



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31402-0889

MAR 04 2009

Regulatory Division

PUBLIC NOTICE

Characterization of Jurisdictional Determinations:
Purpose, Application and Documentation Requirements
as Defined by the
Savannah District, US Army Corps of Engineers

The Savannah District, US Army Corps of Engineers, by means of this notice, announces three approaches to completing a jurisdictional determination (JD) for the purpose of establishing jurisdiction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). This Public Notice (PN) provides an explanation of the three different types of JDs, which includes preliminary JDs, expanded preliminary JDs, and approved JDs. In addition, guidance detailing the utility and appropriateness of each JD is also provided. **Effective immediately, the approach detailed below will be implemented for a period of six months. Following the six month interim period, comments concerning the new JD process will be collected from the public and considered in making any amendments to this approach.**

1. Background: In the summer of 2007, the US Army Corps of Engineers (USACE) and the US Environmental Protection Agency (USEPA) published guidance specific to characterizing the types of waterbodies that are subject to RHA and CWA jurisdiction (see "Memorandum RE: Clean Water Act (CWA) Jurisdiction Following U.S. Supreme Court Discussion in *Rapanos vs. United States*," dated June 19, 2007, and the documents referenced therein). In brief, the US Supreme Court determined that the Clean Water Act jurisdiction applies to: (1) relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters; **or**, (2) wetlands that, "either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and/or biological integrity of other covered waters more readily understood as navigable (i.e., existence of a significant nexus)." Definitively establishing jurisdiction of waters as described in #1 has been achieved through the plurality method¹. Alternatively, defining a significant nexus and consequently exerting jurisdiction over waters described in #2 has been accomplished using the Kennedy method².

¹ Using the plurality method, the USACE asserts jurisdiction over non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months). The agencies will assert jurisdiction over those adjacent wetlands that have a continuous surface connection to such tributaries (e.g., they are not separated by uplands, a berm, dike, or similar feature).

² Using the Kennedy method, the USACE asserts jurisdiction over the following types of waters when they have a significant nexus with a traditional navigable water: (1) non-navigable tributaries that are not relatively permanent, (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent, and (3) wetlands adjacent to, but not directly abutting, a relatively permanent tributary (e.g., separated from it by uplands, a berm, dike or similar feature).

Requirements for using one or both tests are typically reflected in the level of detail required in the 7-page JD form, which documents all waters within a review area as well as the respective connectivity to “navigable” waters of the US. However, on December 1, 2008, the US Supreme Court denied the government’s petition for a writ of *certiorari* for United States v. McWane, Inc., et al. By default, USACE and USEPA now recognize the 11th Circuit decision that the Kennedy standard is the sole method of determining CWA jurisdiction in that circuit. The State of Georgia is located within the 11th Circuit, and consequently, the Savannah District now requires completion of a significant nexus test for all approved JDs.

Presently, the Savannah District utilizes approved JDs as the primary means of verifying jurisdiction in support of any subsequent USACE actions (i.e., permitting and enforcement activities). With the advent of the 11th Circuit decision, the Savannah District anticipates that requiring completion of a significant nexus investigation for all approved JDs could impact our ability to process future USACE actions in a timely manner. Thus, the Savannah District will be relying on the use of preliminary JDs to support particular USACE actions (see USACE Regulatory Guidance Letter 08-02, 26 June 2008).

2. Written Request for JDs: A landowner, permit applicant, or other “affected party” must request **in writing** an approved JD, preliminary JD, or expanded preliminary JD. A JD request can be submitted to the Savannah District as a stand alone action. Alternatively, a JD request can be made prior to, or concurrent with, the submittal of a permit application (i.e., Pre-construction Notification or Joint Permit Application). Before submitting any documentation, interested parties should become familiar with the JD type most applicable for a given USACE action (See Appendix A for chart of JD types and uses). The following sections define approved JDs, preliminary JDs and expanded preliminary JDs as well as provide detailed information on the applicability of each determination. For most circumstances, the Savannah District prefers that interested parties request an expanded preliminary JD. However, the Savannah District will ultimately retain final authority when determining the type of JD required.

