventory 2018” (dated December 10, 2018), USACE Changes AJD Requested (October 2, 2019), “Request for Approved Jurisdictional Determination, Southern Land Company – West Permit Area” (dated June 7, 2018), and “Addendum to AJD Request: Southern Land Company – West Permit Area; Provided by Lord and Winter” (dated September 19, 2018)
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: Notes from site inspections on August 9, 2018 and June 04, 2019.
- Corps navigable waters’ study: <https://www.lrn.usace.army.mil/Missions/Regulatory/Navigable-Waters-List/Cumberland-River-and-Tributaries/>.
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data. Study Area vs. NHD Showing HUC-12 Watercourses (Provided in JD Reports)
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation: Study Area vs. NRCS Soil Survey (Provided in JD Reports)
- National wetlands inventory map(s). Cite name: Study Area vs. National Wetland Inventory (provided in JD Reports)
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): Provided in JD Request Reports (dated June and Dec 2018) and in Addendum to AJD Request (dated Sept 2018); Taken by Corps during field investigations on August 9, 2018 and June 4, 2019
- 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: