

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 22-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01310-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
County/parish/borough: Crawford
City: Pymatuning
Lat: 41.595749998855
Long: -80.4552129613868
Universal Transverse Mercator

Folder UTM List

UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List

UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Bennett Run
Name of nearest Traditional Navigable Water (TNW): Shenango River
Name of watershed or Hydrologic Unit Code (HUC): 5030102

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 22-Oct-2008

18-Jul-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: Established by
 OHWM.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**Watershed size: Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

:Number of tributaries

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:

Identify flow route to TNW:⁵**Tributary Stream Order, if known:**

Order	Tributary Name
-	2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	X	X	-	X	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	Perennial flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWB	Discontinuous OHWB ⁷	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	-	-	X	Wetland area 1, 2, and 3 are all directly abutting this UNT.	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	.64	PEM	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	.92	PEM	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	.04	PEM	-	-

(b) General Flow Relationship with Non-TNW:**Flow is:**

Wetland Name	Flow	Explain
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	Intermittent flow.	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	Intermittent flow.	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	Yes	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	Yes	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	30 (or more)	30 (or more)	Wetland to navigable waters	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	30 (or more)	30 (or more)	Wetland to navigable waters	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	30 (or more)	30 (or more)	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	-	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	-	-	-	-
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	-	-	-	-

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: Not Applicable

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/
WETLANDS ARE:****1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	PERENNIAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1310 Pymatuning Village Club Lake Betsy, UNT A Bennett Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	359.3592	-
Total:		359.3592	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	2589.98784
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	3723.10752
2008-1310 Pymatuning Village Club Lake Betsy, Wetland area 3	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	161.87424
Total:		0	6474.9696

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Porter Consulting Engineers	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 22-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01310-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania

County/parish/borough: Crawford

City: Pymatuning

Lat: 41.595749998855

Long: -80.4552129613868

Universal Transverse Mercator Folder UTM List

UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List

UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Bennett Run

Name of nearest Traditional Navigable Water (TNW): Shenango River

Name of watershed or Hydrologic Unit Code (HUC): 5030102

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 22-Oct-2008

18-Jul-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: Established by
OHWM.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: acres
 Drainage area: 80 acres
 Average annual rainfall: 41 inches
 Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 30 (or more) river miles from TNW.

Project waters are [] river miles from RPW.

Project Waters are 30 (or more) aerial (straight) miles from TNW.

Project waters are [] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT B Bennett Run flows into UNT A Bennett Run which flows into Bennett Run which flows into the Shenango River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	X	X	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	Seasonal flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted\Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	-	-	-	-	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run

UNT 2 Bennett Run has well defined bed and banks carrying a small amount of water to UNT 1 Bennett Run. The UNT would likely flow at least 3 months out of the year making this a seasonal RPW and jurisdictional. Given the bed and banks this tributary would have the capacity to transport pollutants and floodwaters to the downstream TNW. While some lifecycle support functions may be somewhat limited, the tributary definitely transports carbon to downstream foodwebs. Therefore UNT 1 Bennett Run does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this Seasonal RPW can be taken jurisdiction of.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/
WETLANDS ARE:**

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	SEASONAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1310 Pymatuning Village Club Lake Betsy, UNT B Bennett Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	122.8344	-
Total:		122.8344	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Porter Consulting Engineers	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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 8, 2008. This form is for unt 1 to Black Run, a RPW with abutting wetlands #4, and isolated wetland #3 with no significant nexus.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:LRP2008-280 Glasial Sand and Gravel Co., Surface Mine 47

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:PA County/parish/borough: Butler City: Worth Township
Center coordinates of site (lat/long in degree decimal format): Lat. 41.006° **N**, Long. -80.086° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Black Run

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

Name of watershed or Hydrologic Unit Code (HUC): 5030104

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:

Field Determination. Date(s): April 30, 2008

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):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 684linear feet: 6width (ft) and/or acres.

Wetlands: 0.31 acres.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**

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: **wetland # 2 is a PEM 0.19 acre wetland located in a low area withinn an agricultural field that has no hydrologic connection to the nearest waterway's, unt 1 and 2 to Black Run, located approximately 100 feet away and therefore, it is isolated. It is unlikely that this wetland has a significant nexus to the closest TNW, the Beaver River, located approximately 15 miles away.**

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

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

(i) General Area Conditions:

Watershed size: .acres

Drainage area: acres

Average annual rainfall: 42 inches

Average annual snowfall: 36 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 4 tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are 15-20 aerial (straight) miles from TNW.

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

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

Identify flow route to TNW⁵: The stream is an unnamed tributary to Black Run, a tributary to Slippery Rock Creek, a tributary to the Beaver River, a TNW. The Beaver is a tributary to the Ohio River, a currently navigable river..

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.

Tributary stream order, if known: 2nd.

(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: 6 feet
Average depth: 1 feet
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: banks relatively stable.

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

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: flow data has not been measured nor recorded, but watercourse is a named stream and is identified on USGS topo map .

Other information on duration and volume:

Surface flow is: **Confined**. Characteristics:

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

Dye (or other) test performed:

Tributary has (check all that apply):

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

Discontinuous OHWM.⁷ Explain:

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 was clear.

Identify specific pollutants, if known:

⁶A 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.

⁷Ibid.

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

- Riparian corridor. Characteristics (type, average width): stream has a forested and shrub riparian corridor in review area.
- Wetland fringe. Characteristics: 0.31 acres PEM/PSS wetlands are located on both banks of stream.
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.
 - 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: 31 acres

Wetland type. Explain: PEM/PSS.

Wetland quality. Explain: appears good.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: .

Surface flow is: **Overland sheetflow**

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 **15-20** river miles from TNW.

Project waters are **15-20** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2-year or less** 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 is clear.

Identify specific pollutants, if known: .

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

Riparian buffer. Characteristics (type, average width): forested riparian buffer.

Vegetation type/percent cover. Explain: PEM 100% PSS 50%.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.

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: **1**

Approximately (0.31) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland #4 Y	0.31		

Summarize overall biological, chemical and physical functions being performed: Wetlands allows for ground water recharge and discharge, reducing sediment and nutrient load, habitat for sensitive species.

