# 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

- REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania

County/parish/borough: Washington County

City: Glyde

Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

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

#### REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

June 5, 2017

V Field Determination. Date(s): January 30, 2017

# 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.

#### 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]

- - a. Indicate presence of waters of U.S. in review area (check all that apply): 1

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

V 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: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

#### SECTION III: CWA ANALYSIS

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

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

#### 1. TNW

Identify TNW:

Summarize rationale supporting determination: .

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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:

546 acres

Drainage area:

637 acres

Average annual rainfall: 38.8 inches Average annual snowfall: 29 inches

# (ii) Physical Characteristics:

# (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through, tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.

Project waters are river miles from RPW.

Project waters are 10-15 aerial (straight) miles from TNW.

Project waters are aerial (straight) miles from RPW.

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

Tributary stream order, if known:

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

Tributary is:

☐ Natural

Artificial (man-made), Explain:

Manipulated (man-altered). Explain: Five percent of the channel in the project area is culverted. The flow of Stream 5 entering the project area is directed under a work access road by a culvert. Wetland C could have developed at the confluence of Stream 4 and Stream 5 as a result of backup of culvert flow at the inlet of Culvert 5. It is clear that portions of the Stream 5 channel have been straightened. It has been noted that this area has a history of industrial and agricultural work, and its drainage has likely been redirected before.

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

Average width: 2.5 feet Average depth: 1.0 feet Average side slopes: 2:1

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

|       |                 | Primary                                    | tributary substrat  | te compo   | sition (check all th   | at apply):  |                                |  |
|-------|-----------------|--|---|--|--|---|--------------------------------|--|
|       |                 |  | Silts   |  | Sands  |   |                                | Concrete   |
|       |                 | [₹]  | Cobbles   | V.   | Gravel   |   |                                | Muck   |
|       |                 | <b>f</b>                                   | Bedrock   | Γ  | Vegetation. Typ  | e/% cover:  |                                |  |
|       |                 | . []                                       | Other. Explain:   |  |  |   |                                |  |
|       |                 | Presence<br>proj<br>area<br>Tributary      | of run/riffle/poo<br>ect area, and ther   | l comple:<br>e were be<br>dering   | xes. Explain: Not<br>ends and hooks in   | present. Thou                                       | gh ther                        | n: Stream 5 had sturdy banks. e was variation in the velocity of flow through the riffles were not distinct in Stream 5 in the project |
|       | (c)             | Estimate<br>Desc                           | provides for: Se<br>average number<br>cribe flow regime<br>ormation on dura       | of flow e<br>: Flow is   | vents in review are<br>perennial.  | a/year: 20 (or g                                    | reater)                        |  |
|       |                 |  |   |  |  |   |                                | here it flows under roads and close to the project cely through Wetland E.   |
|       |                 |  | e flow: Unknown<br>Dye (or other) te  | _  | -  |   |                                |  |
|       |                 |  | changes in the<br>shelving<br>vegetation ma<br>leaf litter dista<br>sediment depo | all indica<br>line impa<br>e characte<br>tted dow<br>arbed or<br>osition | estors that apply):<br>ressed on the bank<br>er of soil<br>m, bent, or absent<br>washed away | destruction the presen sediment s scour multiple of | n of ter<br>ce of w<br>corting | tter and debris restrial vegetation rack line for predicted flow events plant community  |
|       |                 |  | ligh Tide Line in   | dicated be<br>e along s<br>bris depo                                     | by:  Chore objects  Disits (foreshore)   | Mean High Was survey to a physical m                | ater Ma<br>vailable<br>arkings |  |
| (iii) | Chara<br>I<br>t | icterize trib<br>Explain: St<br>he Applica |   | clear on   |  | e visit, but has                                    | been sh                        | general watershed characteristics, etc.). own to be cloudy as in the photographs from  |

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

6Ibid.

| (iv)  | Bio              | logical Characteristics. Channel supports (check all that apply):  |
|-------|------------------|--|
|       | ]                | Riparian corridor. Characteristics (type, average width): .  |
|       | V                | Wetland fringe. Characteristics: Stream 5 directly abuts and flows through several PEM wetlands.   |
|       | 1                | Habitat for:   |
|       |                  | Federally Listed species, Explain findings: .  |
|       |                  | Fish/spawn areas. Explain findings: .  |
|       |                  | Other environmentally-sensitive species. Explain findings: .   |
|       |                  | Aquatic/wildlife diversity. Explain findings: .  |
| Cha   | ract             | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
| (i)   | Phy              | sical Characteristics;   |
|       | (a)              | General Wetland Characteristics:   |
|       |                  | Properties: Wetland size: 0.45 acres (Wetland F)   |
|       |                  | Wetland type. Explain: PEM   |
|       |                  | Wetland quality. Explain:  |
|       | (b)              | General Flow Relationship with Non-TNW: Flow is: Explain: Discharges directly into Stream 5. Wetland F is adjacent to the right bank of Stream 5, and discharges into Stream 5 via overland flow. Wetland F also receives flows upslope from ephemeral Stream 7. |
|       |                  | Surface flow is: Discrete Characteristics: Seasonal variation.   |
|       |                  | Subsurface flow: Unknown Explain findings: .   |
|       |                  | Dye (or other) test performed: .   |
|       | (c)              | Wetland Adjacency Determination with Non-TNW:  Directly abutting   |
|       |                  | Not directly abutting  |
|       |                  | Discrete wetland hydrologic connection. Explain:   |
|       |                  | Ecological connection. Explain:  |
|       |                  | Separated by berm/barrier. Explain: .  |
|       | ( <del>1</del> ) | Proximity (Relationship) to TNW  |
|       | (4)              | Project wetlands are 15-20 river miles from TNW.   |
|       |                  | Project waters are 10-15 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)  | Che              | omical Characteristics:  |
|       | Cha              | racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristic  |
|       | Iden             | etc.). Explain: .<br>tify specific pollutants, if known: .   |
| (iii) |                  | logical Characteristics. Wetland supports (check all that apply):  |
| ()    |                  |  |
|       | ~                |  |
|       |                  | vegetation (10 species); 4 species (dark green bulrush, sweet flag, creeping jenny, and fox sedge) made up 60% of the cover in August 2016.  |
|       |                  |  |
|       |                  | Federally Listed species. Explain findings: .  |
|       |                  | Fish/spawn areas. Explain findings: .  |
|       |                  | Cother environmentally-sensitive species. Explain findings:  |
|       |                  | Aquatic/wildlife diversity. Explain findings:  |
| Cha   | racto            | eristics of all wetlands adjacent to the tributary (if any)  |

# 3.

2.

