DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

June 10, 2020

Regulatory Branch
Applications Section II

SUBJECT: CENAP-OP-R 2019-00284 (91)
Project Name: Sutliff Property Warehouse Development Project CA
Latitude and Longitude: 41.087182° N, 75.62247° W

Mr. Richard Sutliff
1944 Route 940
Pocono Pines, PA 18350

Dear Mr. Sutliff:

This letter is in regard to your request for a verification of a delineation of waters and wetlands performed on your behalf by JTA Wetland and Environmental Services, LLC. The project center is located approximately 1.45 miles west of the intersection of State Route (SR) 115 and SR 940, Tobyhanna Township, Monroe County, Pennsylvania.

The plans identified on the following page depict the extent of Federal jurisdiction on the subject property. The basis of our determination of jurisdiction is also provided (Enclosure 1).

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands. Any proposal to perform the above activities within the area of Federal jurisdiction requires the prior approval of this office.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participating in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter is valid for a period of five (5) years. This jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the jurisdictional determination at any time should the existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete or inaccurate.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a combined Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form (Enclosure 2). If you request to appeal this determination, you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Mr. James W. Haggerty
Regulatory Program Manager (CENAD-PD-OR)
U.S. Army Corps of Engineers
Fort Hamilton Military Community
301 General Lee Avenue
Brooklyn, New York 11252-6700
Telephone number: 347-370-4650

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by August 10, 2020.

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

Due to the Corps need to work remotely in response to the COVID 19 global pandemic we are only issuing you an electronic copy of your Withdraw Letter. Please print and/or save this document for your records. If you require a physical copy of this document please inform your Project Manager and a physical copy of this document will be mailed to you when conditions allow.

If you have any questions regarding this matter, please contact Mr. Nathan Fronk at 267-284-6564 or by email at Nathan.r.fronk@usace.army.mil.

Sincerely,

Glenn R. Weitknecht
Senior Project Manager

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SUBJECT PROPERTY: Approved jurisdictional determination is for the wetlands and waters identified in "S.R. 940 Land Development, State Route 940, Kidder Township, Pennsylvania, Wetland Map, Richard Henry Construction, Inc., State Route 940, Pocono Pines, PA".

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SURVEY DESCRIPTION: "S.R. 940 Land Development, State Route 940, Kidder Township, Pennsylvania, Wetland Map, Richard Henry Construction, Inc., State Route 940, Pocono Pines, PA", Sheet 1 of 1, Scale: 1" = 200', Drawn by NKG of Pennoni Associates, Inc. on February 18, 2020.

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COMMENTS: Site inspection by representative of this office on May 29 & 30, 2019.