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: wetland 5 originates from a hillside seep located approximately 20 feet upslope of the unnamed the stream channel. It extends beyond the study area, which is a 200' wide currently maintained utility line ROW. Even though there is no surface water connection to the RPW, this wetland is the hydrology source for the RPW that is tributary to the Allegheny River, therefore, it would have an effect on the chemical, biological and physical characteristic of the Allegheny River.

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Flow data has not been measured nor recorded, but based on field observations by this office of the physical structure of the stream channel, the development of a defined bed & banks, substrate content, cursory benthic survey,

and abutting wetland the stream is a perennial RPW. In the absence of any additional information, this office has determined it is a jurisdictional RPW.

- 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: **684.4** linear feet **6** width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

- Tributary waters: 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: **wetland #4 is located on both banks of the stream channel and are connected directly to stream channel.**
- 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: **0.31** 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: **.15+** 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).

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

⁸See Footnote # 3.

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

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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: **This 0.19 acre PEM wetland, #3, is located in a depressional area in an agricultural field. The area is located approximately 100 feet from the stream channels, with no surface water connection and is considered isolated. This office is not able to establish and document a significant nexus for this isolated feature to the closest RPW or TNW. It is unlikely that this isolated feature effects the chemical, biological, or physical integrity of the Beaver River, located approximately 15 miles away.**
- 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: prepared by EADs Group, Inc..
- 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: 1:24,000 Slippery Rock.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: SFWS NWI Maps USGS Slippery Rock.

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.

- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): photos from the EADS Group, Inc. dated January and June 2007.
- 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 stream channel is an unnamed tributary Black Run, a tributary to Slippery Rock Creek, which is a tributary to the Beaver River, a TNW, which flows to the Ohio River. Based on field observations by this office of the physical structure of the stream channel, observed flow during our field visit, the development of a defined bed & banks, substrate content, and abutting wetland, this office has determined the stream as perennial RPW. Wetlands #4 directly abutts the stream channel, and therefore, both the stream and abutting wetland #4 are regulated by the Clean Water Act. This office has determined that a significant nexus for jurisdiction under the CWA can not be established and documented for 0.19 acres wetland #3, located approximately 100 feet from both unnamed tributary 1 and 2 to Black Run. With no surface water no connection to waters of the United States it is considered an isolated feature. It is unlikely that this isolated feature would effects the chemical, biological, or physical integrity of the Beaver River, located approximately 15 miles away.

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 8, 2008. This form is for Relevant Reach, UNT 2 to Black Run, a RPW with abutting wetland #1.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:LRP2008-280 Glacial Sand and Gravel Co., Mine 47 Surface Mine

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:PA County/parish/borough: Butler City: Worth Township
Center coordinates of site (lat/long in degree decimal format): Lat. 41.005° N, Long. -80.081° W.
Universal Transverse Mercator:

Name of nearest waterbody: Black Run

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

Name of watershed or Hydrologic Unit Code (HUC): 5030104

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:

Field Determination. Date(s): April 30, 2008

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):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 500linear feet: 4width (ft) and/or acres.

Wetlands: 2.5+ acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

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: .

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

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

(i) General Area Conditions:

Watershed size: acres
Drainage area: acres
Average annual rainfall: 42 inches
Average annual snowfall: 36 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through 4 tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are 15-20 aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: unt 2 to Black Run flows to Black Run, a tributary to Slippery Rock Creek, a tributary to the Beaver River, a TNW..

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.

Tributary stream order, if known: 1st.

(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):

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

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

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: flow data has not been measured nor recorded, but stream is identified on the USGS topographic map. The stream channel originates within a large, >5 acre, wetland complex that is identified on the wetland inventory maps. Stream was not observed during site visit, but flowing water was observed throughout the wetland located within the review area.

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

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

Dye (or other) test performed: .

Tributary has (check all that apply):

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

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: .

Identify specific pollutants, if known: .

⁶A 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.

⁷Ibid.

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

- Riparian corridor. Characteristics (type, average width): stream reach is located within a large wetland complex with PEM/PSS/PFO components..
- Wetland fringe. Characteristics: 2.5 + acre wetland directly abuts the stream.
- Habitat for:
- Federally Listed species. Explain findings: .
- Fish/spawn areas. Explain findings: .
- Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.
- 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: 2.5+ acres

Wetland type. Explain: PEM/PSS/PFO.

Wetland quality. Explain: appears good.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: .

Surface flow is: **Overland sheetflow**

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 **15-20** river miles from TNW.

Project waters are **15-20** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2-year or less** 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: appears good quality.

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: PEM50%/PSS 75%/PFO50%.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.

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: **1**

Approximately (>2.5) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland #1 Y	2.54 acres in study area, wetland extends beyond		

Summarize overall biological, chemical and physical functions being performed: Wetlands allows for ground water recharge and discharge, reducing sediment and nutrient load, habitat for sensitive species.

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: This small, 0.03 acre, wetland is located approximately 10 feet from the OHWM of Cherry Run. This stream is classified as a cold water fishery and is stocked with trout, a popular game fish. This wetland provides for ground water recharge and discharge, habitat for sensitive species which are an important component to the food chain, and contributed to reducing sediment and nutrient load which is very important for maintaining water quality suitable for game fish..

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Flow data has not been measured nor recorded, but stream is identified on the USGS topographic map and originates within a large, >5 acres, adjacent PEM?PSS?PFO wetland complex. The actual stream is located outside of the

study area, but 2.54 acres of the abutting large wetland complex is located within the study area and the stream is identified on the maps submitted to this office for our review. Surface water was observed flowing overland within the wetland located within the study area during our site visit. Therefore, this office has made the determination that the stream is a perennial RPW.

- 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: **500** linear feet **4** width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

- Tributary waters: 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: **stream channel originates within the large wetland complex which directly abuts both sides of the channel.**
- 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: **0.64** 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).

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

⁸See Footnote # 3.

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

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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: prepared by EADS Group, Inc..
- 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: 1:24,000 Slippery Rock.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: SFWS NWI Maps USGS Slippery Rock.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .

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.

or Other (Name & Date): taken by the EADS Group during January and June 2007.

- 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 stream channel is an unnamed tributary Black Run, a tributary to Slippery Rock Creek, which is a tributary to the Beaver River, a TNW, which flows to the Ohio River. Based on field observations by this office of the large abutting wetland complex with overland sheet flow, this office has determined the stream is perennial RPW. Wetlands #1, of which 2.54 of a larger complex is located within the study area directly abutts the stream channel, and therefore, both the stream and abutting wetland #1 are regulated by the Clean Water Act. .

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 8, 2008. This form is for Relevant Reach, UNT 3 to Black Run, a RPW with abutting wetland #2.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:LRP2008-280 Glacial Sand and Gravel Co., Mine 47 Surface Mine

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:PA County/parish/borough: Butler City: Worth Township
Center coordinates of site (lat/long in degree decimal format): Lat. 41.006° **N**, Long. -80.085° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Black Run

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

Name of watershed or Hydrologic Unit Code (HUC): 5030104

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:

Field Determination. Date(s): April 30, 2008

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):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 522.3linear feet: 3width (ft) and/or acres.

Wetlands: 2.3 acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

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: .

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

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

(i) **General Area Conditions:**

Watershed size: **acres**
Drainage area: **acres**
Average annual rainfall: 42 inches
Average annual snowfall: 36 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

- Tributary flows directly into TNW.
 Tributary flows through **5** tributaries before entering TNW.

Project waters are **15-20** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **15-20** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: stream is an unnamed tributary to Black Run, a tributary to Slippery Rock Creek, a tributary to the Beaver River, a TNW.

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.

Tributary stream order, if known: 1st.

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: stream appears to have been historically relocated and

channalized at the edge of an ag field adjacent to a paved roadway..

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

Average width: 3 feet
Average depth: 2 feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. Explain: banks are eroding and undercut.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: flow data has not been measured nor recorded. Based on field observations of the physical structure of the stream channel, the development of a defined bed & banks, substrate content, flow during the site visits, and the abutting wetland located at the origin of the stream, this office determined that the stream is at least a seasonal RPW. The wetland contains several ground water seeps providing a ground water recharge to the stream.

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

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

Dye (or other) test performed: .

Tributary has (check all that apply):

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

Discontinuous OHWM.⁷ Explain: .

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:

⁶A 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.

⁷Ibid.

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

Explain: water is clear, .

Identify specific pollutants, if known: .

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

Riparian corridor. Characteristics (type, average width): stream reach is located within an agricultural field adjacent to a roadway. A few trees and shrubs are located adjacent to the stream..

Wetland fringe. Characteristics: A 2.3 acre PEM wetland is located at the origin of the stream directly abutting the channel. According to the wetland delineator for the site, the wetland had until recently been a forested and /shrub/scrub complex, but the woody vegetation was recently removed. During our site visit, fresh brush piles were located adjacent to the wetland. Photographs dated January 25, 2007 show trees and shrubs in this wetland.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.

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: 2.3 acres

Wetland type. Explain: PEM.

Wetland quality. Explain: appears good.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: .

Surface flow is: **Overland sheetflow**

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 **15-20** river miles from TNW.

Project waters are **15-20** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the **2-year or less** 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 is clear.

Identify specific pollutants, if known: .

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

Riparian buffer. Characteristics (type, average width): wetlands are located within an agricultural field.

Vegetation type/percent cover. Explain: 100 % PEM.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: likely habitat for sensitive salamander and reptile species.

Crawfish wholes were evident within the wetland. The area is within the range of the state protected massagua rattle snake, a wetland species.

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: **1**

Approximately (2.3) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland #2 Y	2.3 acres		

Summarize overall biological, chemical and physical functions being performed: Wetlands allows for ground water recharge and discharge, reducing sediment and nutrient load, habitat for sensitive species.

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: This small, 0.03 acre, wetland is located approximately 10 feet from the OHWM of Cherry Run. This stream is classified as a cold water fishery and is stocked with trout, a popular game fish. This wetland provides for ground water recharge and discharge, habitat for sensitive species which are an important component to the food chain, and contributed to reducing sediment and nutrient load which is very important for maintaining water quality suitable for game fish..

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows

seasonally: flow data has not been measured nor recorded. Based on field observations by this office of the physical structure of the stream channel, the development of a defined bed & banks, substrate content, cursory benthic survey, flow during the site visit, and the abutting wetland located at the origin of the stream, this office determined that the stream is at least a seasonal RPW. The wetland contains several ground water seeps providing a ground water recharge to the stream. flow to the .

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

Tributary waters: 522 linear feet 3 width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

Tributary waters: 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: stream channel originates at wetland which directly abuts the channel.

Provide acreage estimates for jurisdictional wetlands in the review area: 2.3 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).

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

⁸See Footnote # 3.

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

¹⁰Prior 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.

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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: prepared by EADS Group, Inc..
- 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: 1:24,000 Slippery Rock.
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: SFWS NWI Maps USGS Slippery Rock.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): provided by EADs Group dated January and June 2007.
- 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 stream channel is an unnamed tributary Black Run, a tributary to Slippery Rock Creek, which is a tributary to the Beaver River, a TNW, which flows to the Ohio River. Based on field observations by this office of the physical structure of the stream channel, observed flow during our field visit, the development of a defined bed & banks, and substrate content, this office has determined the stream is at the minimum, a seasonal RPW. Wetlands #2, 2.3 acres directly abutts the stream channel, and therefore, both the stream and abutting wetland #2are regulated by the Clean Water Act. .

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 03-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2007-01003-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
County/parish/borough: Allegheny
City:
Lat: 40.5069166666667
Long: -80.2590833333333
Universal Transverse Mercator Folder UTM List
UTM list determined by folder location
 . NAD83 / UTM zone 37S
Waters UTM List
UTM list determined by waters location
 . NAD83 / UTM zone 37S
Name of nearest waterbody: NW East Fork Enlow Run
Name of nearest Traditional Navigable Water (TNW): Ohio River
Name of watershed or Hydrologic Unit Code (HUC): 5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 03-Oct-2008

03-Oct-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: Established by
OHWM.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:
The UNT was found to be ephemeral and therefore a nRPW.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres
 Drainage area: 5 acres
 Average annual rainfall: 40 inches
 Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 15-20 river miles from TNW.

