# 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): 24 March 2020.
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NAP-2020-00061-95 Donaldson M. Simons II Silvi Avenue Property, Bristol Township, Bucks County, Pennsylvania.
- C. PROJECT LOCATION AND BACKGROUND INFORMATION: Silvi Avenue, Bristol Township, Bucks County, Pennsylvania; Latitude: 40.126550°N, Longitude: -74.838310°W.

Name of Name of	Pennsylvania pordinates of site (lat/long in denearest waterbody: Delaward nearest Traditional Navigable watershed or Hydrologic Unit Check if map/diagram of rev Check if other sites (e.g., offson a different JD form.	e Canal. Water (TNW) into which the Code (HUC): iew area and/or potential juri	e aquatic resource flo	Long74.838310°W ows: Delaware Canal.			
D. ⊠ ⊠	REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): Office (Desk) Determination. Date: 24 March 2020. Field Determination. Date(s): 24 January 2020.						
SECTIO A.	N II: SUMMARY OF FIND RHA SECTION 10 DETE	<u>DINGS</u> RMINATION OF JURISD	ICTION.				
	ea. [Required]  Waters subject to the	he ebb and flow of the tide. ly used, or have been used in		iction (as defined by 33 CFR part 329) in the susceptible for use to transport interstate			
В.	CWA SECTION 404 DET	ERMINATION OF JURIS	DICTION.				
There [ <i>Required</i>		Clean Water Act (CWA) ju	risdiction (as defined	by 33 CFR part 328) in the review area.			
1. Water	s of the U.S. a. Indicate presence of water TNWs, including territorial serious Wetlands adjacent to TNWs Relatively permanent waters Non-RPWs that flow directly Wetlands directly abutting R Wetlands adjacent to but not Wetlands adjacent to non-RP Impoundments of jurisdiction Isolated (interstate or intrastate)	eas  (RPWs) that flow directly of or indirectly into TNWs  PWs that flow directly or indirectly abutting RPWs that  PWs that flow directly or indirectly abutting RPWs that	r indirectly into TNW lirectly into TNWs flow directly or indir rectly into TNWs	Vs			
		f the U.S. in the review are ear feet: width (ft) a					
	(boundaries) of jurisdiction of established OHWM (if kn						

## 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: All water/wetland features at the subject property were determined to have no hydrologic connection to Waters of the U.S. The nearest water body is the man-made Delaware Canal, which abuts the subject property to the west. Subterranean leakage from the canal into the surrounding groundwater table, combined with storm water run-off from surrounding properties are the hydrologic sources for the wetland and ponded water features at the subject property. Thus, given the lack of a

hydrologic connection to Waters of the U.S., the water/wetland features at the subject property were determined to be non-jurisdictional. This determination of non-jurisdiction is in agreement with a U.S. Supreme Court decision (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001), where USACE has determined that any waters/wetlands on the subject property do not meet the current criteria of Waters of the U.S. under Section 404 of the Clean Water Act. The Court ruled that isolated, interstate waters can no longer be considered Waters of the U.S. based solely upon their use by migratory birds.

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

<sup>&</sup>lt;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>&</sup>lt;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:

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<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: Drainage area: Average annual rainfall: Average annual snowfall:	inches inches				
(ii) Physical Characteristics:					
(a) Relationship with TNW:					
Tributary flows directly into	TNW.				
Tributary flows through	tributaries before entering TNW.				
Project waters are river miles from TNW.					
Project waters are river miles from RPW.					
Project waters are aerial (straight) miles from TNW.					
Project waters are aerial (straight) miles from RPW.					
Project waters cross or serve as state boundaries. Explain:					
1 Toject waters cross of serve as state boundaries. Explain.					
Identify flow route to TNW <sup>5</sup> :					
Tributary stream order, if known:					

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

<sup>&</sup>lt;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.

(b) General Tributa	ary Charac	eteristics (c	heck all t	hat apply):				
Tributary is:				de). Explain: -altered). Explai	in:			
Tributary properti Average Average :	width:	feet feet	p of bank	(estimate):				
Primary tributary st	ubstrate co Silts Cobbles Bedrock Other. E		a (check a	ll that apply): Sands Gravel Vegetation.	□ □ T	ype	Concrete Muck	% cover:
Presence of run/riff Tributary geometry	Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Presence of run/riffle/pool complexes. Explain: Tributary geometry: Tributary gradient (approximate average slope): %							
(c) Flow: Tributary provides Estimate average no Describe flow regin Other information of	umber of me:			w area/year:				
Surface flow is:		Characte	ristics:					
Subsurface flow: _		Explain to ther) test p		<b>1</b> :				
Tributary has (chec	banks OHWM <sup>6</sup>	(check all clear, nat changes i shelving vegetation	ural line in the charm matted disturbed deposition ining		lbsent			the presence of litter and debris destruction of terrestrial vegetation the presence of wrack line sediment sorting scour multiple observed or predicted flow events abrupt change in plant community
If factors other than	Line indic oil or scu fine shell	ated by: om line alo l or debris markings/o ges	ng shore (	objects (foreshore)	extent of	CWA	jurisdictio	on (check all that apply):  Mean High Water Mark indicated by: survey to available datum; physical markings; vegetation lines/changes in vegetation types
(iii) Chemical Cha Characterize tributa Explain: Identify specific po	ary (e.g., v	water color	is clear,	discolored, oily	film; wa	iter qu	ality; gene	eral watershed characteristics, etc.).