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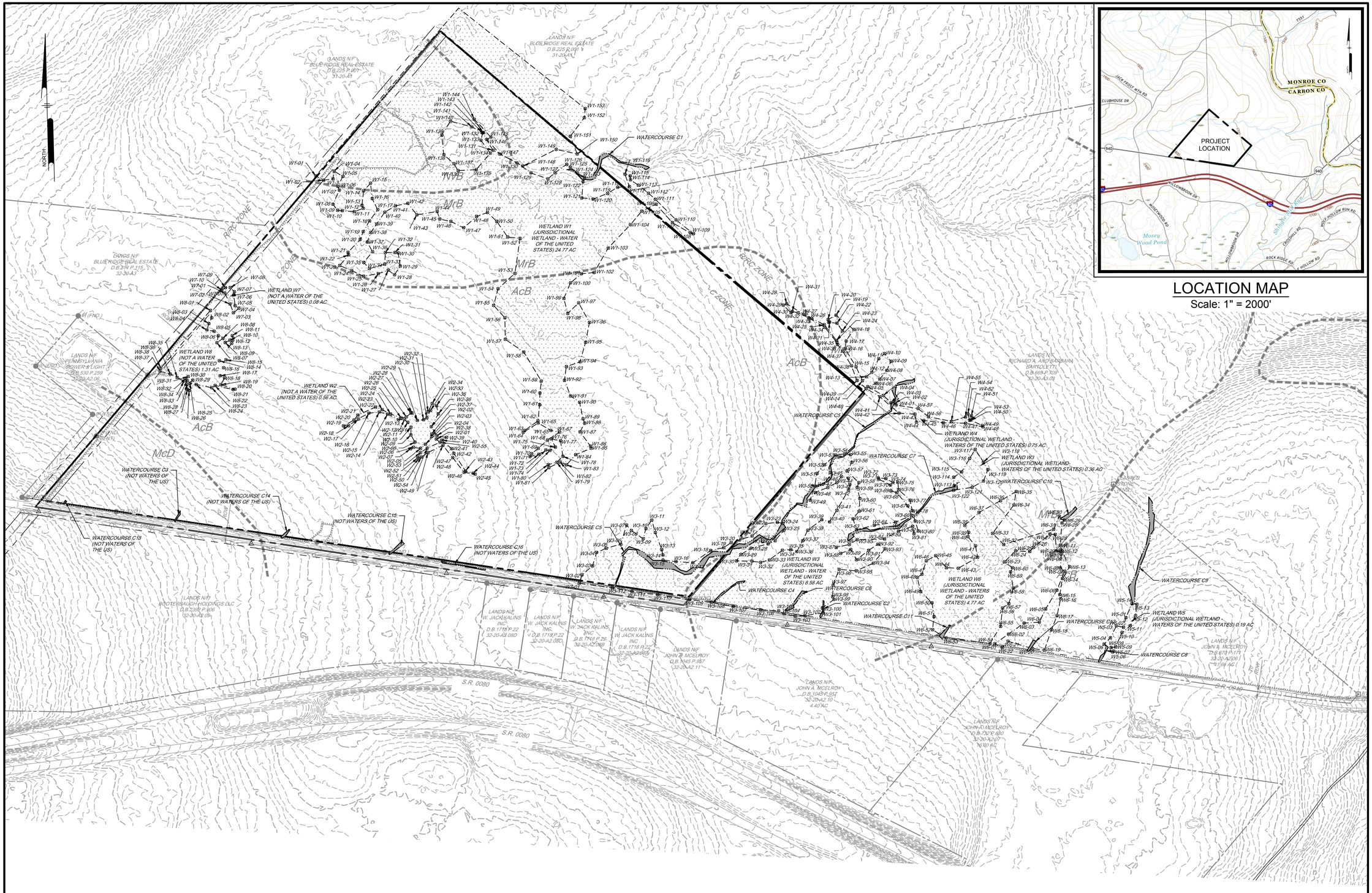
Enclosures

Copies Furnished:

PADEP (NERO)
Carbon County Conservation District
Kidder Township
Groundwater & Environmental Services, Inc.



LOCATION MAP

Scale: 1" = 2000'

NOT FOR CONSTRUCTION

Pennoni

PENNONI ASSOCIATES INC.
672 N. River Street
Suite 313
Plains, PA 18705
T 570.824.2200 F 570.824.0800

ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK

S.R. 940 LAND DEVELOPMENT

STATE ROUTE 940
KIDDER TOWNSHIP, PENNSYLVANIA

WETLAND MAP

RICHARD HENRY CONSTRUCTION, INC.
STATE ROUTE 940
POCONO PINES, PA 18350

NO.	DATE	REVISIONS	BY

PROJECT	RHENS19001
DATE	2020/02/18
DRAWING SCALE	1" = 200'
DRAWN BY	NKG
APPROVED BY	JFM

WL-1

SHEET 1 OF 1

PROJECT STATUS: —
PLOTTED: 4/28/2020 9:14 AM, BY: Nicole Gemme
PLOTSTYLE: Pennoni WCS.stb
C:\Users\NGemme\OneDrive - PENNONI\Desktop\RHENS\WETLAND EXHIBITS.dwg

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

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 10, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: 2019-00284 Sutliff Property Warehouse Development Project CA

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The project center is located approximately 1.45 miles west of the intersection of PA-115 and PA-940, Tobyhanna Township, Monroe County, Pennsylvania. A preliminary jurisdictional was issued for the project area on June 18, 2019.