Project waters are [] river miles from RPW.

Project Waters are 5-10 aerial (straight) miles from TNW.

Project waters are [] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT NWEFEN-4 flows into NWEFEN-4 which flows into Montour Run which flows into the Ohio River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2007-1003 North Field Cargo Facility NWEFEN-4 UNT A

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	X	-	-	X	The UNT is culverted across an access road.

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	X	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	Seasonal flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	Confined	Flow would be confined to the bed and banks.

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHW	Discontinuous OHW ⁷	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	-	-	X	Wetland NWEFEN-09 directly abuts this UNT.	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2007-1003 North Field Cargo Facility NWEFEN-4 UNT A

NWEFEN-4 UNT A has well defined bed and banks carrying a small amount of water to NWEFEN. The UNT would likely flow at least 3 months out of the year making this a seasonal RPW and jurisdictional. Given the bed and banks this tributary would have the capacity to transport pollutants and floodwaters to the downstream TNW. While some lifecycle support functions may be somewhat limited, the tributary definitely transports carbon to downstream foodwebs. Therefore NWEFEN-4 UNT A does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this Seasonal RPW can be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	SEASONAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT A	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	59.1312	-
Total:		59.1312	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

The UNT could not have more than a insubstantial or negligible effect on the downstream TNW.

Other (Explain):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/ consultant	Pedersen and Pedersen	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	Original JD 3/3/2005	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 03-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2007-01003-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
 County/parish/borough: Allegheny
 City:
 Lat: 40.5069166666667
 Long: -80.2590833333333
 Universal Transverse Mercator
 Folder UTM List
UTM list determined by folder location
 • NAD83 / UTM zone 37S
 Waters UTM List
UTM list determined by waters location
 • NAD83 / UTM zone 37S
 Name of nearest waterbody: NW East Fork Enlow Run
 Name of nearest Traditional Navigable Water (TNW): Ohio River
 Name of watershed or Hydrologic Unit Code (HUC): 5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 03-Oct-2008
 Field Determination Date (s): 03-Oct-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The UNT was found to be ephemeral and therefore a nRPW.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: acres

Drainage area: 1 acres

Average annual rainfall: 40 inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

:Number of tributaries

Project waters are 15-20 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

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

Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

NWEFEN-4 UNT B flows into NWEFEN-4 UNT A which flows into NWEFEN-4 which flows into Montour Run which flows into the Ohio River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2007-1003 North Field Cargo Facility NWEFEN-4 UNT B

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	-	X	Several old culverts existed along this UNT.

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	-	-	-	-	-	X	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	X	-	X	The OHWM is not present.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2007-1003 North Field Cargo Facility NWEFEN-4 UNT B

Given the small size of NWEFEN-4 UNT B and the small drainage area there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as this tributary is ephemeral no fish were found in it. Lifecycle support functions would be extremely limited within a tributary such as this that is dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs. Therefore NWEFEN-4 UNT B does not have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW cannot be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	Non-RPWs that flow directly or indirectly into TNWs	74.0664	-
Total:		74.0664	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

The UNT could not have more than an insubstantial or negligible effect on the downstream TNW.

Other (Explain):

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

Not Applicable.

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.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT B	Non-RPWs that flow directly or indirectly into TNWs	74.0664	-
Total:		74.0664	0

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Pedersen and Pedersen	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	Original JD 3/3/2008	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 03-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2007-01003-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
 County/parish/borough: Allegheny
 City:
 Lat: 40.5069166666667
 Long: -80.2590833333333
 Universal Transverse Mercator
 Folder UTM List
UTM list determined by folder location
 . NAD83 / UTM zone 37S
 Waters UTM List
UTM list determined by waters location
 . NAD83 / UTM zone 37S
 Name of nearest waterbody: NW East Fork Enlow Run
 Name of nearest Traditional Navigable Water (TNW): Ohio River
 Name of watershed or Hydrologic Unit Code (HUC): 5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 03-Oct-2008
 Field Determination Date (s): 03-Oct-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: The UNT was found to be ephemeral and therefore a nRPW.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: acres

Drainage area: 1 acres

Average annual rainfall: 40 inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

:Number of tributaries

Project waters are 15-20 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

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

Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

NWEFEN-4 UNT C flows into NWEFEN-4 UNT A which flows into NWEFEN-4 which flows into Montour Run which flows into the Ohio River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2007-1003 North Field Cargo Facility NWEFEN-4 UNT C

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	-	X	There is a culvert that conveys this UNT.

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	-	-	-	-	-	X	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	X	-	X	There is no OHWM present.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2007-1003 North Field Cargo Facility NWEFEN-4 UNT C

Given the small size of NWEFEN-4 UNT C and the small drainage area there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as this tributary is ephemeral no fish were found in it. Lifecycle support functions would be extremely limited within a tributary such as this that is dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs. Therefore NWEFEN-4 UNT C does not have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW cannot be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	Non-RPWs that flow directly or indirectly into TNWs	106.68	-
Total:		106.68	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

The UNT could not have more than an insubstantial or negligible effect on the downstream TNW.

Other (Explain):

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

Not Applicable.

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.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2007-1003 North Field Cargo Facility NWEFEN-4 UNT C	Non-RPWs that flow directly or indirectly into TNWs	106.68	-
Total:		106.68	0

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Pedersen and Pedersen	-
--U.S. Geological Survey map(s).	-	-
--Photographs	-	-
----Aerial	-	-
--Previous determination(s).	Original JD 3/3/2008	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 14-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01880-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : WV - West Virginia
County/parish/borough: Jefferson
City: Ranson
Lat: 39.3212061869833
Long: -77.8624403062127
Universal Transverse Mercator: Folder UTM List
UTM list determined by folder location
 . NAD83 / UTM zone 37S
Waters UTM List
UTM list determined by waters location
 . NAD83 / UTM zone 37S
Name of nearest waterbody: UNT Flowing Springs Run
Name of nearest Traditional Navigable Water (TNW): Shenandoah River
Name of watershed or Hydrologic Unit Code (HUC): 2070007

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 14-Oct-2008

12-Aug-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2008-1880 Lloyd Property, UNT Flowing Springs Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
2008-1880 Lloyd Property, Wetland 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWB Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres
 Drainage area: 5 acres
 Average annual rainfall: 39 inches
 Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 5-10 river miles from TNW.