All wetland(s) being considered in the cumulative analysis: 3

Approximately (#) acres in total are being considered in the cumulative analysis. 0.978 acres For each wetland, specify the following:

| Directly abuts? | (Y/N) | Size (in acres) |
|-----------------|-------|-----------------|
| Wetland C       | Y     | 0.009           |
| Wetland E       | Y     | 0.519           |
| Wetland F       | Y     | 0.450           |

Summarize overall biological, chemical and physical functions being performed: Wetland C is located at the confluence of Stream 5 and Stream 4 as it discharges from Culvert 4. It developed in the stream channel just before Stream 5 flows through Culvert 5 under the access road. In August 2016, the Wetland's saturated water table was 10 inches with no surface flow; during the USACE field visit, surface flow was observed. It is likely gathering sediment from the slowing of the stream flow before it enters the road culvert, hence the high saturation and lack of surface flow.

Wetland E was initially delineated by the Applicant as E-1, a palustrine emergent wetland, and E-2, a palustrine forested wetland. However, no hydrophytic trees were delineated (only dying crabapple trees), and none were observed during the USACE site visit. Wetland "E-2" was observed to be a dry patch within the emergent wetland. This dry patch (likely due to slightly higher elevation) did have hydric soils and wetland hydrology. It has been determined that this habitat was simply one wetland, Wetland E.

Wetland F is adjacent to the right bank of Stream 5, and discharges into Stream 5 via overland flow. Wetland F also receives flows upslope from ephemeral Stream 7.

#### 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:

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into Ephemeral Stream 7 flows indirectly to TNW Chartiers Creek by flowing directly into Wetland F, which then discharges into Stream 5, which flows to the TNW.
- Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

| D. | DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE S | SUBJECT WATERS/W | ETLANDS AR | E (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. Data supporting this conclusion is provided at Section III.B. Provide data and rationale indicating that tributary is perennial. See 2016 delineation report by Dieffenbauch and Hritz.
- 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: See 2016 delineation report by Dieffenbauch and Hritz.

| Provide estimates for jurisdictional waters in the review area (check all that | t appl | hat | ĺŧ | all | ck | chec | area ( | review | the | s ir | waters | ctional | iurisdi | for | stimates | Provide |
|--|--------|-----|----|-----|----|------|--------|--------|-----|------|--------|---------|---------|-----|----------|---------|
|--|--------|-----|----|-----|----|------|--------|--------|-----|------|--------|---------|---------|-----|----------|---------|

| Tributary waters: 3,001 linear feet . 2.5 wid | th (ft). |
|---|----------|
|---|----------|

Other non-wetland waters: . acres.

|    | Identify type(s) of waters:   |
|----|---|
| 3. | Non-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C. |
|    | Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: 266 linear feet, 0.9 average width (ft).  |

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

Identify type(s) of waters: Ephemeral streams.

Other non-wetland waters: acres.

- 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 5 flows through Wetland C and Wetland E. Wetland F discharges overland flow into Stream 5.
  - 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: Intermittent Stream 3 flows directly into Wetland B, which then flows into Stream 5 via intermittent Stream 4.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.08 acres.

| 3. Thenands adjacent to but not unretily abuting a tel to that hop directly of municely into i | lands adjacent to but not directly abutting a RPW that flow directly or indirectly i |  |
|--|--|--|
|--|--|--|

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 jurisidictional. 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 Π.C.

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

| 7. I | mpoundments | of jurisdictiona | l waters. <sup>8</sup> |
|------|-------------|------------------|------------------------|
|------|-------------|------------------|------------------------|

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

Demonstrate that impoundment was created from "waters of the U.S.," or

Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

Demonstrate that water is isolated with a nexus to commerce (see E below).

| E. | ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION |
|----|--|
|    | OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK     |
|    | ALL THAT APPLY):9  |

| DIHAI APPLIJ:  |
|--|
| 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: .  |
| ntify water body and summarize rationale supporting determination:                               |
| vide 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.

