

INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING
 FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200202599

REGULATORY PROJECT MANAGER: Lawrence M. Slavitter Date: April 17, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: March 14, 2003,
 May 13, 2003 and
 June 2, 2004

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Bucks

Center coordinates of site by latitude & longitudinal coordinates: 40-08-33 N/74-58-18 W

Approximate size of site/property (including uplands & in acres): 73

Name of waterway or watershed: Neshaminy Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
River	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stream	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dry Wash	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mudflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sandflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input type="checkbox"/>	<input checked="" type="checkbox"/> 1.1	<input type="checkbox"/>						
Slough	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prairie pothole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wet meadow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Playa lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vernal pool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Natural pond	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other water (identify type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat for endangered species?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is used to irrigate crops sold in interstate commerce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

Site Conditions:

The property is a 72 acre (gross) tract identified as tax map parcel number 2-4-308, located adjacent to Oakford Road, in Bensalem Township, Bucks County, PA. The subject property contains forested uplands, forested and emergent wetlands. Upland islands are located within portions of the wetlands located on the site. The property is bordered by railroad tracks on both the north and south sides of the property. Properties adjacent to the site consist of commercial and residential developments. The subject property contains tributaries of Neshaminy Creek; that are described as follows:

Tributary 1: Enters the site from the north side of the site, under the railroad tracks. The water flows south; then in a southeast direction and exits the site through a culvert under the southern set of railroad tracks.

Tributary 2: Enters the site from the northwest corner of the site, from behind an urban development, and flows into Tributary 1.

Tributary 3: Enters the site from the southwest corner of the site, from behind an urban development, and flows into Tributary 1.

Tributary 4: Formed from a spring located on the site, located east of Tributary 1, flows off the site through a culvert under the southern set of railroad tracks.

Tributary 5: Formed from a spring located on the site, on the eastern side of the site, flows off the site through a culvert under the southern set of railroad tracks.

Tributary 6: Formed from a spring located on the site, immediately east of Tributary 5, flows off the site through the same culvert as Tributary 5.

All of the tributaries noted above flow off the site and terminate in Neshaminy Creek, which flows into the Delaware River. The Delaware River is considered a navigable waters of the US per 33 CFR 329 and 33 CFR 328.3 (a)(1). As such, these tributaries of Neshaminy Creek are considered a waters of the US per 33 CFR 328.3 (a)(5). There are wetlands adjacent to the tributaries of Neshaminy Creek. There are upland islands located within these adjacent wetlands. These wetlands are considered regulated waters of the US per 33 CFR 328.3 (a)(7). There are approximately 17.05 acres of wetlands and 2144 linear feet of the tributaries of Neshaminy Creek on the property.

In the center of the property, two wetlands are identified as follows:

Flag numbers WF 851 through 872 (hereafter identified as “Wetland A”) located approximately 80 feet from Tributary 4.

Flag numbers WF1600, WF1602A through WF1605A (hereafter identified as “Wetland B”) located approximately 20 feet from Tributary 4.

These are emergent wetlands that are depression that may have been formed by previous human activity on the site. The water from “Wetland A” and “Wetland B” flow into Tributary 4. The tributary flows off site, through a culvert under the railroad tracks on the southern boundary of the property, into Neshaminy Creek, located to the south of the subject property. Neshaminy Creek is a tributary of the Delaware River. Due to this hydrologic connection, these wetlands are considered neighboring to regulated waters of the US. The COE regulates the discharge of dredge and fill material within “Wetland A” and “Wetland B” per 33 CFR 328.3(a)(7).

In the southeast section of the site, one wetland was identified as follows:

Flag numbers 1201 through 1216 (hereafter identified as “Wetland C”) located approximately 180 feet from Tributary 5.

Topography from Wetland C slopes towards Tributary 5. Tributary 5 flows off site, through a culvert under the railroad tracks on the southern boundary of the property, into Neshaminy Creek, located to the south of the subject property. Neshaminy Creek is a tributary of the Delaware River. Due to this hydrologic connection, Wetland C is considered neighboring to a regulated water of the US. The COE regulates the discharge of dredge and fill material within “Wetland C” per 33 CFR 328.3(a)(7).

There are 5 isolated wetlands that were identified on the site. These wetlands are identified as follows:

Flag numbers WF 1401A through WF1413A (hereafter identified as “Wetland D”), located approximately 360 feet from Tributary 4.

Flag numbers WF11501A through WF1509A (hereafter identified as “Wetland E”), located approximately 570 feet from Tributary 4.

Flag numbers WF 801 through 807 (hereafter identified as “Wetland F”), located approximately 380 feet from Tributary 4.

Flag numbers WF601 through WF613 (hereafter identified as “Wetland G”), located approximately 400 feet from Tributary 4.

Flag numbers WF 651 through 657 (hereafter identified as “Wetland H”), located approximately 210 feet from Tributary 4.

These are not part of or adjacent to a part of a surface tributary to a water of the United States. Additionally, these wetlands have no nexus to interstate or foreign commerce, and therefore these areas were not identified as a water of the United States. These wetlands contain 1.06 acre of non-jurisdictional wetland on the property.

Rationale for Determination:

1. “Wetland D” through “Wetland H are too small to contain enough standing water to support any type of watercraft and therefore are non-navigable in fact.

2. There are 5 herbaceous, isolated wetlands, totaling approximately 1.06 acre, was identified at the property. “Wetland D” through “Wetland H” are depressions that may have been formed during previous human activity on the site. Due to the topography surrounding these wetlands, water from the wetlands would flow away from the tributaries on the subject property. Given the distance to the nearest watercourse and the small size of the three wetlands, the wetlands are too far from the watercourses to be considered neighboring wetlands. In accordance with 33 CFR 328.3 (c), these wetlands are not adjacent to a waters of the US, but rather they are isolated.

a. The wetlands were evaluated for a nexus to interstate or foreign commerce as follows: The small size of the wetlands and the lack of any unusual properties make it unlikely that these wetlands could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)). These wetlands do not support fish or shellfish; they could not be used to irrigate crops or used in industrial or commercial processes (33 CFR 328.3 (a)(3)(ii)). These wetlands do not contain merchantable timber, there are no known mineral deposits, and they do not contain sand or gravel deposits that could be extracted (33 CFR 328.3 (a)(3)(iii)).

b. Based upon the factors considered above, the 5 wetlands, Wetland D, Wetland E, Wetland F, Wetland G and Wetland H, are isolated, intrastate wetlands with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, these wetlands are not considered waters of the United States, and are not subject to Section 404 of the CWA.

Waters of the United States:

The watercourses on the site are located as indicated above. The tributaries originate both on site and off site and flow off-site into Neshaminy Creek. Neshaminy Creek is a tributary to the Delaware River. The Delaware River is a navigable, interstate water of the United States. Based on this connection, the tributaries Neshaminy Creek are part of the surface tributary system of the Delaware River, and thus are waters of the United States in accordance with 33 CFR 328.3 (a)(5). All wetlands identified in the vicinity of the tributaries of Neshaminy Creek are contiguous with there respective watercourse. Wetlands contiguous to these watercourses are therefore adjacent to part of the surface tributary system of the Delaware River and are waters of the US per 33 CFR 328.3 (a)(7).

Wetland A, Wetland B and Wetland C are wetland features that have a hydrological connection, via overland flow, to a tributary to Neshaminy Creek. These wetlands have been determined to be neighboring to a tributary to Neshaminy Creek, which is a surface tributary to the Delaware River. In accordance with 33 CFR 328.3 (a)(7), these wetlands are waters of the United States