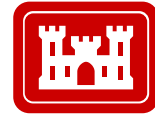




®

## **Regulatory Program**



®

### **INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided  
in the Interim Approved Jurisdictional Determination Form User Manual.

#### **SECTION I: BACKGROUND INFORMATION**

**A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):** October 18, 2018

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** NAP-2018-0691

#### **C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: NJ County/parish/borough: Cape May County City: Dennis Township

Center coordinates of site (lat/long in degree decimal format): Lat. 39.208558°, Long. -74.903422°.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☒ attached ☐ in report/map titled .

☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

#### **D. REVIEW PERFORMED FOR SITE EVALUATION:**

☐ Office (Desk) Determination Only. Date: .

☒ Office (Desk) and Field Determination. Office/Desk Dates: 2018-10-19 Field Date(s): 2018-10-18.

#### **SECTION II: DATA SOURCES**

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: .

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: .

☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .

Revised Title/Date: .

☒ Data sheets prepared by the Corps. Title/Date: 2018-10-18.

☒ Corps navigable waters study. Title/Date: List of Navigable and Non-Navigable Waters in the Philadelphia District - New Jersey- East Creek.

☐ CorpsMap ORM map layers. Title/Date: .

☐ USGS Hydrologic Atlas. Title/Date: .

☐ USGS, NHD, or WBD data/maps. Title/Date: .

☒ USGS 8, 10 and/or 12 digit HUC maps. HUC number: HUC-8, 02040206 Mid-Atlantic Region, Delaware Mid-Atlantic Coastal, Lower Delaware, Cohancey-Maurice.

☒ USGS maps. Scale & quad name and date: USGS 1:24000 Topographic Quad Map, Heislerville, NJ, 1957, Photorevised 1972, Photoinspected 1977..

☒ USDA NRCS Soil Survey. Citation: MmtAv Mispillion-Transquaking-Appoquinimink complex, 0 to 1 percent slopes, very frequently flooded.

☐ USFWS National Wetlands Inventory maps. Citation: .

☐ State/Local wetland inventory maps. Citation: .

☒ FEMA/FIRM maps. Citation: Zone AE, Coastal Barrier Resource System.

☒ Photographs: ☒ Aerial. Citation: NJDEP and GoogleEarth aerials dated 1979, 2002, 2007, 2009, 2012, 2013, 2015, 2016, and 2018. or ☒ Other. Citation: Pictometry dated 2007, 2010, 2013, and 2016.

☐ LiDAR data/maps. Citation: .

- ☐ Previous JDs. File no. and date of JD letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): Site investigation data dated August 9 and October 18, 2018.

### **SECTION III: SUMMARY OF FINDINGS**

**Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required**

#### **A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:**

- ☐ "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

• **Complete Table 1 - Required**

**NOTE:** If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

#### **B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION:** "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- ☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

• **Complete Table 1 - Required**

- ☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- ☐ (a)(2): All interstate waters, including interstate wetlands.

• **Complete Table 2 - Required**

- ☐ (a)(3): The territorial seas.

• **Complete Table 3 - Required**

- ☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

• **Complete Table 4 - Required**

- ☐ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• **Complete Table 5 - Required**

- ☒ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

• **Complete Table 6 - Required**

- ☒ Bordering/Contiguous.  
Neighboring:

- ☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- ☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- ☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- ☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- ☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

#### C. NON-WATERS OF THE U.S. FINDINGS:

##### **Check all that apply.**

- ☐ The review area is comprised entirely of dry land.
- ☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- ☐ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- ☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

☐ (b)(2): Prior converted cropland.

☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>

☐ (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>

☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>

☐ (b)(4)(vii): Puddles.<sup>1</sup>

☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>

☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>

☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

- ☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

#### D. ADDITIONAL COMMENTS TO SUPPORT AJD:

<sup>1</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

**Jurisdictional Waters of the U.S.**

**Table 1. (a)(1) Traditional Navigable Waters**

<b>(a)(1) Waters Name</b>	<b>(a)(1) Criteria</b>	<b>Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.</b>
N/A	Choose an item.	N/A

**Table 2. (a)(2) Interstate Waters**

<b>(a)(2) Waters Name</b>	<b>Rationale to Support (a)(2) Designation</b>
N/A	N/A

**Table 3. (a)(3) Territorial Seas**

<b>(a)(3) Waters Name</b>	<b>Rationale to Support (a)(3) Designation</b>
N/A	N/A

**Table 4. (a)(4) Impoundments**

<b>(a)(4) Waters Name</b>	<b>Rationale to Support (a)(4) Designation</b>
N/A	N/A
N/A	N/A

**Table 5. (a)(5)Tributaries**

<b>(a)(5) Waters Name</b>	<b>Flow Regime</b>	<b>(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows</b>	<b>Tributary Breaks</b>	<b>Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.</b>
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