3. Approved JDs: As defined in Regulatory Guidance Letter 08-02, an approved JD is an official Savannah District determination that jurisdictional “waters of the United States,” or “navigable waters of the United States,” or both, are either present or absent on a particular site. An approved JD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA and/ or RHA (See 33 C.F.R. 331.2.). For waters subject to Savannah District jurisdiction under the CWA, an approved JD would be associated with a Savannah District-approved, verified delineation of waters of the US (see Section 3.f).

a. The Savannah District will provide (subject to the limitation contained in paragraph 5.b. below) an approved JD to any landowner, permit applicant, or other “affected party” when:

(1) landowner, permit applicant, or other “affected party” requests **in writing** an approved JD by name or otherwise requests an official jurisdictional determination, whether or not it is referred to as an “approved JD”;

(2) landowner, permit applicant, or other “affected party” contests jurisdiction over a particular water body or wetland, and where the Savannah District is allowed access to the property and is otherwise able to produce an approved JD; or

(3) Savannah District determines that jurisdiction does not exist over a particular water body or wetland.

b. An approved JD:

(1) constitutes the Savannah District’s official, written representation that the JD’s findings are correct;

(2) can be relied upon by a landowner, permit applicant, or other “affected party” (as defined at 33 C.F.R. 331.2) who receives an approved JD for five years (subject to certain limited exceptions explained in RGL 05-02);

(3) can be used and relied on by the recipient of the approved JD (absent extraordinary circumstances, such as an approved JD based on incorrect data provided by a landowner or consultant) if a CWA citizen’s lawsuit is brought in the Federal Courts against the landowner or other “affected party,” challenging the legitimacy of that JD or its determinations;

(4) can be immediately appealed through the Savannah District’s administrative appeal process set out at 33 CFR Part 331; and

(5) will be required for complex, standard permits where the Savannah District has determined that impacts to waters of the US are of a magnitude sufficient to warrant such an investigation.

c. The Savannah District retains the discretion to use an approved JD in any other circumstance where the district determines that is appropriate given the facts of the particular case.

d. If wetlands or other water bodies are present on a site, an approved JD for that site will identify and delineate those water bodies and wetlands that are subject to CWA/RHA jurisdiction.

e. Approved JDs shall be documented using the 7-page form attached to this PN (See Appendix B). It is important to note that the form requires documentation of a detailed significant nexus determination (Section C of the form), which must be completed in accordance with the 11th Circuit Decision. The Savannah District will continue to post Approved JDs on our website (<http://www.sas.usace.army.mil/JDs.htm>).

f. A delineation of waters of the US would be provided to the Savannah District for verification by submitting a formal survey or GPS exhibit of waters within a review area. The complete package requesting verification of a wetland delineation would include but is not limited to: a formal survey or GPS exhibit of the waters within a review area; USACE field data sheets; soils map; quad sheets; etc. A Savannah District-verified delineation is valid for a period of five years from the date of issuance and will be honored by the district unless the information submitted, and on which the Savannah District has based its determination, is later found to be in error.

g. Savannah District will not accept a request for an approved JD for actions which are regulated pursuant to sections of the Clean Water Act (CWA) program which are administered by other Federal or state agencies (e.g., Section 402, 303, or 311). In such circumstances, the Savannah District will decline to perform the JD and instead refer the person who requested it to the Federal or state agency responsible for administering the program.

4. Preliminary JDs: Preliminary JDs are non-binding “written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed.” (See 33 C.F.R. 331.2.)

a. A landowner, permit applicant, or other “affected party” may elect to use a preliminary JD to voluntarily waive or set aside questions regarding CWA/RHA jurisdiction over a particular site. Parties interested in obtaining a preliminary JD would need to complete the preliminary JD form provided in Appendix C.

b. A landowner, permit applicant, or other “affected party” may elect to use a preliminary JD even where initial indications are that the water bodies or wetlands on a site may not be jurisdictional, if the affected party makes an informed, voluntary decision that is in his or her best interest not to request and obtain an approved JD.

c. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the US pursuant to Section 404 of the CWA.

d. When the Savannah District provides a preliminary JD, or authorizes an activity based on a preliminary JD, the Savannah District is making no legally binding determination of any type regarding whether CWA/RHA jurisdiction exists over the particular water body or wetland in question.