<sup>&</sup>lt;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>Ihid

$\Box$		n corridor. Characteristics (type, average width): d fringe. Characteristics:						
	Habitat for:							
		Federally Listed species. Explain findings:						
		Fish/spawn areas. Explain findings:						
	님	Other environmentally-sensitive species. Explain findings:						
	Ш	Aquatic/wildlife diversity. Explain findings:						
2. Cha	racterist	ics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW						
	(i)	Physical Characteristics:						
		(a) <u>General Wetland Characteristics:</u> 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:						
		(b) <u>General Flow Relationship with Non-TNW:</u> Flow is: Explain:						
		Surface flow is:						
		Characteristics:						
		Subsurface flow: 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) <u>Proximity (Relationship) to TNW</u>						
		Project wetlands are river miles from TNW.						
		Project waters are aerial (straight) miles from TNW.						
		Flow is from:						
		Estimate approximate location of wetland as within the floo	dplain.					
C1 4	(ii)	Chemical Characteristics:	14					
		and system (e.g., water color is clear, brown, oil film on surface; water quality; gene eristics; etc.). Explain:	rai watei					
		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:						
		ics of all wetlands adjacent to the tributary (if any)						
		ing considered in the cumulative analysis:						
Approxi	imately (	) acres in total are being considered in the cumulative analysis.						

For each	wetland,	specify the followin	g:		
Directly	abuts? (Y	N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Summari	ize overall	biological, chemica	al and physical functions	being performed:	
C.	SIGNIF	ICANT NEXUS D	ETERMINATION		
by any woof a TNV wetlands Consider of water wetlands tributary	wetlands a W. For ea- s, has mon rations w in the tri s. It is not y and its a	djacent to the trib ch of the following re than a speculati- hen evaluating sign butary and its pro- appropriate to de djacent wetland o	utary to determine if the situations, a significant we or insubstantial effectificant nexus include, leximity to a TNW, and the termine significant nex	ney significantly affect the chement nexus exists if the tributary, in the chemical, physical and the chemical, physical and the total to the volument of the functions performed by the flust based solely on any specific that the TNW). Similarly, the fact	ry itself and the functions performed ical, physical, and biological integrity a combination with all of its adjacent for biological integrity of a TNW. He, duration, and frequency of the flow tributary and all its adjacent threshold of distance (e.g. between a ct an adjacent wetland lies within or
• Does the TNWs, of other special of the support of the Does the Support of the S	d in the In the tributary or to reduce the tributary the tributary downstream the tributary	astructional Guide y, in combination we the amount of pol y, in combination we as feeding, nesting y, in combination we n foodwebs?	book. Factors to considith its adjacent wetlands lutants or flood waters reith its adjacent wetlands, spawning, or rearing yout ith its adjacent wetlands	der include, for example: (if any), have the capacity to carreaching a TNW? (if any), provide habitat and lifectung for species that are present in	cycle support functions for fish and in the TNW?  In the tribute of the support functions for fish and in the tribute of the support functions for fish and in the tribute of the support functions for fish and in the support function function functions for fish and in the support function f
Note: the	e above li	st of consideration	s is not inclusive and ot	her functions observed or know	vn to occur should be documented
				acent wetlands and flows direct sed on the tributary itself, then go	tly or indirectly into TNWs. Explain to Section III.D:
TNWs. E	Explain fir		or absence of significant	at wetlands, where the non-RPV nexus below, based on the tributa	V flows directly or indirectly into ry in combination with all of its
	or absence				ut the RPW. Explain findings of f its adjacent wetlands, then go to
D.		MINATIONS OF (	JURISDICTIONAL FI	NDINGS. THE SUBJECT WA	TERS/WETLANDS ARE (CHECK
	1.	TNWs:	ent Wetlands. Check al linear feet s adjacent to TNWs:	I that apply and provide size estin width (ft), Or, acres.	nates in review area: acres.
	2.	RPWs that flow of	lirectly or indirectly in	to TNWs.	

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and

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

rationale indicating that tributary is perennial:

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.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).
DEGRADATION SUCH WATERS which ar from wh Interstate Other fac	TED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, I OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY (CHECK ALL THAT APPLY): 10 e or could be used by interstate or foreign travelers for recreational or other purposes. ich fish or shellfish are or could be taken and sold in interstate or foreign commerce. e or could be used for industrial purposes by industries in interstate commerce. e isolated waters. Explain:
Identify water bo	dy and summarize rationale supporting determination:

 <sup>&</sup>lt;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>&</sup>lt;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):					
factors (i	acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional it (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: approximately 3.0-acres.					
	acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such as required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams):  Linear feet, width (ft).  Lakes/ponds:  other non-wetland waters:  wetlands:  acres.  List type of aquatic resource:  Wetlands:					
SECTIO	ON IV: DATA SOURCES.					
Α.	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: E-1, entitled Edgely Manor Industrial Park, date stamped 24 March 2020.					
	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: Bucks County, PA; Survey Area Data: Version 7, Oct					
	6, 2008; http://websoilsurvey.nrcs.usda.gov, National wetlands inventory map(s). Cite name: State/Local wetland inventory map(s): FEMA/FIRM maps: National Flood Hazard Layer FIRMette – ESRI DigitalGlobe. 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929) Photographs: Aerial (Name & Date): GoogleEarth 2004, 2008, 2010, 2013, 2017.  Or Other (Name & Date): Site Photos dated 24 January 2020.					
	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:

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