<sup>&</sup>lt;sup>7</sup>See Footnote # 3

<sup>&</sup>lt;sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook,

<sup>&</sup>lt;sup>9</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

|          |   | 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: .   |
|          | <b>1</b> .:                                   | waters do not meet the Significant rooms standard, where saon a mining is required for jurisdiction. Explain.   |
|          | Г   | Other: (explain, if not covered above): .   |
|          | (i.e.   | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors, presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment eck all that apply):  |
|          |   | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
|          |   | Lakes/ponds: acres.   |
|          | Г   | Other non-wetland waters: acres. List type of aquatic resource: .   |
|          | Г   | Wetlands: acres.  |
|          | find  | vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ing is required for jurisdiction (check all that apply):  |
|          | 1.:   | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
|          | 10  | Lakes/ponds: acres.   |
|          |   | Other non-wetland waters: acres. List type of aquatic resource:.  |
|          | Г   | Wetlands: # acres.  |
|          |   |   |
| <u>S</u> | ECTIO   | N IV: DATA SOURCES.   |
|          |   | ORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and   |
|          | reque   | ested, appropriately reference sources below): Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and a stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but designs were not finalized and were not included.  Data sheets prepared/submitted by or on behalf of the applicant/consultant.   |
|          | İ   | Office concurs with data sheets/delineation report.   |
|          |   | Office does not concur with data sheets/delineation report.   |
|          | 111   | Data sheets prepared by the Corps:  |
|          |   | Corps navigable waters' study:  |
|          |   | U.S. Geological Survey Hydrologic Atlas:  |
|          | Į   | USGS NHD data.  |
|          | ı   | USGS 8 and 12 digit HUC maps.   |
|          |   | U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads   |
|          | V V   | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015   |
|          | <u>                                      </u> | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015   |
|          |   | State/Local wetland inventory map(s):   |
|          |   | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |
|          |   | 00-year Floodplain Elevation is:  |
|          | V P   | Photographs:   Aerial (Name & Date): Application aerial, 9/30/2016  |
|          | <b>.</b>                                      | or 🔽 Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016   |
|          | P   | revious determination(s). File no. and date of response letter:   |
|          | T A   | Applicable/supporting case law:   |
|          | A   | applicable/supporting scientific literature:  |
|          | V C   | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017   |
| В.       | throug<br>active<br>drained                   | HONAL COMMENTS TO SUPPORT JD: the most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5" hout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The pad is relatively flat, and is d by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation. |
|          |   |   |

Alani Taylor Project Manager June 15, 2017

Date

## 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 26, 2016
- DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania County/parish/borough: Washington County City: Glyde Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

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

#### REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

June 5, 2017

Field Determination. Date(s): January 30, 2017

#### 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.

#### 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 waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

#### 2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetland D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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

<sup>&</sup>lt;sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

#### SECTION III: CWA ANALYSIS

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

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

#### 1. TNW

Identify TNW:

Summarize rationale supporting determination:

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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: 38.8 inches Average annual snowfall: 29 inches

# (ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

Natural

Artificial (man-made). Explain: .

Manipulated (man-altered). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before.

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

Average width: 1.0 feet Average depth: 0.4 feet Average side slopes:

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

|     | Primary                            | tributary substrate  | compos   | ition (check all t   | hat app  | ly):   |  |  |
|-----|------------------------------------|--|--|--|----------|--|--|--|
|     |                                    | Silts  | _  | Sands  |          |  |  | Concrete   |
|     | Γ:                                 | Cobbles  | V  | Gravel   |          | •  |  | Muck   |
|     | Γ                                  | Bedrock  | Γ_   | Vegetation. Ty   | /pe/% c  | over:  |  |  |
|     | Γ                                  | Other, Explain:  |  |  | -        |  |  |  |
|     | banks are<br>Presence<br>Tributary |  | terately<br>complex<br>vely Str  | stable" in the A<br>es. Explain: Ri<br>aight                                 | pplican  | t's Habitat  | Asses  | in: The Stream 2 channel is well-defined. The ssment Field Data Sheet. re not observed.                                  |
| (c) | Tributary<br>Estimate<br>Des       | y provides for: Epho<br>average number of<br>cribe flow regime:<br>formation on duration           | `flow e  | vents in review a  | area/yea | ar:  |  |  |
|     |                                    | flow is: Discrete Cl<br>is defined but shallo  |  | istics: There we   | ere no n | oted rills o   | r gulli  | ies in the banks or surrounding upland area. The   |
|     |                                    | ce flow: Unknown<br>Dye (or other) tes   |  |  |          |  |  |  |
|     | If factors                         | water staining other (list): Discontinuous OF other than the OF High Tide Line in oil or scum line | II indication important indicated downsition  IWM.6  WM we dicated a along bris deposite indicated indicat | explain:  Explain:  re used to determ by:  shore objects  stors that apply): | nk       | destruction the present sediment scour multiple of abrupt cha eral extent an High W survey to physical r | on of te<br>nee of<br>sorting<br>observe<br>ange in<br>of CV<br>vater M<br>availal | ed or predicted flow events  n plant community .  WA jurisdiction (check all that apply):  Mark indicated by: ble datum; |
|     | ſ                                  | other (list):  |  |  |          | •  |  |  |
| Ch  | aracterize t<br>Explain:           |  |  | s clear, discolore   | ed, oily | film; wate   | r quali  | ity; general watershed characteristics, etc.).   |

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>6</sup>Ibid.

| 2. Char<br>(i) I | Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics: |
|------------------|--|
| 2. Char<br>(i) I | Habitat for:  Federally Listed species. Explain findings: .  Fish/spawn areas. Explain findings: .  Other environmentally-sensitive species. Explain findings: .  Aquatic/wildlife diversity. Explain findings: .  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics:  |
| 2. Char<br>(i) I | Federally Listed species. Explain findings: .  Fish/spawn areas. Explain findings: .  Other environmentally-sensitive species. Explain findings: .  Aquatic/wildlife diversity. Explain findings: .  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics:  |
| (i) I            | Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings:  Aquatic/wildlife diversity. Explain findings:  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics:   |
| (i) I            | Other environmentally-sensitive species. Explain findings: .  Aquatic/wildlife diversity. Explain findings: .  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics:  |
| (i) I            | Aquatic/wildlife diversity. Explain findings: .  acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  Physical Characteristics:  |
| (i) I            | acteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  |
| (i) I            | Physical Characteristics:  |
|                  |  |
|                  | a) General Wetland Characteristics: Properties: Wetland size: Wetland type. Explain: Wetland quality. Explain:   |
| (                | b) General Flow Relationship with Non-TNW: Flow is: Explain:   |
| ٠                | Surface flow is: Characteristics: .  |
|                  | Subsurface flow: Unknown Explain findings: .  Dye (or other) test performed:   |
| (0               | 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 river miles from TNW. Project waters are aerial (straight) miles from TNW. Flow is from: Estimate approximate location of wetland as within the floodplain.   |
| Cł               | nemical Characteristics:<br>naracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics<br>etc.). Explain: .<br>entify specific pollutants, if known: .   |
| (iii) Bi         | ological Characteristics. Wetland supports (check all that apply):   |
| ſ.               | Riparian buffer. Characteristics (type, average width):  |
| .<br> -          | Vegetation type/percent cover. Explain: .  |
| T.               | Habitat for:   |
|                  | Federally Listed species. Explain findings: .  |
|                  | Fish/spawn areas. Explain findings: .  Other environmentally-sensitive species. Explain findings: .  |
|                  | Aquatic/wildlife diversity. Explain findings:  |