Project waters are [] river miles from RPW.

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

Project waters are [] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT Flowing Springs Run flows into Flowing Springs Run which flows into the Shenandoah River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1880 Lloyd Property, UNT Flowing Springs Run

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1880 Lloyd Property, UNT Flowing Springs Run	Seasonal flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM?	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1880 Lloyd Property, UNT Flowing Springs Run	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	X	Wetland 1 is directly abutting the RPW.	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-1880 Lloyd Property, Wetland 1	.9	PEM	-	-

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, Wetland 1	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-1880 Lloyd Property, Wetland 1	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1880 Lloyd Property, Wetland 1	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-1880 Lloyd Property, Wetland 1	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-1880 Lloyd Property, Wetland 1	5-10	2-5	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
2008-1880 Lloyd Property, Wetland 1	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-1880 Lloyd Property, Wetland 1	-	-	-	-

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1880 Lloyd Property, UNT Flowing Springs Run, 2008-1880 Lloyd Property, Wetland 1 UNT Flowing Springs Run has a relatively well defined bed and banks carrying a small amount of water to Flowing Springs Run. The UNT would likely flow at least 3 months out of the year making this a seasonal RPW and jurisdictional. Given the bed and banks this tributary would have the capacity to transport pollutants and floodwaters to the downstream TNW. While some lifecycle support functions may be somewhat limited, the tributary definitely transports carbon to downstream foodwebs. Therefore UNT Flowing Springs Run does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this Seasonal RPW can be taken jurisdiction of. The wetland is directly abutting.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	SEASONAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, UNT Flowing Springs Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	228.6	-
Total:		228.6	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, Wetland 1	SEASONAL	-

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, Wetland 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	3642.1704
Total:		0	3642.1704

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Virginia Waters and Wetlands	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	USGS	-
--National wetlands inventory map(s).	USFWS	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 14-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01880-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : WV - West Virginia
County/parish/borough: Jefferson
City: Ranson
Lat: 39.3212061869833
Long: -77.8624403062127
Universal Transverse Mercator: Folder UTM List
UTM list determined by folder location
 . NAD83 / UTM zone 37S
Waters UTM List
UTM list determined by waters location
 . NAD83 / UTM zone 37S
Name of nearest waterbody: UNT Flowing Springs Run
Name of nearest Traditional Navigable Water (TNW): Shenandoah River
Name of watershed or Hydrologic Unit Code (HUC): 2070007

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 14-Oct-2008

12-Aug-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2008-1880 Lloyd Property, UNT Flowing Springs Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
2008-1880 Lloyd Property, Wetland 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWB Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres
 Drainage area: 5 acres
 Average annual rainfall: 39 inches
 Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 5-10 river miles from TNW.

Project waters are [] river miles from RPW.

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

Project waters are [] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT Flowing Springs Run flows into Flowing Springs Run which flows into the Shenandoah River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1880 Lloyd Property, UNT Flowing Springs Run

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1880 Lloyd Property, UNT Flowing Springs Run	Seasonal flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM?	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1880 Lloyd Property, UNT Flowing Springs Run	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1880 Lloyd Property, UNT Flowing Springs Run	-	-	X	Wetland 1 is directly abutting the RPW.	-

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-1880 Lloyd Property, Wetland 1	.9	PEM	-	-

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, Wetland 1	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-1880 Lloyd Property, Wetland 1	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1880 Lloyd Property, Wetland 1	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-1880 Lloyd Property, Wetland 1	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-1880 Lloyd Property, Wetland 1	5-10	2-5	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
2008-1880 Lloyd Property, Wetland 1	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-1880 Lloyd Property, Wetland 1	-	-	-	-

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1880 Lloyd Property, UNT Flowing Springs Run, 2008-1880 Lloyd Property, Wetland 1 UNT Flowing Springs Run has a relatively well defined bed and banks carrying a small amount of water to Flowing Springs Run. The UNT would likely flow at least 3 months out of the year making this a seasonal RPW and jurisdictional. Given the bed and banks this tributary would have the capacity to transport pollutants and floodwaters to the downstream TNW. While some lifecycle support functions may be somewhat limited, the tributary definitely transports carbon to downstream foodwebs. Therefore UNT Flowing Springs Run does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this Seasonal RPW can be taken jurisdiction of. The wetland is directly abutting.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, UNT Flowing Springs Run	SEASONAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, UNT Flowing Springs Run	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	228.6	-
Total:		228.6	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Wetland Name	Flow	Explain
2008-1880 Lloyd Property, Wetland 1	SEASONAL	-

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, Wetland 1	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	3642.1704
Total:		0	3642.1704

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Virginia Waters and Wetlands	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	USGS	-
--National wetlands inventory map(s).	USFWS	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 14-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01880-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : WV - West Virginia
 County/parish/borough: Jefferson
 City: Ranson
 Lat: 39.3212061869833
 Long: -77.8624403062127
 Universal Transverse Mercator
 Folder UTM List
UTM list determined by folder location
 . NAD83 / UTM zone 37S
 Waters UTM List
UTM list determined by waters location
 . NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Flowing Springs Run
 Name of nearest Traditional Navigable Water (TNW): Shenandoah River
 Name of watershed or Hydrologic Unit Code (HUC): 2070007

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 14-Oct-2008

Field Determination Date (s): 12-Aug-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: UNT 2 Flowing Springs Run did not have a SND to the Shenandoah River.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres

Drainage area: 1 acres

Average annual rainfall: 39 inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

:Number of tributaries

Project waters are 5-10 river miles from TNW.

Project waters are river miles from RPW.