State: Pennsylvania County: Carbon City: Kidder Township

Center coordinates of site (lat/long in degree decimal format): Lat. 40.087542° N, Long. -75.619143° W
Universal Transverse Mercator: 18 Northing Easting

Name of nearest waterbody: Tobyhanna Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Tobyhanna Creek
Name of watershed or Hydrologic Unit Code (HUC): 01447720

☒ 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: 4 Apr 2020
☒ Field Determination. Date(s): 12 Apr 2019 and 29 May 2019

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are 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 waters[2] (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: 4, 286 linear feet
Wetlands: 40.4 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: Five of the eight ephemeral streams (Watercourses 3, 13-16) were found to be non-jurisdictional due to the lack of a surface hydrological connection to a water of the United States. Of the 8 wetlands within the project area, 3 of the wetlands (Wetlands 2, 7 and 8) had a significant nexus analysis performed on them and were found to be non-jurisdictional. All 3 wetlands lacked a surface hydrological connection to a water of the United States and did not have a physical, chemical or biological connection to a TNW.

[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.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW
Identify TNW:
Summarize rationale supporting determination:

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent":

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under 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[4] 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

For all 6 intermittent watercourses (Watercourses 2, 4-7, and 9).

(i) General Area Conditions:
Watershed size: 125 **square miles**
Drainage area: 125 **square miles**
Average annual rainfall: 50 inches
Average annual snowfall: 59 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☒ Tributary flows directly into TNW.
☒ Tributary flows through tributary before entering TNW.

Project waters are 1 river miles from TNW.
Project waters are _0_ river miles from RPW.
Project waters are 1 aerial (straight) miles from TNW.

Project waters are 0 aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: N/A

Identify flow route to TNW[5]: UNT of Tobyhanna Creek to Tobyhanna Creek
Tributary stream order, if known:

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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.
(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: 4-6 feet
Average depth: 0.5-1 foot
Average side slopes: 3:1

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: All tributaries are stable and in good condition with extensive riparian buffers
Presence of run/riffle/pool complexes. Explain: The 6 intermittent watercourses all showed some run/riffle/pool complexes
Tributary geometry:meandering
Tributary gradient (approximate average slope): 3%

(c) Flow:
Tributary provides for: Intermittent flow
Estimate average number of flow events in review area/year: 300 days/year
Describe flow regime: Intermittent
Other information on duration and volume:

Surface flow is: **Confined** Characteristics:

Subsurface flow: **Unknown** Explain findings:
☐ Dye (or other) test performed:

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:

If factors other than the OHWM were 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):		

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water is clear in color, watershed is heavily forested, and water quality is expected to be good.

Identify specific pollutants, if known:

[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.

(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: Likely habitat for a number of aquatic macroinvertebrates.

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

(i) Physical Characteristics:

(a) General Wetland Characteristics: 5 wetlands are adjacent, and directly abutting, a non-TNW
Properties: PFO wetlands are surrounded by extensive upland forest
Wetland size: 0.2 to 25 acres
Wetland type. Explain: Forested
Wetland quality. Explain: High quality, contiguous wetlands surrounded by upland forest
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is:**Perennial Flow** Explain: Wetlands directly abut non-TNW's and likely provide year round flow into tributaries.

Surface flow is**: Not Present**
Characteristics:

Subsurface flow: **Unknown** 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 1 river miles from TNW.
Project waters are 1 aerial (straight) miles from TNW.
Flow is from: **Wetlands to navigable waters**
Estimate approximate location of wetland as within the **51-100 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: Water in wetlands was clear and water quality is expected to be good given the extensive forest cover surrounding the wetlands.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain: Mature forest- 100% cover
☒ Habitat for:
- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings:
- ☒ Aquatic/wildlife diversity. Explain findings: Wood Frog and Spotted Salamander eggs observed in wetlands. Wetlands are likely home to a variety of bird and mammal species.