**Table 6. (a)(6) Adjacent Waters**

<b>(a)(6) Waters Name</b>	<b>(a)(1)-(a)(5) Water Name to which this Water is Adjacent</b>	<b>Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.</b>
NAP-2018-0961 Adjacent Wetlands	East Creek	East Creek and its fringing wetlands are subject to the ebb and flow of the tide. Wetlands on the Gibboni site are contiguous with the tidal wetlands fringing East Creek
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

<b>SPOE Name</b>	<b>(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Non-Jurisdictional Waters**

**Table 9. Non-Waters/No Significant Nexus**

<b>SPOE Name</b>	<b>Non-(a)(7)/(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus</b>	<b>Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 10. Non-Waters/Excluded Waters and Features**

<b>Paragraph (b) Excluded Feature/Water Name</b>	<b>Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.</b>
N/A	N/A
N/A	N/A

**Table 11. Non-Waters/Other**

<b>Other Non-Waters of U.S. Feature/Water Name</b>	<b>Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.</b>
N/A	N/A

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

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** October 18, 2018

**UNAUTHORIZED ACTIVITY - This Jurisdictional Determination is subject to the terms and restrictions at 33 CFR 331.11.**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** NAP-2018-0961-56, Gibboni David and Jessica CM,  
NAP-2018-0961 Adjacent Wetlands

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: NJ County/parish/borough: Cape May Co. City: Dennisville Township  
Center coordinates of site (lat/long in degree decimal format): Lat. 39.208558° **Pick List**, Long. -74.903422° **Pick List**.  
Universal Transverse Mercator:

Name of nearest waterbody: East Creek

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

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: October 19, 2018  
☒ Field Determination. Date(s): October 18, 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: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "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):<sup>1</sup>**

- ☐ TNWs, including territorial seas  
☒ Wetlands adjacent to TNWs  
☐ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs  
☐ Non-RPWs that flow directly or indirectly into TNWs  
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs  
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs  
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs  
☐ Impoundments of jurisdictional waters  
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or acres.  
Wetlands: 0.11 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):<sup>3</sup>**

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

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

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.



### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

##### **1. TNW**

Identify TNW: East Creek and its fringing tidal wetlands.

Summarize rationale supporting determination: Subject to the ebb and flow of the tide to the high tide line. East Creek is listed in the Philadelphia District's list of Navigable Waters.

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": Non-tidal wetlands contiguous with the tidal waters of East Creek and its fringing tidal wetlands.

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

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

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

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

If the waterbody<sup>4</sup> 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: **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.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

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

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

Project waters cross or serve as state boundaries. Explain: .

---

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

Identify flow route to TNW<sup>5</sup>: .  
Tributary stream order, if known: .

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

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

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

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

**Primary tributary substrate composition (check all that apply):**

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope):        %

(c) Flow:

Tributary provides for: **Pick List**

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

Describe flow regime: .

Other information on duration and volume: .

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

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

☐ Dye (or other) test performed: .

**Tributary has (check all that apply):**

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

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

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

Identify specific pollutants, if known: .

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Ibid.

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

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

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: . acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

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

Surface flow is: **Pick List**

Characteristics: .

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

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

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

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

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

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

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

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

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

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

### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

☐ TNWs: linear feet width (ft), Or, acres.

☒ Wetlands adjacent to TNWs: 0.11 acres.

2. **RPWs that flow directly or indirectly into TNWs.**

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

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

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

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

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

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

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

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

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

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

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

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

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

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

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

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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):<sup>10</sup>**

- ☐ 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:** .

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> 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.

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

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

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.  
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.  
☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).  
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .  
☐ Other: (explain, if not covered above): .