All wetland(s) being considered in the cumulative analysis: Approximately . acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

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

#### 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:

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into Ephemeral Stream 2 flows indirectly to TNW Chartiers Creek by flowing directly into Stream 3 which becomes Stream 4, and discharges into Stream 5 which flows to the TNW.
- Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

| D. | DETERMINATIONS OF JURISDICTION | NAL FINDINGS | . THE SUBJECT V | WATERS/WETLA | NDS ARE ( | CHECK ALL |
|----|--------------------------------|--------------|-----------------|--------------|-----------|-----------|
|    | THAT APPLY);                   |              |                 |              |           |           |

| TH   | AT APPLY):  |
|------|---|
| TN   | Ws 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.  |
| RPV  | Ws that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:                 |
| Γ    | Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:                 |
|      | Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: . linear feet . width (ft).  Other non-wetland waters: . acres.  Identify type(s) of waters: .  |
| Non  | P-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C. |
| Prov | vide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: 46 linear feet 0.4 width (ft).  Other non-wetland waters: acres.   |

Identify type(s) of waters: .

3,

1.

2.

|    | 7.        | 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:  |
|    | 5.        | Wetlands adjacent to but not directly abutting a 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 jurisidictional. Data supporting this conclusion is provided at Section III.C.   |
|    |           | Provide acreage estimates for jurisdictional wetlands in the review area: acres.  |
|    | 6.        | Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.   |
|    |           | Provide estimates for jurisdictional wetlands in the review area: #acres.   |
|    | 7.        | Impoundments of jurisdictional waters. <sup>8</sup> As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  |
|    |           | Demonstrate that water meets the criteria for one of the categories presented above (1-6), or   |
|    |           | Demonstrate that water is isolated with a nexus to commerce (see E below).  |
| E. | OR<br>ALI | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK L THAT APPLY):  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:  tify water body and summarize rationale supporting determination:  vide 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       | N-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): .   |
|    | (i.e., j  | ide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment ok all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  |
|    |           | Lakes/ponds: acres.   |
|    | 1_: (     | Other non-wetland waters: acres. List type of aquatic resource: .   |
|    |           |   |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

|      | Г              | Wetlands: acres.  |
|------|----------------|---|
|      | find           | vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ing is required for jurisdiction (check all that apply):  |
|      | Г              | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
|      |                | Lakes/ponds: acres.   |
|      | <u> </u>       | Other non-wetland waters: acres. List type of aquatic resource: .   |
|      |                | Wetlands: acres.  |
|      |                |   |
| SEC  | TIO            | NIV: DATA SOURCES.  |
| A. 8 | SUPE           | PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and  |
|      | V              | nested, appropriately reference sources below):  Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and a stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but designs were not finalized and were not included.  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:  |
|      | <b>[</b>       | Corps navigable waters' study:  |
|      | Г              | U.S. Geological Survey Hydrologic Atlas:  |
|      |                | USGS NHD data.  |
|      |                | USGS 8 and 12 digit HUC maps.   |
|      | V              | U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads   |
|      | V              | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015   |
|      | V              | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015   |
|      | Γ              | State/Local wetland inventory map(s):   |
|      |                | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |
|      |                | 100-year Floodplain Elevation is:   |
|      | ,<br> V        | Photographs: Aerial (Name & Date): Application aerial, 9/30/2016  |
|      | ,·             | or   Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016   |
|      |                | Previous determination(s). File no, and date of response letter:  |
|      |                | Applicable/supporting case law:   |
|      | / :<br>        | Applicable/supporting scientific literature:  |
|      | •              | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017   |
|      |                |   |
|      | throu<br>activ | TITIONAL COMMENTS TO SUPPORT JD:  The most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5' ughout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently we work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The work pad is relatively flat, and ained by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various a (agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation. |
|      |                |   |
|      |                |   |
|      |                | June 15, 2017   |
|      | Mań            | i Taylor Date   |
|      |                | ect Managér   |

B.

# 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 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania

County/parish/borough: Washington County

City: Glyde

Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

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:

June 5, 2017

Field Determination. Date(s): January 30, 2017

#### 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 waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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

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).

#### 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:

#### Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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: 38.8 inches Average annual snowfall: 29 inches

# (ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

Natural Natural

Artificial (man-made), Explain: .

Manipulated (man-altered). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before. This channel is the result of the grading of the work pad, and it guides surface flow northwest then northeast into Stream 5. Stream 4 and Stream 3 are essentially one channel in which Wetland B developed. Stream 4 is shaped to be aligned with Hartley Hill Road.