e. Appropriate uses of a preliminary JD would include: efforts that require initial real estate planning; projects with temporary impacts; projects with minor placement of dredged or fill material in waters of the US; docks; marinas; and/or other work subject to only RHA jurisdiction. With respect to permitting, interested parties can submit a request

for a preliminary JD, a Pre-construction Notification, and engineering drawings that illustrate the magnitude of impacts to waters of the US at the project site or within the review area.

f. A preliminary JD is “preliminary” in the sense that a recipient of a preliminary JD can later request and obtain an approved JD if that later becomes necessary or appropriate during the permit process or during the administrative appeal process.

g. Savannah District will not accept a request for a preliminary JD for actions which are regulated pursuant to sections of the Clean Water Act (CWA) program which are administered by other Federal or state agencies (e.g., Section 402, 303, or 311). In such circumstances, the Savannah District will decline to perform the JD and instead refer the person who requested it to the Federal or state agency responsible for administering the program.

5. Expanded Preliminary JD: The intent of using the expanded preliminary JD is to allow a landowner or other “affected party” to move ahead expeditiously to obtain a Savannah District permit authorization where the party determines that it is in his or her best interest. The expanded preliminary JD can be characterized by the information presented in Section 4 of this PN with the exception of 4.b, 4.c and 4.d. In most cases, expanded preliminary JDs are also non-binding “written indications” that there may be waters of the United States, including wetlands, on a parcel or indications of the approximate location(s) of waters of the United States or wetlands on a parcel.” However, Savannah District verification of a delineation, which is submitted in conjunction with an expanded preliminary JD request, would provide the landowner or affected party with defensible documentation concerning the maximum limits of Savannah District jurisdiction (See 5.c below).

The following information relates to use of the expanded preliminary JD and the supplemental documentation needed in support of permit requests.

a. The expanded preliminary JD would support CWA and RHA permitting and/or enforcement activities. Parties interested in use of the expanded preliminary JD to support permitting efforts would need to complete the expanded preliminary JD form provided in Appendix D.

b. In support of a minor permit or enforcement action, interested parties can submit a request for an expanded preliminary JD, the relevant permit application (i.e., Pre-construction Notification or Joint Permit Application), engineering drawings and/or a survey that quantifies the magnitude of impacts to waters of the US at the project site or within the review area.

c. When an expanded preliminary JD is requested, interested parties will also submit a delineation of waters of the US for the review area. The review area can be limited to the impact site(s) for which a permit is required or include the entire project site. Interested parties would submit a delineation to the Savannah District for

verification by providing a formal survey or GPS exhibit of waters within a review area. The complete package requesting verification of a delineation would include, but is not limited to: a formal survey or GPS exhibit of the waters within a review area; USACE field data sheets; soils map; quad sheets; etc. A Savannah District-verified delineation is valid for a period of five years from the date of issuance and will be honored by the district unless the information submitted, and on which the Savannah District has based its determination, is later found to be in error.

d. In conjunction with the expanded preliminary JD request, interested parties may request that the Savannah District verify the presence of isolated, non-jurisdictional waters located at the project site or within a review area. Parties requesting an expanded preliminary JD, and a verified delineation with an isolated, non-jurisdictional determination for waters on the project site or in the review area, should complete the forms located in Appendix D and E. Isolated, non-jurisdictional waters located on the GPS exhibit or survey should be identified by letter designation (i.e., A, B, C, etc.) only. Documents and figures illustrating the isolated, non-jurisdictional nature of select waters will be coordinated with USEPA.

e. Savannah District will not accept a request for an expanded preliminary JD for actions which are regulated pursuant to sections of the Clean Water Act (CWA) program which are administered by other Federal or state agencies (e.g., Section 402, 303, or 311). In such circumstances, the Savannah District will decline to perform the JD and instead refer the person who requested it to the Federal or state agency responsible for administering the program.