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

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

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

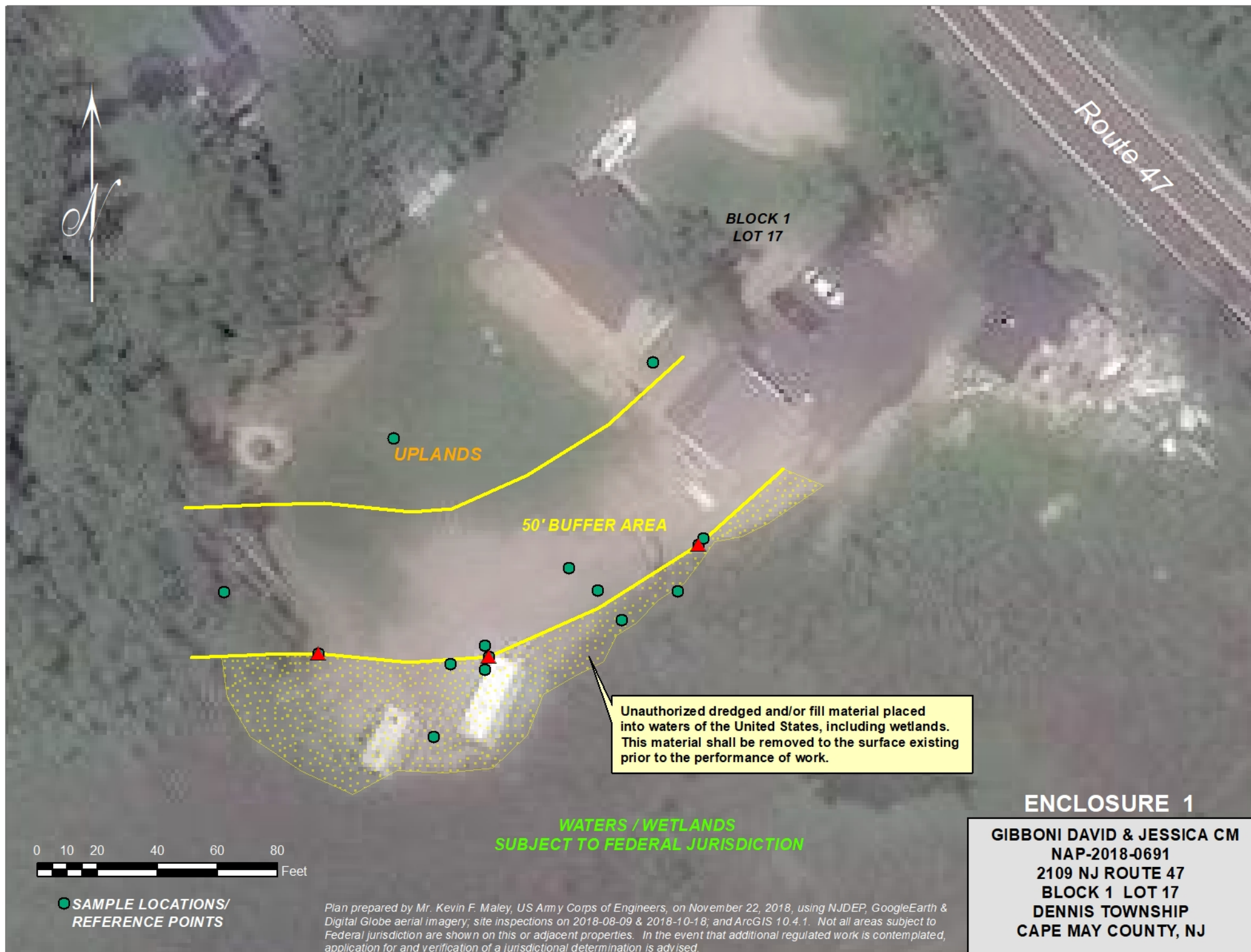
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).  
☐ Lakes/ponds: acres.  
☐ Other non-wetland waters: acres. List type of aquatic resource: .  
☐ Wetlands: acres.

**SECTION IV: DATA SOURCES.**

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

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .  
☐ 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: October 18, 2018.  
☒ Corps navigable waters' study: List of Navigable and Non-Navigable Waters in the Philadelphia District - New Jersey- East Creek.  
☐ U.S. Geological Survey Hydrologic Atlas: HUC-8, 02040206 Mid-Atlantic Region, Delaware Mid-Atlantic Coastal, Lower Delaware, Cohancey-Maurice.  
☐ USGS NHD data.  
☒ USGS 8 and 12 digit HUC maps.  
☒ U.S. Geological Survey map(s). Cite scale & quad name: USGS 1:24000 Topographic Quad Map, Heislerville, NJ, 1957, Photorevised 1972, Photoinspected 1977.  
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: MmtAv Mispillion-Transquaking-Appoquinimink complex, 0 to 1 percent slopes, very frequently flooded.  
☐ National wetlands inventory map(s). Cite name: .  
☐ State/Local wetland inventory map(s): .  
☒ FEMA/FIRM maps: Zone AE, Coastal Barrier Resource System.  
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)  
☒ Photographs: ☒ Aerial (Name & Date): NJDEP and GoogleEarth aerials dated 1979, 2002, 2007, 2009, 2012, 2013, 2015, 2016, and 2018.  
or ☒ Other (Name & Date): Pictometry dated 2007, 2010, 2013, and 2016.  
☐ 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:** .



## ENCLOSURE 1

GIBBONI DAVID & JESSICA CM  
NAP-2018-0691  
2109 NJ ROUTE 47  
BLOCK 1 LOT 17  
DENNIS TOWNSHIP  
CAPE MAY COUNTY, NJ