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

Average width: 1.0 feet Average depth: 1.5 feet Average side slopes:

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

|           | Primary                             | tributary substrate   | composition   | (check all that a   | pply):   |  |   |
|-----------|-------------------------------------|---|---|---|--|--|---|
|           | 1                                   | Silts   | Sand  | ls .  | j  | Г  | Concrete  |
|           | V                                   | Cobbles   | Grav  | ⁄el   |  | _  | Muck  |
|           | Г                                   | Bedrock   | √ Vege  | etation. Type/%   | cover:   |  |   |
|           | 1                                   | Other, Explain: Be<br>Wetland B, Stream   | elow Wetland<br>n 3 is charact  | d B, Stream 4 is<br>erized as having  | characterized a<br>g a "cobble/gra   | as hav   | ving a "silt/gravel" substrate, and above substrate.  |
|           | "moderat<br>Presence<br>Tributary   | ely stable" in the A  | pplicant's ha<br>omplexes. E<br>cring   | ıbitat assessmen<br>xplain: Riffle sı   | t field data she   | ets.   | n: Stream 4 and Stream 3 are both described as<br>ly exposed in Stream 3.                                     |
| (c)       | Tributary Estimate: Desc Other info | provides for: Sease<br>average number of<br>cribe flow regime: .<br>ormation on duration  | flow events in and volum  | e: ,  |  |  |   |
|           | 4 receives                          | ow is: Discrete and<br>flow from Wetland<br>into Stream 5.  | Confined C<br>d B through   | Culvert 3, and the  | The Stream 3 c<br>ne channel is re   | hann<br>estrict  | el has some meandering into Wetland B. Streat<br>ted to be aligned with the road. Its flow is then            |
|           |                                     | e flow: Unknown Dye (or other) test   | -   | ngs: .  |  |  |   |
| (iii) Cho | If factors o                        | shelving vegetation matter leaf litter disturt sediment deposit water staining other (list): Discontinuous OHV office than the OHW High Tide Line indi oil or scum line fine shell or debut physical marking tidal gauges other (list): | indicators the impressed haracter of seed down, bended or washed tion  VM. 6 Explain M were used cated by: along shore or is deposits ( | on the bank oil via t, or absent daway on:  It to determine la bijects foreshore) | destruction of the presence sediment sor scour multiple obseabrupt chang steral extent of the ean High Water survey to available physical markets. | of terroof working  cerved  cerved  cer Ma  critical and the ser Ma  kings | or predicted flow events clant community .  A jurisdiction (check all that apply): ark indicated by: e datum; |
| Char      | acterize trib<br>Explain: .         | racteristics: outary (e.g., water c pollutants, if know   |   | discolored, oily  | film; water qu   | ıality   | ; general watershed characteristics, etc.).   |

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Solution of 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.

| (iv)  | Bio   | logical Characteristics. Channel supports (check all that apply):  |
|-------|-------|--|
|       | 1     | Riparian corridor. Characteristics (type, average width):  |
|       | JV.   | Wetland fringe. Characteristics: The landform of the Wetland B is a bench with a perched water table. Two species make up 50% of the vegetative cover ( <i>Impatiens capensis</i> and <i>Syphrotrichum prenanthoides</i> ). The development or presence of this wetland may have been influenced by the culverting of the stream channel in which it is. |
|       | _     | Habitat for:   |
|       |       | Federally Listed species. Explain findings:  |
|       |       | Fish/spawn areas. Explain findings: .  |
|       |       | Other environmentally-sensitive species. Explain findings:   |
|       |       | Aquatic/wildlife diversity. Explain findings:  |
| Cha   | ıract | eristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
| (i)   |       | vsical Characteristics:  |
| `,    | •     | General Wetland Characteristics:   |
|       |       | Properties: Wetland size: 0.101 acres  |
|       |       | Wetland type. Explain: Palustrine Emergent (PEM).  |
|       |       | Wetland quality. Explain: The landform of the wetland is bench with a perched water table. Two species make up 50% of the vegetative cover ( <i>Impatiens capensis</i> and <i>Syphrotrichum prenanthoides</i> )  |
|       | (b)   | General Flow Relationship with Non-TNW: Flow is: Intermittent Flow Explain: Wetland B is located near the origin of intermittent Stream 3.   |
|       |       | Surface flow is: Discrete and Confined Characteristics: The outlet of Wetland B is restricted to culvert outflow into the Stream 4 channel.  |
|       |       | Subsurface flow: Unknown Explain findings: .   |
|       |       | Dye (or other) test performed: .   |
|       | (c)   | Wetland Adjacency Determination with Non-TNW:  |
|       |       | Directly abutting  |
|       |       | Not directly abutting  |
|       |       | Discrete wetland hydrologic connection. Explain:   |
|       |       | Ecological connection. Explain:  |
|       |       | Separated by berm/barrier. Explain:  |
|       | (d)   | Proximity (Relationship) to TNW  |
|       |       | Project wetlands are 15-20 river miles from TNW.  Project waters are 10-15 aerial (straight) miles from TNW.   |
|       |       | Flow is from: Wetland to Navigable Waters  |
|       |       | Estimate approximate location of wetland as within the floodplain.   |
| (ii)  | Che   | mical Characteristics:   |
|       | Cha   | racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristic  |
|       | Iden  | etc.). Explain: . tify specific pollutants, if known: .  |
| (iii) |       | logical Characteristics. Wetland supports (check all that apply):  |
| (,    | Γ     |  |
|       | V     |  |
|       |       | Habitat for:   |
|       | •     | Federally Listed species. Explain findings: .  |
|       |       | Fish/spawn areas. Explain findings: .  |
|       |       | Other environmentally-sensitive species. Explain findings: .   |
|       |       | Aquatic/wildlife diversity. Explain findings: .  |

2.

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: 1
Approximately 0.101 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) 0.101 Wetland B Y

Summarize overall biological, chemical and physical functions being performed: Wetland B holds some of the surface runoff from the field upslope, and allows for some of the sediment to settle before the water flows further downstream.