6. Appeal of Proffered Permits with Preliminary or Expanded Preliminary JDs: In any circumstance where a permit applicant obtains a Savannah District proffered individual permit or a permit denial, based on a preliminary JD or expanded preliminary JD, and where the permit applicant elects to pursue an administrative appeal of the proffered permit or the permit denial, the appeal "may include jurisdiction issues," as stated at 33 C.F.R. 331.5(a)(2). However, if an affected party during the appeal of a proffered permit or a permit denial challenges or questions jurisdiction, those jurisdictional issues must be addressed with an approved JD. Therefore, if, during or as a result of the administrative appeal of the permit denial or the terms and conditions of the proffered permit, it becomes necessary to make an official determination whether CWA/RHA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Savannah District should provide an approved JD as soon as is practicable. Such an approved JD would be subject to the same procedures as other approved JDs, such as requirements for coordinating approved JDs with EPA.

7. Coordination of JDs with USEPA: The Savannah District will continue to post approved JDs on our website. Consistent with historical practice, preliminary JDs or expanded preliminary JDs will not be coordinated with USEPA or posted on the District website. However, Appendix E, which documents non-jurisdictional waters, will be coordinated with USEPA and posted on the District website.

8. Savannah District Discretion on Use of Approved JDs: The Savannah District retains the discretion to use an approved JD in any circumstance where it is appropriate given the facts of a particular case.

For more information concerning this matter, please contact Jeffrey K. King at (912) 652-5133.

Enclosures:

Appendix A – Chart of JD types and uses

Appendix B – Approved JD form

Appendix C – Preliminary JD form

Appendix D – Expanded Preliminary JD form

Appendix E – Non-jurisdictional waters form

APPENDIX A

Chart of JD Types and Uses

	Preliminary JD	Expanded Preliminary JD	Approved JD
Intended Use	Early Site Characterization and/or Planning; Real Estate Transfers; LOPs; Some GPs	For most GPs, LOPs and SPs; and Enforcement actions	For complex and controversial GPs, SPs and Enforcement actions
Required JD Documentation	Completed PJD Form; Drawings that depict general location of waters	Completed PJD Form; completed GPS capabilities form and GPS delineation of waters on site; Corps data sheets; soils map; NWI	Completed AJD Form; completed GPS capabilities form and GPS delineation of waters on site OR formal survey of delineated waters; Corps data sheets; soils map; NWI
Required Supporting Documentation for use with permitting	PCN	PCN OR Joint Permit Application	PCN OR Joint Permit Application
Legally Binding Corps Jurisdictional Determination	No	No	Yes
Can Appeal Corps Determination	No	No	Yes
Post on Corps Website	No	Yes (if non-jurisdictional included) No (if all waters jurisdictional)	Yes
Corps determination that portions of waters on site are jurisdictional	No	Yes, requires submittal of delineation and completion of Appendix E	Yes
Used to determine no wetlands or other waters on site	No	No	Yes
Coordination with UEPA	No	Yes (If required)	Yes (If required)
Acronyms: Preliminary JD (PJD); Approved JD (AJD); General Permit (GP); Letter of Permission (LOP); Standard Permit (SP); Global Positioning System (GPS); Pre-Construction Notification (PCN); and National Wetland Inventory (NWI)			

APPENDIX B

Approved JD Form

SAS APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers (Revised 10 Jan 2009)

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: _____ County/parish/borough: _____ City: _____
Center coordinates of site (lat/long in degree decimal format): Lat. ° Pick List. Long. ° Pick List.
Universal Transverse Mercator: _____

Name of nearest waterbody: _____

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

Name of watershed or Hydrologic Unit Code (HUC): _____

☐ 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): _____

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

☐ 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: _____

There Pick List "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

☐ TNWs, including territorial seas (complete Sec III A. 1)

☐ Wetlands adjacent to TNWs (complete Sec III A. 2.)

☐ Interstate Waters that flow directly or indirectly into TNWs, explain in Sec III B. 1.

☐ Wetlands adjacent to Interstate Waters that flow directly or indirectly into TNWs. Explain in section III B. 2.

☐ Waters that flow directly or indirectly into and have a significant nexus with a TNW (provide data supporting this conclusion in Section III.D.)

☐ Wetlands adjacent to waters that flow directly or indirectly into a TNW and the tributary (relevant reach) and its adjacent wetlands have a significant nexus with that TNW (provide data supporting this conclusion in Section III.D.)

☐ Impoundments of jurisdictional waters (As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional).

☐ Demonstrate that impoundment was created from "waters of the U.S."