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

Project waters are aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT2 Flowing Springs Run flows into UNT Flowing Springs Run which flows into Flowing Springs Run which flows into the Shenandoah River.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1880 Lloyd Property, UNT 2 Flowing Springs Run

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	X	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1880 Lloyd Property, UNT 2 Flowing Springs Run

Given the small size of UNT 2 Flowing Springs Run and the small drainage area there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as this tributary is ephemeral no fish were found in it. Lifecycle support functions would be extremely limited within a tributary such as this that is dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs. Therefore UNT 2 Flowing Springs Run does not have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW cannot be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	Non-RPWs that flow directly or indirectly into TNWs	60.96	-
Total:		60.96	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

The ephemeral nRPW could not have more than a speculative or insubstantial effect on the downstream TNW.

Other (Explain):

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

Not Applicable.

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.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1880 Lloyd Property, UNT 2 Flowing Springs Run	Non-RPWs that flow directly or indirectly into TNWs	60.96	-
Total:		60.96	0

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Virginia Waters and Wetlands	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	USGS	-
--National wetlands inventory map(s).	USFWS	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.
- 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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01887-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
County/parish/borough: Washington
City: Bulger
Lat: 40.368297222222
Long: -80.3134166666667
Universal Transverse Mercator
Folder UTM List
UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List
UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Raccoon Creek
Name of nearest Traditional Navigable Water (TNW): Raccoon Creek
Name of watershed or Hydrologic Unit Code (HUC): 5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 17-Oct-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
2008-1887 DGD Martin Property, Wetland 1	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
2008-1887 DGD Martin Property, Wetland 2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-1887 DGD Martin Property, Wetland 3	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-1887 DGD Martin Property, Wetland 4	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-1887 DGD Martin Property, Wetland 5	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: []

Drainage area: []

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

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:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	X	X	-	-	X	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	Perennial flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWB	Discontinuous OHWB ⁷	Explain
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	-	-	X	Wetland 1 and 5 are adjacent and wetland 2, 3, and 4 are abutting.	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-1887 DGD Martin Property, Wetland 2	.02	PEM/PSS	-	-
2008-1887 DGD Martin Property, Wetland 3	.02	PEM, PSS	-	-
2008-1887 DGD Martin Property, Wetland 4	.34	PEM, PSS	-	-

(b) General Flow Relationship with Non-TNW:**Flow is:**

Wetland Name	Flow	Explain
2008-1887 DGD Martin Property, Wetland 2	Intermittent flow.	-
2008-1887 DGD Martin Property, Wetland 3	Intermittent flow.	-
2008-1887 DGD Martin Property, Wetland 4	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-1887 DGD Martin Property, Wetland 2	-	-
2008-1887 DGD Martin Property, Wetland 3	-	-
2008-1887 DGD Martin Property, Wetland 4	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1887 DGD Martin Property, Wetland 2	-	-	-
2008-1887 DGD Martin Property, Wetland 3	-	-	-
2008-1887 DGD Martin Property, Wetland 4	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-1887 DGD Martin Property, Wetland 2	Yes	-	-	-
2008-1887 DGD Martin Property, Wetland 3	Yes	-	-	-
2008-1887 DGD Martin Property, Wetland 4	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-1887 DGD Martin Property, Wetland 2	30 (or more)	20-25	Wetland to navigable waters	-
2008-1887 DGD Martin Property, Wetland 3	30 (or more)	15-20	Wetland to navigable waters	-
2008-1887 DGD Martin Property, Wetland 4	30 (or more)	20-25	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
2008-1887 DGD Martin Property, Wetland 2	-	-
2008-1887 DGD Martin Property, Wetland 3	-	-
2008-1887 DGD Martin Property, Wetland 4	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-1887 DGD Martin Property, Wetland 2	-	-	-	-
2008-1887 DGD Martin Property, Wetland 3	-	-	-	-
2008-1887 DGD Martin Property, Wetland 4	-	-	-	-

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

Wetland Name	Directly Abuts	Size (Area) (m ²)
2008-1887 DGD Martin Property, Wetland 1	No	121.40568
2008-1887 DGD Martin Property, Wetland 5	No	121.40568
Total:		242.81136

Summarize overall biological, chemical and physical functions being performed:

Wetland Name	Functional Summary
2008-1887 DGD Martin Property, Wetland 1	Wetland A is adjacent to UNT 1 Raccoon Creek. Even though this wetland is small it would still provide habitat for certain macro and microorganisms. The wetland would provide the essential lifecycle support functions for the organisms that thrive within it. This wetland would also serve to store floodwaters and help to recharge ground water preventing flooding. Likewise this wetland could help to eliminate certain pollutants before entering the water table. Therefore Wetland A does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW and can be deemed jurisdictional.
2008-1887 DGD Martin Property, Wetland 5	Wetland 5 is directly abutting UNT Raccoon Creek. Even though this wetland is small it would still provide habitat for certain macro and microorganisms. The wetland would provide the essential lifecycle support functions for the organisms that thrive within it. This wetland would also serve to store floodwaters and help to recharge ground water preventing flooding. Likewise this wetland could help to eliminate certain pollutants before entering the water table. Therefore Wetland 5 does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW and can be deemed jurisdictional.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	PERENNIAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1887 DGD Martin Property, UNT-1 to Raccoon Creek	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	670.56	-
Total:		670.56	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1887 DGD Martin Property, Wetland 2	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	80.93712
2008-1887 DGD Martin Property, Wetland 3	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	80.93712
2008-1887 DGD Martin Property, Wetland 4	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1375.93104
Total:		0	1537.80528

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1887 DGD Martin Property, Wetland 1	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs	-	121.40568
2008-1887 DGD Martin Property, Wetland 5	Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs	-	121.40568
Total:		0	242.81136

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Not Applicable.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.
- 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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01887-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : PA - Pennsylvania
County/parish/borough: Washington
City: Bulger
Lat: 40.368297222222
Long: -80.3134166666667
Universal Transverse Mercator
Folder UTM List
UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List
UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Raccoon Creek
Name of nearest Traditional Navigable Water (TNW): Raccoon Creek
Name of watershed or Hydrologic Unit Code (HUC): 5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 17-Oct-2008