#### 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:

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into
- Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

| D. | DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHEC | CK ALL |
|----|--|--------|
|    | THAT APPLY):   |        |

|    | 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. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:   |
|    | 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: See 2010 delineation report by Dieffenbauch and Hritz. |
|    | Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: 442 (ft).   |
|    | Other non-wetland waters: . acres.  Identify type(s) of waters: .   |
| 3. | Non-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.                                     |
|    | Provide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: . linear feet . width (ft).   |
|    | Other non-wetland waters: acres.  |
|    | Identify type(s) of waters: .   |

016

|           | 4.       | Wetlands directly abutting a 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: Wetland B lies directly within the channel of Streams 3 and 4, receiving open flow from Stream 3 and discharging culverted flow into Stream 4. Stream 3 flow into Wetland B was observed.  |
|           |          | Provide acreage estimates for jurisdictional wetlands in the review area: 0.101 acres   |
|           | 5.       | Wetlands adjacent to but not directly abutting a 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 jurisidictional. Data supporting this conclusion is provided at Section III.C.   |
|           |          | Provide acreage estimates for jurisdictional wetlands in the review area: acres.  |
|           | 6.       | Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.   |
|           |          | Provide estimates for jurisdictional wetlands in the review area: #acres.   |
|           | 7.       | Impoundments of jurisdictional waters. <sup>8</sup> As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  |
|           |          | Demonstrate that water meets the criteria for one of the categories presented above (1-6), or   |
|           |          | Demonstrate that water is isolated with a nexus to commerce (see E below).  |
| <b>E.</b> | OR<br>AL | PLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATIO DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECKL THAT APPLY):   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:   |
|           | Г        | Other factors. Explain: .   |
|           | Ide      | ntify water body and summarize rationale supporting determination: .  |
|           | Pro      | vide 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:   |
|           | Γ        | Wetlands: acres.  |
|           |          |   |
| F.        | NO.      | N-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: |
|           | T-       | Other: (explain, if not covered above):   |
|           | (i.e.    | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors, presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment sek all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
|           |          |   |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

|   | •  |
|---|--|
| 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 the finding is required for jurisdiction (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  | at do not meet the "Significant Nexus" standard, where such a  |
| Lakes/ponds: acres.   |  |
| Other non-wetland waters: acres, List type of aquatic resource:.  |  |
| Wetlands: . acres.  |  |
| wettands. acres.  |  |
| SECTION IV: DATA SOURCES.   |  |
| A. SUPPORTING DATA. Data reviewed for JD (check all that apply - check  | ced items shall be included in case file and, where checked an   |
| requested, appropriately reference sources below):  Maps, plans, or plots submitted by or on behalf of the applicant/consultant stream-wetland delineation completed by the Applicant/Consultant designs were not finalized and were not included.  Data sheets prepared/submitted by or on behalf of the applicant/consultant  | ent: Received 10/26/2016. Application included maps and a in 2016. A narrative of the future plans was provided, bu  |
| 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: 7.5 minute Top USDA Natural Resources Conservation Service Soil Survey. Citation: NI   |  |
| National wetlands inventory map(s). Cite name: USFWS National Wetla   | inds Inventory 2015  |
| State/Local wetland inventory map(s):   |  |
| FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |  |
| 100-year Floodplain Elevation is:   |  |
| Photographs:  | б  |
| or 🔽 Other (Name & Date): Field photographs included i  | in the application, 8/9/2016 and 10/4/2016   |
| Previous determination(s). File no. and date of response letter:  |  |
| Applicable/supporting case law:   |  |
| Applicable/supporting scientific literature:  |  |
| Other information (please specify): Observations and photographs from   | a USACE site visit on 1/30/2017  |
|   |  |
| B. ADDITIONAL COMMENTS TO SUPPORT JD:  The most recent NWI map shows Little Chartiers Creek, a perennial stream throughout the application). The project area is just southwest of CR-40, and the active work pad sits upslope of the right bank of Stream 5 (not in the 100-year advanced by culverts which guides streams and drainage around and through it in work (agricultural and industrial) since at least the 1970s, and thus many opportunity of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the project of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the right bank of Stream in the stream of the stream | topography slopes generally towards the road. The currently flood zone of Stream 5). The pad is relatively flat, and is no Stream 5. The project area has had a history of various |
|   |  |
| ALTL  |  |
|   | June 15, 2017  |
| Alani Taylor  | Date   |
| Project Manager   | •  |

stream 6

## 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 26, 2016
- DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania County/parish/borough: Washington County City: Glyde Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

- V 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
- REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
  - Office (Desk) Determination. Date:

June 5, 2017

Field Determination. Date(s): January 30, 2017

#### 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.

#### 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 Г

V Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetland D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

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

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>&</sup>lt;sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

#### SECTION III: CWA ANALYSIS

#### TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aguatic 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.

#### TNW

Identify TNW:

Summarize rationale supporting determination:

#### Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

## 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 (percanial) 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 percunial (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.

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

# General Area Conditions:

Watershed size: . acres

Drainage area:

Average annual rainfall: 38.8 inches

Average annual snowfall: 29 inches

# (ii) Physical Characteristics:

# (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

Natural Natural

Artificial (man-made). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before. This channel receives from the work pad area, and discharges, almost completely via Culvert 2, into Stream 5.

Manipulated (man-altered). Explain: .

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

Average width: 1.0 feet Average depth: 0.4 feet Average side slopes:

|     | Primary t  | ributary substrate o   | composit  | ion (check all the                                       | at app   | oly):  |                                     |   |
|-----|--|--|---|--|----------|--|-------------------------------------|---|
|     |  | Silts  |   | Sands  |          |  |                                     | Concrete  |
| I   |  | Cobbles  | <b>∀</b> . (  | Gravel   |          |  | <u> </u>                            | Muck  |
|     | Γ.   | Bedrock  | <u> </u>  | Vegetation. Typ  | e/% c    | over;  |                                     |   |
|     | П  | Other. Explain:  |   |  |          |  |                                     |   |
|     | the Appli<br>Presence<br>Tributary   | cant's habitat asses   | ssment fic<br>omplexe   | eld data sheet, th<br>s. Explain: Only                   | ough     | this may h   | iave mi                             | n: Stream 6 is described as "moderately stable" in<br>ach to do with the guidance from Culvert 2.<br>I were unculverted, so this could not be seen. |
| (c) | Estimate :   | provides for: Seas<br>average number of<br>cribe flow regime;<br>ormation on duration  | flow eve  | nts in review are  | ea/yea   | nr:  |                                     |   |
|     |  | ow is: Confined C<br>y via Culvert 2, in   |   |  | m rec    | ceives fron  | the we                              | ork pad area, and directly discharges, almost   |
|     |  | e flow: Unknown<br>Dye (or other) test   | -   | -  |          |  |                                     |   |
|     | ר.<br>יס<br>ר<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י<br>י | has (check all that Bed and banks OHWM <sup>5</sup> (check a clear, natural li changes in the shelving vegetation mat leaf litter distu- sediment depo- water staining other (list): | ll indicat<br>ine impre<br>character<br>ted down<br>rbed or w | ssed on the bank<br>of soil                              | <b>▽</b> | destruction<br>the present<br>sediment<br>scour<br>multiple of | on of tention of tention of verting |   |
|     | [  | Discontinuous OH   | WM 6 E  | xplain:  |          |  |                                     |   |
|     | If factors   | other than the OHY<br>High Tide Line ind<br>oil or scum line<br>fine shell or de<br>physical marki<br>tidal gauges   | WM were<br>dicated by<br>along sl<br>bris depo                | e used to determing:  y:  hore objects  sits (foreshore) | Me       | ean High V<br>survey to<br>physical i                          | Vater M<br>availat<br>marking       |   |
| Cha | racterize tr<br>Explain: .   | racteristics:<br>ibutary (e.g., water<br>ic pollutants, if kno   |   | clear, discolored  | l, oily  | film; wate   | er quali                            | ty; general watershed characteristics, etc.).   |

(iii)

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. <sup>6</sup>Ibid.

| (iv) Biological Characteristics. Channel supports (check all that apply):  |      |
|--|------|
| Riparian corridor. Characteristics (type, average width):  |      |
| Wetland fringe. Characteristics: .   |      |
| Habitat for:   |      |
| Federally Listed species. Explain findings: .  |      |
| Fish/spawn areas. Explain findings: .  |      |
| Other environmentally-sensitive species. Explain findings: .   |      |
| Aquatic/wildlife diversity. Explain findings: .  |      |
| . Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  |      |
| (i) Physical Characteristics:  |      |
| (a) General Wetland Characteristics:   |      |
| Properties: Wetland size: . acres  |      |
| Wetland type. Explain: .   |      |
| Wetland quality. Explain: .  |      |
| (b) General Flow Relationship with Non-TNW: Flow is: Explain: .  |      |
| Surface flow is:   |      |
| Characteristics:   |      |
| Subsurface flow: Unknown Explain findings: .   |      |
| Dye (or other) test performed: .   |      |
| (c) Wetland Adjacency Determination with Non-TNW:  |      |
| Directly abutting  |      |
| Not directly abutting  |      |
| Discrete wetland hydrologic connection. Explain:   |      |
| Ecological connection. Explain:  |      |
| Separated by berm/barrier, Explain:  |      |
| (d) Proximity (Relationship) to TNW Project wetlands are river miles from TNW.   |      |
| Project waters are aerial (straight) miles from TNW.   |      |
| Flow is from:  |      |
| Estimate approximate location of wetland as within the floodplain.   |      |
| (ii) Chemical Characteristics:  Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics. | ies: |
| etc.). Explain: .  | ,    |
| Identify specific pollutants, if known:  |      |
| (iii) Biological Characteristics. Wetland supports (check all that apply):   |      |
| Riparian buffer. Characteristics (type, average width):  |      |
| Vegetation type/percent cover. Explain:  Habitat for:  |      |
| Federally Listed species. Explain findings: .  |      |
| Fish/spawn areas, Explain findings: .  |      |
| Other environmentally-sensitive species. Explain findings:   |      |
| Aquatic/wildlife diversity. Explain findings: .  |      |
|  |      |
| Characteristics of all wetlands adjacent to the tributary (if any)   |      |

3.

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

Approximately 0 acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

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

#### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

|    | *****  |
|----|--|
| 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. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .  |
| ÷  | 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: See 2016 delineation report by Dieffenbauch and Hritz. |
|    | Provide estimates for jurisdictional waters in the review area (check all that apply):   |
|    | Tributary waters: 414 (ft), 1.0 width (ft).  |
|    | Other non-wetland waters: . acres.   |
|    | Identify type(s) of waters: .  |
| 3. | Non-RPWs7 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  |

DETERMINATIONS OF JURISDICTIONAL FINDINGS, THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL

Wetlands directly abutting a RPW that flow directly or indirectly into TNWs.
 Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

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

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):

D.

|                 | Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:   |
|-----------------|--|
|                 | Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:   |
|                 | Provide acreage estimates for jurisdictional wetlands in the review area: .  |
| 5.              | Wetlands adjacent to but not directly abutting a 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 jurisidictional. Data supporting this conclusion is provided at Section III.C.  |
|                 | Provide acreage estimates for jurisdictional wetlands in the review area: acres.   |
| 6.              | Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.  |
|                 | Provide estimates for jurisdictional wetlands in the review area: #acres.  |
| 7.              | Impoundments of jurisdictional waters. <sup>8</sup> As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or   |
|                 | Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  |
|                 | Demonstrate that water is isolated with a nexus to commerce (see E below).   |
|                 | 1 Demonstrate that water is isolated with a next to commerce (see E below).  |
| OR<br>AL        | DLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK L THAT APPLY):  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: .  |
|                 |  |
| Ide             | ntify water body and summarize rationale supporting determination: .   |
| Pro             | vide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet width (ft).   |
| Г.:             | Other non-wetland waters: acres.   |
|                 | Identify type(s) of waters:  |
| J. i            | Wetlands: acres.   |
|                 | AN AN ONCON COMPANY AND THE PROPERTY OF THE PROPERTY AND COMPANY AND ADDRESS A |
| NOI             | N-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.  |
| 1               | 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:   |
| Г               | Other: (explain, if not covered above): .  |
| (i.e.,<br>(chec | ide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment ok 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: .  |

E.