☐ Demonstrate that water meets the criteria for one of the categories presented above

☐ Demonstrate that water is isolated with a nexus to commerce (see below).

☐ Isolated (interstate or intrastate) waters, including isolated wetlands (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)).²

☐ 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: _____

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

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

Wetlands: acres: _____

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

² 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.

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

☐ 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). 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.

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

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.

☐ Uplands: acres. Explain:

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

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 only, then skip to Sec IV; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2, then skip to Sec IV; otherwise, see Section III.B below.

1. TNW

Identify TNW:

Summarize rationale supporting determination:

☐ Waters of the State

☐ Waters Covered Under a Court Case

☐ Navigable in Fact Waters (if selected explain below)

Basis for Decision:

Tributary has (check all that apply):

☐ Bed and banks

☐ OHWM¹ (check all indicators that apply):

☐ clear, natural line impressed on the bank

☐ changes in the character of soil

☐ shelving

☐ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ water staining

☐ other (list):

☐ the presence of litter and debris

☐ destruction of terrestrial vegetation

☐ the presence of wreck line

☐ sediment sorting

☐ scow

☐ multiple observed or predicted flow events

☐ abrupt change in plant community

☐ Discontinuous OHWM.² Explain:

¹A 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.

Factors other than the OHWM 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): | |

2. Wetland adjacent to TNW.

Summarize rationale supporting conclusion that wetland is "adjacent":

Wetland relationship to water (s) of the US, excluding other wetlands

- ☐ Separated by berm or barrier or the like – (footnote see section Sec 328.3 (c))
- ☐ Connections
- ☐ Surface
 - ☐ Shallow subsurface
 - ☐ Ecological

Basis for decision (explain):

B. CHARACTERISTICS OF INTERSTATE WATERS/WETLANDS:

1. Interstate Waters that flow directly to or indirectly into TNW

Summarize rationale supporting basis for determination:

- ☐ Waters of the State
- ☐ Waters Covered Under a Court Case
- ☐ Navigable in Fact Waters (if selected explain below)
- Basis for Decision:

(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.
- ☐ Tributary flows through Pick List tributaries before entering TNW.
- Tributary stream order, if known:
- Project waters are Pick List river miles from TNW.
- Project waters are Pick List aerial (straight) miles from TNW.

Identify flow route to TNW⁶:

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: | |

Factors other than the OHWM 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): | |

⁶ibid.

⁷ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, into tributary b, which then flows into TNW.

⁸ 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.

⁹ibid.

2. Wetland adjacent to Interstate Waters.

Summarize rationale supporting conclusion that wetland is "adjacent":

Wetland relationship to water (s) of the US, excluding other wetlands

☐ Separated by berm or barrier or the like - (footnote see section Sec 328.3 (c))

☐ Connections

☐ Surface

☐ Shallow subsurface

☐ Ecological

Basis for decision (explain):

C. CHARACTERISTICS OF TRIBUTARY AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any. If the JD covers only the waterbody² (and no adjacent wetlands), complete Sections III.C.1, IILD and IV. If the JD covers a tributary with adjacent wetlands, complete Section IILC.1 for the tributary, Section IILC.2 for any onsite wetlands, and Section III.C.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section IILD below, then complete Sec IV.

1. Characteristics of the waterbody that flows directly or indirectly into a TNW

(i) General Area Conditions:

Watershed size: Pick List

Drainage area: Pick List

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through Pick List tributaries before entering TNW.

Identify flow route to TNW³:

Tributary stream order, if known:

Project waters are Pick List river miles from TNW.

Project waters are Pick List aerial (straight) miles from TNW.

(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: feet

Average depth: feet

Average side slopes: Pick List.

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:

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

Rationale to support flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

¹ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

² Flow route can be described by identifying, e.g., tributary a, which flows through the review area, flows into tributary b, which then flows into TNW.