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **5**

Approximately (40.4) 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)
Wetland 1 (Y)	25 acres		
Wetland 3 (Y)	8.93 acres		
Wetland 4 (Y)	1.5 acres		
Wetland 5 (Y)	0.2 acre		
Wetland 6 (Y)	4.77 acres		

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:

Five watercourses (Watercourses 3, 13, 14, 15 and 16) that have no adjacent wetlands and flows indirectly into a TNW were identified within the project area. The watercourses, which exhibited sediment sorting, destruction of terrestrial vegetation and a bed & bank, have an ephemeral flow regime. Much, if not all, of their flow is driven by runoff from the roadway. These watercourses do not have any surface water connection to a water of the United States and have no apparent relationship to the physical, chemical or biological integrity to the TNW.

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:

Three non-RPW's (Watercourses 8, 11, and 12) that abut waters of the United States and flow directly or indirectly into a TNW were identified within the project area. All 3 watercourses are abut PFO watercourses that connect to RPWs that flow directly or indirectly into the TNW. It is likely that pollutants could be carried from these watercourses into the nearest TNW and that nutrients and organic carbon can be transferred to downstream foodwebs.

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:

Three wetlands (Wetlands 2, 7 and 8) are located within the project area but do not abut an RPW. All of the wetlands are at least 300 feet from a water of the US and at least 4,000 feet from the closest TNW. While all of the wetlands had evidence of amphibian's breeding within them, none are close enough to support any migration between the wetlands and the TNW. It is unlikely that the wetlands have any capacity to carry pollutants and flood waters, or to reduce the amount of pollutants and flood waters, to the TNW. The wetlands have no known relationships to the physical, chemical or biological integrity of the TNW.

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:

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: Based on 2 field visits, aerial imagery and submitted delineation report, the tributaries are considered 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: Based on 2 field visits, the presence of aquatic macroinvertebrates in the tributaries and the submitted delineation report, the tributaries are considered intermittent.

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

☒ Tributary waters: 4,076 linear feet

☐ Other non-wetland waters:

Identify type(s) of waters:

3. Non-RPWs[8] 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: 210 linear feet

☐ Other non-wetland waters:

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: Wetland boundaries delineated by JTA Environmental and field verified by Corps

☒ 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: Wetland boundaries delineated by JTA Environmental and field verified by Corps

Provide acreage estimates for jurisdictional wetlands in the review area: 40.4 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:

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:

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:

[8] See 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.*

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:

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): 441 linear feet
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: List type of aquatic resource:
☒ Wetlands: 2.01 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): 441 linear feet
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☒ Wetlands: 2.01 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:
☐ 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: Web Soil Survey
☐ 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: Photo Presentation, Sutliff & McElroy Properties, July 6-8, 15, 21, 2018

☐ Aerial (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:

The property contains a total of 16 watercourses and 8 forested wetlands. The flow regimes for the 16 watercourses are as follows; 2 perennial, 6 intermittent and 8 ephemeral. The 2 perennial streams, 6 intermittent streams, and 3 of the ephemeral streams were found to be jurisdictional based on a review of previous aerial imagery, two on-site inspections and evidence of direct surface hydrological connections to waters of the United States. Of the 2 perennial streams, one flows directly into an unnamed tributary of Tobyhanna Creek and one flows into Wetland 4. All six of the intermittent streams are located within jurisdictional wetlands and of those intermittent wetlands, one flows directly into an unnamed tributary of Tobyhanna Creek, which is located outside of the study area. The jurisdictional ephemeral streams are located within wetlands that are contiguous with a RPW that flows into a Water of the United States.
The 5 additional ephemeral streams were found to be non-jurisdictional due to the lack of a surface hydrological connection to a water of the United States.