Field Determination Date
(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: []
 Drainage area: []
 Average annual rainfall: inches
 Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

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:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	X	X	-	-	-	-	X	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition/Stability	Run/Riffle/Pool Complexes	Geometry	Gradient (%)
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	X	X	-	-	-	-	-	-	-	-	-	-	-	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: Not Applicable**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:****1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	PERENNIAL	-

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1887 DGD Martin Property, UNT-2 to Raccoon Creek	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	99.06	-
Total:		99.06	0

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Ecotone	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
---Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.
- 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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01887-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	PA - Pennsylvania
County/parish/borough:	Washington
City:	Bulger
Lat:	40.3682972222222
Long:	-80.3134166666667
Universal Transverse Mercator	Folder UTM List
	<u>UTM list determined by folder location</u>
	• NAD83 / UTM zone 37S
	Waters UTM List
	<u>UTM list determined by waters location</u>
	• NAD83 / UTM zone 37S
Name of nearest waterbody:	UNT Raccoon Creek
Name of nearest Traditional Navigable Water (TNW):	Raccoon Creek
Name of watershed or Hydrologic Unit Code (HUC):	5030101

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 17-Oct-2008

Field Determination Date
(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 [] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: Established by
OHWM.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres

Drainage area: 1 acres

Average annual rainfall: 38 inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 30 (or more) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project Waters are 20-25 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT 2A to UNT2 to UNT 1 to Raccoon Creek

Tributary Stream Order, if known:

Order	Tributary Name
1	2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek (headwater to UNT-2)	-	-	-	-	-	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek (headwater to UNT-2)	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWL	Discontinuous OHWL ⁷	Explain
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	X	-	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek (headwater to UNT-2)	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek(headwater to UNT-2)

Given the small size of UNT 2A Raccoon Creek and the small drainage area there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as this tributary is ephemeral no fish were found in it. Lifecycle support functions would be extremely limited within a tributary such as this that is dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs. Therefore UNT 2A Raccoon Creek does not have more then a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW cannot be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1887 DGD Martin Property, UNT-2A to Raccoon Creek (headwater to UNT-2)	Non-RPWs that flow directly or indirectly into TNWs	27.432	-
Total:		27.432	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Ecotune	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 24-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01965-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : OH - Ohio
County/parish/borough: Mahoning
City: North Jackson
Lat: 41.088
Long: -80.893
Universal Transverse Mercator: Folder UTM List
UTM list determined by folder location

- NAD83 / UTM zone 37S

Waters UTM List
UTM list determined by waters location

- NAD83 / UTM zone 37S

Name of nearest waterbody: UNT Morrison Run
Name of nearest Traditional Navigable Water (TNW): Mahoning River
Name of watershed or Hydrologic Unit Code (HUC): 5030103

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 24-Oct-2008

11-Aug-2008

Field Determination Date

(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1965 Handwork Property Site, UNT 2 Morrison Run	Non-RPWs that flow directly or indirectly into TNWs
2008-1965 Handwork Property Site, Wetland A	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
2008-1965 Handwork Property Site, Wetland D	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size: acres
 Drainage area: 20 acres
 Average annual rainfall: 37 inches
 Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 10-15 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project Waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

UNT 2 Morrison Run Flows into Morrison Run which flows into Meander Creek which flows into the Mahoning River, a Section 10 waterway.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1965 Handwork Property Site, UNT 2 Morrison Run

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1965 Handwork Property Site, UNT 2 Morrison Run	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	X	-	-	-	X	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1965 Handwork Property Site, UNT 2 Morrison Run	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2008-1965 Handwork Property Site, UNT 2 Morrison Run	X	X	X	Some reaches the OHWM is difficult to distinguish.

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted\Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
2008-1965 Handwork Property Site, UNT 2 Morrison Run	X	X	-	-	-	-	-	-	-	-	-	-	-	X	-	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:**High Tide Line indicated by:**

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1965 Handwork Property Site, UNT 2 Morrison Run	-	-	X	Wetland A is abutting this UNT and Wetland D is adjacent.	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-1965 Handwork Property Site, Wetland A	.56	PEM	-	-
2008-1965 Handwork Property Site, Wetland D	.03	PEM	-	-

(b) General Flow Relationship with Non-TNW:**Flow is:**

Wetland Name	Flow	Explain
2008-1965 Handwork Property Site, Wetland A	Intermittent flow.	-
2008-1965 Handwork Property Site, Wetland D	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-1965 Handwork Property Site, Wetland A	-	-
2008-1965 Handwork Property Site, Wetland D	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1965 Handwork Property Site, Wetland A	-	-	-
2008-1965 Handwork Property Site, Wetland D	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-1965 Handwork Property Site, Wetland A	Yes	-	-	-
2008-1965 Handwork Property Site, Wetland D	No	X	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-1965 Handwork Property Site, Wetland A	10-15	5-10	Wetland to navigable waters	-
2008-1965 Handwork Property Site, Wetland D	10-15	5-10	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
2008-1965 Handwork Property Site, Wetland A	-	-
2008-1965 Handwork Property Site, Wetland D	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-1965 Handwork Property Site, Wetland A	-	-	-	-
2008-1965 Handwork Property Site, Wetland D	-	-	-	-

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1965 Handwork Property Site, UNT 2 Morrison Run, 2008-1965 Handwork Property Site, Wetland A, 2008-1965 Handwork Property Site, Wetland D
UNT 2 Morrison Run has relatively well defined bed and banks that could carry a small amount of water to Morrison Run. Given the bed and banks this tributary would have the capacity to transport pollutants and floodwaters to the downstream TNW 12 miles away. While some lifecycle support functions may be somewhat limited, the tributary definitely transports carbon to downstream foodwebs. Not to mention it connects a 0.56 acre PEM wetland to the TNW. Therefore UNT 2 Morrison Run does have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW is thought to be jurisdictional.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1965 Handwork Property Site, UNT 2 Morrison Run	Non-RPWs that flow directly or indirectly into TNWs	237.744	-
Total:		237.744	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1965 Handwork Property Site, Wetland A	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs	-	2266.23936
2008-1965 Handwork Property Site, Wetland D	Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs	-	121.40568
Total:		0	2387.64504

