



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): September 25, 2018
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Jacksonville District, Cocoa Permits Section, Emerald Lakes, SAJ-2018-02833
C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: Florida, County/parish/borough: Brevard, City: Palm Bay, Center coordinates of site (lat/long in degree decimal format): Lat. 27.896413° N, Long. -80.588299° W, Universal Transverse Mercator: Name of nearest waterbody: Sottile Canal (2,000' south from project center), Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: St. Sebastian River, Name of watershed or Hydrologic Unit Code (HUC): 03080101 Upper St. Johns ; 03080203 Vero Beach
D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: Field Determination. Date(s): June 5, 2018

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: The Indian River is located within the Relative Reach of this determination. The Indian River is part of the Atlantic Intracoastal Waterway a USACE federal project.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are and are not "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

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

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

Non-wetland waters: linear feet: width (ft) and/or 0.54 acres.
Wetlands: 600.83 acres.

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

Elevation of established OHWM (if known):

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetlands 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 26, 27, 29, 30, 31, 32, 34, 35, 36, 38, 39, 44.

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.

45, 49, 50, 51, 52, 53, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69, 73, 74, 76, 77, 78, and 79 (See Figures 5 and 6), totaling 23.50 acres, are isolated wetlands within the review area. The subject wetlands are surrounded by upland vegetation and do not have any physical, chemical, or biological connections to waters of the United States. Sandy soils surrounding the wetlands allow the downward movement of water to the surficial aquifer. Geomorphic conditions appear to reduce the opportunity for lateral movement by subsurface flow to any nearby intermittent tributaries (i.e. swales, ditches). The nearest RPW is located less than 0.5 miles south of the subject wetland discussed above. Given the absence of factual determination of subsurface flow, or a substantial nexus to commerce, these wetlands were determined to be isolated consistent with SWANCC and the “Migratory Bird Rule”.

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”: N/A.

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

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

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

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

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

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

(i) General Area Conditions:

Watershed size: 21.1 square miles

Drainage area: 21.1 square miles

Average annual rainfall: 48.29 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.

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

Project waters are 5-10 river miles from TNW.
 Project waters are 2-5 river miles from RPW.
 Project waters are 2-5 aerial (straight) miles from TNW.
 Project waters are 1 (or less) aerial (straight) miles from RPW.
 Project waters cross or serve as state boundaries. Explain: N/A.

Identify flow route to TNW⁵: The RPW (Sottile Canal) drains directly into the St. Sebastian River .
 Tributary stream order, if known:

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

Tributary is: Natural
 Artificial (man-made). Explain: the RPWs and NRPWs are manmade swales/ditches constructed from uplands to alleviate flooding in adjacent lands.
 Manipulated (man-altered). Explain: Some wetland tributaries have been channelized via ditching.

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

Average width: 60 feet
 Average depth: 15 feet
 Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stabilized by grass.
 Presence of run/riffle/pool complexes. Explain: N/A.
 Tributary geometry: **Relatively straight**
 Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: Sottile Canal flows year round.

Other information on duration and volume: This land is mostly improved pasture west of SR-507 and citrus and undeveloped land east of SR- 507. There are no structures regulating flow in this canal. TECHNICAL PUBLICATION SJ 84-10 INTERBASIN DIVERSION in the UPPER ST. JOHNS RIVER BASIN By DAVID A. CLAPP and HAROLD A. WILKENING, III

Surface flow is: **Overland sheetflow**. Characteristics: Flow originates in wetland which are connected via pipes to the RPW.

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

Dye (or other) test performed: N/A.

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain:

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.

⁷ Ibid.

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

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

(iii) Chemical Characteristics:

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

Explain: Water Color is clear but is known to receive untreated inputs from road runoff which likely contains oils.