Of the 8 wetlands within the project area, 5 are abutting an RPW that flows, directly or indirectly, into a TNW and are therefore Waters of the United States. Three of the wetlands had a significant nexus analysis performed on them.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Richard Sutliff	File Number: CENAP 2019-00284	Date: June 10, 2020
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Nathan Fronk (267) 284-6564, or Nathan.R.Fronk@usace.army.mil	If you only have questions regarding the appeal process you may also contact: Mr. James W. Haggerty Regulatory Program Manager (CENAD-PD-OR) U.S. Army Corps of Engineers Fort Hamilton Military Community 301 General Lee Avenue Brooklyn, New York 11252-6700 Telephone number: 347-370-4650

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

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-2019-00284-(91)

REGULATORY PROJECT MANAGER: Nathan Fronk Date: May 4, 2020

PROJECT REVIEW/DETERMINATION COMPLETED:
In the office Y (Y/N) Date: 4 Apr 2020
At the project site Y (Y/N) Date: 12 Apr 2019, 29 May 2019

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Carbon

Center coordinates of site by latitude & longitudinal coordinates: Lat 40.087542, Lon – 75.619143

Approximate size of site/property (including uplands & in acres): 162 acres

Name of waterway or watershed: Tobyhanna 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	☐	☐	☐	☐	☐	☐	☐	☐	☐
River	☐	☐	☐	☐	☐	☐	☐	☐	☐
Stream	☐	☒	☐	☐	☐	☐	☐	☐	☐
Dry Wash	☐	☐	☐	☐	☐	☐	☐	☐	☐
Mudflat	☐	☐	☐	☐	☐	☐	☐	☐	☐
Sandflat	☐	☐	☐	☐	☐	☐	☐	☐	☐
Wetlands	☐	☐	☐	☐	☐	☒	☐	☐	☐
Slough	☐	☐	☐	☐	☐	☐	☐	☐	☐
Prairie pothole	☐	☐	☐	☐	☐	☐	☐	☐	☐
Wet meadow	☐	☐	☐	☐	☐	☐	☐	☐	☐
Playa lake	☐	☐	☐	☐	☐	☐	☐	☐	☐
Vernal pool	☐	☐	☐	☐	☐	☐	☐	☐	☐
Natural pond	☐	☐	☐	☐	☐	☐	☐	☐	☐
Other water (identify type)	☐	☐	☐	☐	☐	☐	☐	☐	☐

[1]Check 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?	☒	☐	☐	☐	☐
Is or would be used as habitat by other migratory birds that cross state lines?	☒	☐	☐	☐	☐
Is or would be used as habitat for endangered species?	☐	☐	☐	☐	☒
Is used to irrigate crops sold in interstate commerce?	☐	☒	☐	☐	☐
[1]Check 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 contains a total of 16 watercourses and 8 forested wetlands. The flow regimes for the 16 watercourses are as follows; 2 perennial, 6 intermittent and 8 ephemeral. The 2 perennial streams, 6 intermittent streams, and 3 of the ephemeral streams were found to be jurisdictional based on a review of previous aerial imagery, two on-site inspections and evidence of direct surface hydrological connections to waters of the United States. Of the 2 perennial streams, one flows directly into an unnamed tributary of Tobyhanna Creek and one flows into Wetland 4. All six of the intermittent streams are located within jurisdictional wetlands and of those intermittent wetlands, one flows directly into an unnamed tributary of Tobyhanna Creek, which is located outside of the study area. The jurisdictional ephemeral streams are located within wetlands that are contiguous with a RPW that flows into a Water of the United States. The 5 additional ephemeral streams were found to be non-jurisdictional due to the lack of a surface hydrological connection to a water of the United States.