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Western Reserve Land Consultants, Inc.	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--100-year Floodplain Elevation is:	-	-
--Photographs	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

- 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.
- 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.
- 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.
- 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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 24-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01965-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : OH - Ohio
 County/parish/borough: Mahoning
 City: North Jackson
 Lat: 41.088
 Long: -80.893
 Universal Transverse Mercator Folder UTM List
UTM list determined by folder location
 • NAD83 / UTM zone 37S
 Waters UTM List
UTM list determined by waters location
 • NAD83 / UTM zone 37S
 Name of nearest waterbody: UNT Morrison Run
 Name of nearest Traditional Navigable Water (TNW): Mahoning River
 Name of watershed or Hydrologic Unit Code (HUC): 5030103

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 24-Oct-2008

Field Determination Date (s): 11-Aug-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-1965 Handwork Property Site, Wetland B	Isolated (interstate or intrastate) waters, including isolated wetlands
2008-1965 Handwork Property Site, Wetland C	Isolated (interstate or intrastate) waters, including isolated wetlands

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetland B and C were determined to be too far disconnected from any nexus to the TNW and therefore qualify as isolated wetlands.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

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

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

(i) General Area Conditions:

Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

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:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Not Applicable.

(b) General Tributary Characteristics:

Tributary is:

Not Applicable.

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

Not Applicable.

Primary tributary substrate composition:

Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:

Not Applicable.

Surface Flow is:

Not Applicable.

Subsurface Flow:

Not Applicable.

Tributary has:

Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Not Applicable.

(iv) Biological Characteristics. Channel supports:

Not Applicable.

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Waters Name	Interstate/Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
2008-1965 Handwork Property Site, Wetland B	-	-	-	-	-	-	-
2008-1965 Handwork Property Site, Wetland C	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
2008-1965 Handwork Property Site, Wetland B	-	-
2008-1965 Handwork Property Site, Wetland C	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1965 Handwork Property Site, Wetland B	Isolated (interstate or intrastate) waters, including isolated wetlands	-	647.49696
2008-1965 Handwork Property Site, Wetland C	Isolated (interstate or intrastate) waters, including isolated wetlands	-	121.40568
Total:		0	768.90264

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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):

No connection could be found for Wetland B and C. They have no substantial nexus to interstate or foreign commerce either.

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

Not Applicable.

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.

Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Western Reserve Land Consultants, Inc.	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
----Aerial	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.

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.

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.

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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 24-Oct-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh District, LRP-2008-01965-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	OH - Ohio
County/parish/borough:	Mahoning
City:	North Jackson
Lat:	41.088
Long:	-80.893
Universal Transverse Mercator	Folder UTM List
	<u>UTM list determined by folder location</u>
	• NAD83 / UTM zone 37S
	Waters UTM List
	<u>UTM list determined by waters location</u>
	• NAD83 / UTM zone 37S
Name of nearest waterbody:	UNT Morrison Run
Name of nearest Traditional Navigable Water (TNW):	Mahoning River
Name of watershed or Hydrologic Unit Code (HUC):	5030103

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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: 24-Oct-2008

Field Determination Date (s): 11-Aug-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.**a. Indicate presence of waters of U.S. in review area:¹**

Water Name	Water Type(s) Present
2008-1965 Handwork Property Site, UNT 1 Morrison Run	Non-RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:
The UNT was ephemeral and its exact nexus to the TNW could not be traced.

SECTION III: CWA ANALYSIS**A. TNWs AND WETLANDS ADJACENT TO TNWs****1. TNW**

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: acres

Drainage area: 2 acres

Average annual rainfall: 37 inches

Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are 10-15 river miles from TNW.

Project waters are 1-2 river miles from RPW.

Project Waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1-2 aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Flow route cannot be determined as the ephemeral UNT empties into a soybean field.

Tributary Stream Order, if known:

Order	Tributary Name
-	2008-1965 Handwork Property Site, UNT 1 Morrison Run

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-1965 Handwork Property Site, UNT 1 Morrison Run	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	X	-	-	X	-	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-1965 Handwork Property Site, UNT 1 Morrison Run	Ephemeral flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-	-

Tributary has:

Tributary Name	Bed & Banks	OHW	Discontinuous OHW ⁷	Explain
2008-1965 Handwork Property Site, UNT 1 Morrison Run	X	-	-	-

If factors other than the OHW were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

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

Tributary Name	Explain	Identify specific pollutants, if known
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-1965 Handwork Property Site, UNT 1 Morrison Run	-	-	-	-	-

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

(b) General Flow Relationship with Non-TNW:**Flow is:**

Not Applicable.

Surface flow is:

Not Applicable.

Subsurface flow:

Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:

Not Applicable.

(d) Proximity (Relationship) to TNW:

Not Applicable.

(ii) Chemical Characteristics:

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

Not Applicable.

(iii) Biological Characteristics. Wetland supports:

Not Applicable.

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

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

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.

Findings for: 2008-1965 Handwork Property Site, UNT 1 Morrison Run

Given the small size of UNT 1 Morrison Run and the small drainage area there is little to no capacity for this tributary to carry pollutants or flood waters to the TNW. Being as this tributary is ephemeral no fish were found in it. Lifecycle support functions would be extremely limited within a tributary such as this that is dry much of the year. A small amount of carbon may be transported by this tributary during heavy rain events but would amount to a negligible percentage for downstream foodwebs. Therefore UNT 1 Morrison Run does not have more than a speculative or insubstantial effect on the chemical, biological, or physical integrity of the TNW. It is for this reason that this nRPW cannot be taken jurisdiction of.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/ WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Tributary Name	Type	Size (Linear) (m)	Size (Area) (m ²)
2008-1965 Handwork Property Site, UNT 1 Morrison Run	Non-RPWs that flow directly or indirectly into TNWs	204.216	-
Total:		204.216	0

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

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:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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:

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Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

No significant nexus could be established.

Other (Explain):

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A. SUPPORTING DATA. Data reviewed for JD

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