Subsurface flow: Pick List. Explain findings:

☐ Dye (or other) test performed:

Tributary has (check all that apply):

☐ Bed and banks

☐ OHWM¹⁰ (check all indicators that apply):

☐ clear, natural line impressed on the bank

☐ changes in the character of soil

☐ shelving

☐ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ water staining

☐ other (list):

☐ the presence of litter and debris

☐ destruction of terrestrial vegetation

☐ the presence of wreck line

☐ sediment sorting

☐ scour

☐ multiple observed or predicted flow events

☐ abrupt change in plant community

☐ Discontinuous OHWM.¹¹ Explain:

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

☐ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gauges

☐ other (list):

☐ Mean High Water Mark indicated by:

☐ survey to available datum:

☐ physical markings:

☐ vegetation lines/changes in vegetation types.

(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 roving/spawn areas. Explain findings:

☐ Other environmentally-sensitive species. Explain findings:

☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to tributary that flows directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) **Wetland Adjacency Determination:**

☐ Directly abutting

☐ Not directly abutting

☐ Separated by berm/barrier.

☐ Connection:

☐ Surface

☐ Shallow subsurface

☐ Ecological

Basis for decision (explain):

(b) **General Wetland Characteristics:**

Properties:

Wetland size: _____ acres

Wetland type. Explain:

Wetland quality. Explain:

(c) **General Flow Relationship:**

Flow is: Pick List. Explain:

¹⁰ 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.

¹¹ Ibid.

Surface flow is: Pick List
Characteristics:

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

(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:

Characteristic 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:

(iv) Other Ecological Characteristics.

☐ Explain:

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:

D. 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. 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. 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 *Rapans 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 water 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 IV:
2. Significant nexus findings for water and its adjacent wetlands, where the water 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 IV:

SECTION IV: DATA SOURCES.

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

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☐ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):
 - 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:

Appendix C

Preliminary JD Form

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: County/parish/borough: City:
Center coordinates of site (lat/long in degree decimal format): Lat. ° Pick List, Long. ° Pick List.
Universal Transverse Mercator:

Name of nearest waterbody:

Identify (estimate) amount of waters in the review area:

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

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

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

☐ Office (Desk) Determination. Date:

☐ Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on

any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

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

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

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

SAMPLE

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
1				0.1 acre	section 10 – tidal
2				100 linear feet	section 10 – non-tidal
3				15 square feet	non-section 10 – wetland
4				0.01 acre	non-section 10 – non-wetland

Appendix D

Expanded Preliminary JD Forms

EXPANDED PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: County/parish/borough: City:
Center coordinates of site (lat/long in degree decimal format): Lat. ° Pick List, Long. ° Pick List.
Universal Transverse Mercator:

Name of nearest waterbody:

Identify (estimate) amount of waters in the review area:

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

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

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

☐ Office (Desk) Determination. Date:

☐ Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on

any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

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

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

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

SAMPLE

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
1				0.1 acre	section 10 – tidal
2				100 linear feet	section 10 – non-tidal
3				15 square feet	non-section 10 – wetland
4				0.01 acre	non-section 10 – non-wetland

**US Army Corps of Engineers
Savannah District, Regulatory Division
Global Positioning Systems (GPS) Datasheet
Delineation of Wetlands, Streams and Other Waters
Within the State of Georgia**

USACE File Number _____ Date of Delineation _____

Name of Delineator Present _____

Make and Model of GPS Device Used (must be capable of sub-meter accuracy)

Geographic Coordinate System Used _____

Name of Continually Operated Reference Station Used for Post-processing

Date Post-processing Performed _____

Percent Dilution of Position (PDOP) (6 or less is required) _____

Name and Coordinates of Known Property Corner and/or Monument

GPS Reading of Known Property Corner and/or Monument

Frequency of Waypoints Taken During Survey _____

Note: GPS data must be provided, if requested. If GPS data and/or GPS delineation is determined unacceptable by the Savannah District, a survey sealed by a surveyor licensed in Georgia will be required.

Appendix E

Non-Jurisdictional Waters Form

☐ No wetlands on-site.

☐ 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).

☐	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.	

☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps:
☐ Corps navigable waters' study:
☐ U.S. Geological Survey Hydrologic Atlas:
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.

☐ USGS map(s). Cite name:
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☐ National wetlands inventory map(s):
☐ State/local wetland inventory map(s):
☐ FEMA/FIRM map(s):
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929).
☐ Photographs: ☐ Aerial (Name & Date):
or ☐ Other (Name & Date):

☐ Previous Determination(s). File number and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):