Of the 8 wetlands within the project area, 5 are abutting an RPW that flows, directly or indirectly, into a TNW and are therefore Waters of the United States. Three of the wetlands had a significant nexus analysis performed on them. All 3 of the wetlands are at least 300 feet from a water of the US and at least 4,000 feet from the closest TNW. While all of the wetlands had evidence of amphibian's breeding within them, none are close enough to support any migration between the wetlands and the TNW. It is unlikely that the wetlands have any capacity to carry pollutants and flood waters, or to reduce the amount of pollutants and flood waters, to the TNW. The wetlands have no known relationships to the physical, chemical or biological integrity of the TNW.

RATIONALE FOR DETERMINATION OF NO JURISDICTION: From 33 CFR 328.3 (a) the following determinations have been made in regard to the isolated wetlands and waters: 1) It is not tidal and not subject to, susceptible to nor have been subject to, in the past, use in interstate or foreign commerce; 2) It is not interstate waters, it is located entirely within the state of Pennsylvania; 3) It is not an intrastate water that the use, degradation, or destruction of which could affect interstate or foreign commerce; i) It cannot be used by interstate or foreign travelers for recreation or other purposes as the property is private; ii) It could not be used for the harvesting or selling of fish or shellfish in interstate or foreign commerce; iii) It could not be used for industrial purposes by industries in interstate commerce; 4) It is not an impoundment of a waters described above; 5) It is not a tributary to waters of the U.S.; 6) It is not a part of the territorial seas, and 7) It is not adjacent to waters of the U.S.

WATERS OF THE UNITED STATES: 40.4 acres of forested wetlands, 4,076 linear feet of RPW, and 210 linear feet of non-RPW.

14 Apr 2020

Determination of S.W.A.N.C.C. Isolation

Project Name: Sutliff Property Warehouse Development Project CA
Project Number: CENAP-OP-R 2019-00284
Project Location: Lat. 40.087542° N, Long. - 75.619143° W

1 The 162 acre project area is a proposed warehouse development. The project area is located approximately 1.45 miles west of the intersection of PA-115 and PA-940, Tobyhanna Township, Monroe County, Pennsylvania.

2 The property contains a total of 16 watercourses and 8 forested wetlands. The flow regimes for the 16 watercourses are as follows; 2 perennial, 6 intermittent and 8 ephemeral. The 2 perennial streams, 6 intermittent streams, and 3 of the ephemeral streams were found to be jurisdictional based on a review of previous aerial imagery, two on-site inspections and evidence of direct surface hydrological connections to waters of the United States. Of the 2 perennial streams, one flows directly into an unnamed tributary of Tobyhanna Creek and one flows into Wetland 4. All six of the intermittent streams are located within jurisdictional wetlands and of those intermittent wetlands, one flows directly into an unnamed tributary of Tobyhanna Creek, which is located outside of the study area. The jurisdictional ephemeral streams are located within wetlands that are contiguous with a RPW that flows into a Water of the United States. The 5 additional ephemeral streams were found to be non-jurisdictional due to the lack of a surface hydrological connection to a water of the United States. They are identified as Watercourses 3, 13, 14, 15 and 16.

3 Of the 8 wetlands within the project area, 5 are abutting an RPW that flows, directly or indirectly, into a TNW and are therefore Waters of the United States. Three wetlands had a significant analysis performed on them. The 3 wetlands (Wetlands 2, 7 and 8) are located within the project area but do not abut an RPW. All of the wetlands are at least 300 feet from a water of the US and at least 4,000 feet from the closest TNW. While all of the wetlands had evidence of amphibian's breeding within them, none are close enough to support any migration between the wetlands and the TNW. It is unlikely that the wetlands have any capacity to carry pollutants and flood waters, or to reduce the amount of pollutants and flood waters, to the TNW. The wetlands have no known relationships to the physical, chemical or biological integrity of the TNW.

4 Watercourses 3, 13, 14, 15, and 16 and Wetlands 2, 7 and 8 are not waters of the United States as defined in 33 CFR §328.3 (a)(1) though (a)(7). As such, the

wetland is not waters of the United States subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water.

Nathan Fronk, Biologist
Application Section II