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: RPW and NRPW contins suitable foraging habitat for wood storks, indigo snakes are expected to utilize the wetland and upland features of the site.
 - Fish/spawn areas. Explain findings: Bass, brim, and alligator gar are known to occur in Sottile Canal.
 - 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: 600.83 acres

| | |
|------------|--------|
| Wetland 1 | 0.27 |
| Wetland 2 | 157.48 |
| Wetland 16 | 0.76 |
| Wetland 22 | 26.11 |
| Wetland 24 | 11.88 |
| Wetland 25 | 24.03 |
| Wetland 28 | 26.47 |
| Wetland 33 | 3.18 |
| Wetland 37 | 13.58 |
| Wetland 40 | 0.24 |
| Wetland 41 | 0.02 |
| Wetland 42 | 0.02 |
| Wetland 43 | 0.15 |
| Wetland 46 | 2.07 |
| Wetland 47 | 2.95 |
| Wetland 48 | 291.47 |
| Wetland 57 | 5.28 |
| Wetland 58 | 0.04 |
| Wetland 59 | 0.01 |
| Wetland 60 | 0.09 |
| Wetland 70 | 0.42 |
| Wetland 71 | 13.53 |
| Wetland 72 | 6.05 |
| Wetland 75 | 2.00 |
| Wetland 80 | 10.47 |
| Wetland 81 | 2.26 |

Wetland type. Explain: Herbaceous and forested systems that have been artificially connected to the Non-TNW (Sottile Canal) through drainage pipes.

Wetland quality. Explain: Wetland quality is moderate and is affected by adjacent roadways, agricultural activities, and past ditching in the area.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The Non-TNW connections have been excavated in sandy soils which are very permeable. Flows here occur during high water times and significant rain events. On the east side of the project area, the connectivity is through a series of wetland systems that lead to a culverted connection to the RPW.

Surface flow is: **Overland sheetflow**

Characteristics: Intermittent flow occurs into the NRPW.

Subsurface flow: **Unknown**. Explain findings: Due to sandy soil conditions subsurface lateral flow is not expected.

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetlands have been artificially connected to the NRPW and RPW through shallow swales and pipes which allow for a hydrologic connection.

Ecological connection. Explain:

Separated by berm/barrier. Explain: The Sottile Canal was primarily constructed from uplands to improve drainage for agricultural purposes. The excavated material was side cast along the edge of the canal creating berms and barriers. Several culverted connections have been installed to facilitate drainage of adjacent wetlands into the canal.

(d) Proximity (Relationship) to TNW

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

Project waters are **2-5** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No known chemical inputs occur in the connected wetlands.

Identify specific pollutants, if known: N/A.

(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: Suitable foraging habitat for the wood stork and suitable habitat for the eastern indigo snake.

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings: Wetlands may be used by sandhill cranes and the fringes of these systems may be used by the Florida scrub-jay.

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: **437**

Approximately (8,066) acres in total are being considered in the cumulative analysis

For each wetland, specify the following: See Attachment 2 and associated tables.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: The review area includes a total of 8,066 acres of wetlands. This includes palustrine emergent (2638 acres), palustrine forested (4322), palustrine scrub-shrub (824 acres), tributary canal (42.87 acres) and palustrine unconsolidated bottom (239 acres) wetlands. These wetland systems provide habitat for wildlife, perform flood storage and drainage for the surrounding areas, water quality treatment and baseflow to the Sebastian River, and food web support for the Sebastian River and Indian River Lagoon.

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: A majority of the wetland within the project boundaries are hydrologically connected to Sottile Canal via culverts.
4. **Significant nexus findings for wetlands directly abutting an RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its abutting wetlands, then go to Section III.D: .
5. **Significant nexus findings for an RPW (perennial or seasonal).** Explain findings of presence or absence of significant nexus below, based on the tributary, then go to Section III.D:

Sottile Canal with its tributaries and associated wetlands connect to North Prong of the St. Sebastian River, and ultimately to Indian River, provide a variety of habitat and lifecycle support functions. These functions include but are not limited to feeding, nesting, spawning, or areas to rear young for a variety of species such as fish, amphibians, snakes, reptiles, birds, and mammals. These species are present within wetlands and along the path of the waterway. Agricultural development has occurred adjacent to Sottile canal prior to stormwater permitting rules and these waterbodies and wetlands help to reduce the amount of pollutants or flood waters reaching the downstream TNW. The wetlands and non-wetland waters help to transfer nutrients and organic carbon that support downstream food webs and in combination with its adjacent wetlands, contribute to the physical, chemical, or biological integrity of the TNW. The Sottile canal and wetlands provide the local residents recreational values such as but not limited to fishing and hunting as well as aesthetic values important for property values and quality of life in the area. Discharge waters are critical in maintaining downstream North Prong St. Sebastian River.

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: Field observations made by regulatory staff confirm flow in Sottile Canal is continuous seasonally.
Provide estimates for jurisdictional waters in the review area (check all that apply):
 - Tributary waters: linear feet width (ft).
 - Other non-wetland waters: **Sottile Canal: 42.9** 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: **2,700** linear feet **10** width (ft).
 Other non-wetland waters: _____ acres.

Identify type(s) of waters: upland cut surface waters which connect wetlands to Sottile Canal.

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: The manmade swales and pipes connect the subject wetlands to the Sottile Canal (NON-TNW Tributary) during high water periods.

Provide acreage estimates for jurisdictional wetlands in the review area: **595.38** 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: **5.45** 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):

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: 23.50 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 1-5.
- 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: SAJ-2008-04538 and SAJ-2009-01907 – Sept 10, 2015.
- Applicable/supporting case law:
- Applicable/supporting scientific literature: TECHNICAL PUBLICATION SJ 84-10 INTERBASIN DIVERSION IN THE UPPER ST. JOHNS RIVER BASIN; National Wetland Inventory and NHD flowline data sets.
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: This document determines the jurisdictional status of waters of the United States, including wetlands, found within the review area of the Emerald Lakes project. Waters of the United States and wetlands outside of the review area are not considered as part of this evaluation and will be evaluated in subsequent determinations.

There are 600.83 acres of jurisdictional wetlands within the project area (Figures 1-8); 8,066 within the review area (Attachment 2 and Table 2-1). These wetlands are hydrologically connected to the Sottile Canal through culvert connections within the review area as well as offsite connections to the east of the Review Area. The Sottile Canal flows directly into the north prong of the St. Sebastian River. The Sottile Canal has the capacity to carry pollutants or flood waters to the St. Sebastian River (TNW). The canal and its adjacent hydrologically connected wetlands (wetlands 1, 2, 16, 22, 24, 25, 28, 33, 37, 40, 41, 42, 43, 46, 47, 48, 57, 58, 59, 60, 63, 70, 71, 72, 75, 80, and 81) provide flood water storage and pollutant treatment prior to waters reaching the TNW. Sottile Canal and the subject wetlands also have the capacity to provide habitat and lifecycle support to various amphibians and reptiles as well as foraging and nesting habitat for various avian species.

all of which provides for higher level organisms in the food web including species downstream in the St. Sebastian River. The Sottile Canal and the subject wetlands have the capacity to transfer nutrients and detritus St. Sebastian River further supporting the food web. There are water stains and signs of inundation that indicate that hydrological patterns between the subject wetlands and Sottile Canal exist. Therefore, the subject wetlands and tributary significantly contribute to the St. Sebastian River.

There are 23.50 acres of non-jurisdictional isolated wetlands within the review area. These wetlands are surrounded by uplands and wetlands but do not have any hydrologic connections to waters of the United States. The Corps completed field investigations subsequent to substantial rain events in June 2018 and did not observe hydrologic connections between the isolated wetlands and their abutting wetlands. Wetlands 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 26, 27, 29, 30, 31, 32, 34, 35, 36, 38, 39, 44, 45, 49, 50, 51, 52, 53, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69, 73, 74, 76, 77, 78, and 79 are physically, chemically, any hydrologically isolated from other wetlands or surface waters and does not convey water to any RPW, non-RPW, TNW.