F.

<sup>8</sup> To complete the analysis refer to the key in Scotion III.D.6 of the Instructional Guidebook.
9 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.

| <b>T</b>            | Wetlands: acres.  |
|---------------------|---|
|                     | ovide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ding is required for jurisdiction (check all that apply):  |
| Γ                   | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
| 1                   | Lakes/ponds: acres.   |
| Г                   | Other non-wetland waters: acres. List type of aquatic resource: .   |
| Г                   | Wetlands: . acres.  |
| •                   |   |
| ari arriv           |   |
|                     | ON IV: DATA SOURCES.  |
|                     | PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked an uested, appropriately reference sources below):   |
| V                   | Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but   |
| [V]                 | designs were not finalized and were not included.  Data sheets prepared/submitted by or on behalf of the applicant/consultant.  |
| 10.1                | Office concurs with data sheets/delineation report.   |
|                     | Office does not concur with data sheets/delineation report.   |
| Г                   | Data sheets prepared by the Corps:  |
|                     | Corps navigable waters' study:  |
| i i                 | U.S. Geological Survey Hydrologic Atlas:  |
| *                   | USGS NHD data.  |
|                     | USGS 8 and 12 digit HUC maps.   |
| V                   | U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads   |
| V                   | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015   |
| V                   | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015   |
| Г                   | State/Local wetland inventory map(s):   |
| ⊽                   | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |
|                     | 100-year Floodplain Elevation is:   |
| JV.                 | Photographs:   Aerial (Name & Date): Application aerial, 9/30/2016  |
|                     | or [v] Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016   |
|                     | Previous determination(s). File no. and date of response letter:  |
|                     | Applicable/supporting case law:   |
| 厂                   | Applicable/supporting scientific literature:  |
| V                   | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017   |
|                     |   |
| thro<br>acti<br>dra | The most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5 bughout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently we work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The pad is relatively flat, and is ined by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various rk (agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation. |
|                     |   |
|                     | At 1  |
| A 1×6               | June 15, 2017   |
|                     | ni Taylor Date  |

# 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

- REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania

County/parish/borough: Washington County

City: Glyde

Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

- ٧ 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
- REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

V Office (Desk) Determination. Date: June 5, 2017

7 Field Determination. Date(s): January 30, 2017

#### 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]

- - a. Indicate presence of waters of U.S. in review area (check all that apply): 1
- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands
  - b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

- 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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

#### SECTION III: CWA ANALYSIS

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

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

# 1. TNW

Identify TNW:

Summarize rationale supporting determination: .

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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: . a

Drainage area: . acre

Average annual rainfall: 38.8 inches Average annual snowfall: 29 inches

#### (ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

✓ Natural

Artificial (man-made). Explain: .

Manipulated (man-altered). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before.

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

Average width: 0.5 feet

Average depth: 0.3 feet

Average side slopes:

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

|       |            | Primary  | tributary substrat   | te compos   | sition (check a  | ıll that aj                        | oply):  |  |   |
|-------|------------|--|--|---|--|------------------------------------|---|--|---|
|       |            | V  | Silts  |   | Sands  |                                    |   |  | Concrete  |
|       |            |  | Cobbles  | $\Gamma$  | Gravel   |                                    |   |  | Muck  |
|       |            | . [-   | Bedrock  | Γ   | Vegetation.  | Type/%                             | cover:  |  |   |
|       |            | <b>[</b> 7]                                      | Other. Explain:  | clay  |  |                                    |   |  |   |
|       |            | to the stro<br>Stream 7<br>Presence<br>Tributary | ong growth of the  | e surround<br>moderate<br>I complex<br>ively Stra   | ding upland voltage in the stable in the sta | egetatior<br>he Appli<br>Riffle/po | (Stream 7<br>cant's habit   | flows ti<br>at asses   | n: Stream 7 has banks that are not continuous du<br>hrough a forested area with a thick understory).<br>ssment field data sheet.<br>e not observed. |
|       | (c)        | Estimate :                                       | provides for: Ep<br>average number o<br>ribe flow regime<br>ormation on dura   | of flow ev  | vents in reviev  | v area/ye                          | ar:   |  |   |
|       |            |  | ow is: Discrete (<br>defined but shal  |   |  |                                    |   |  | es in the banks or surrounding upland area. The ite visits.   |
|       |            |  | e flow: Unknown<br>Dye (or other) te   | _   |  |                                    |   |  |   |
|       | J          | If factors o                                     | changes in the shelving vegetation ma leaf litter districted water staining other (list): Discontinuous Of ther than the OH ligh Tide Line in oil or scum lin fine shell or dephysical markitidal gauges | all indica line imprese characte atted down arbed or v position  HWM.6 I WM were dicated b e along s ebris depo | essed on the bar of soil  n, bent, or abswashed away  Explain: e used to determy: hore objects osits (foreshor   | ent F                              | destruction the present sediment s scour multiple of abrupt cha eral extent can High W survey to a physical m | n of ten<br>ce of w<br>sorting<br>bserved<br>nge in p<br>of CWA<br>ater Ma<br>available<br>arkings | restrial vegetation rack line  I or predicted flow events plant community .  A jurisdiction (check all that apply): ark indicated by: e datum;      |
| (iii) | Chara<br>E | cterize trib<br>Explain: .                       | acteristics: outary (e.g., water   |   | clear, discolor  | ed, oily                           | film; water   | quality  | ; general watershed characteristics, etc.).   |

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

6 Ibid.

|         | (iv)         | Bic        | ological Characteristics. Channel supports (check all that apply):  Riparian corridor. Characteristics (type, average width):   |
|---------|--------------|------------|---|
|         |              | _          | Wetland fringe. Characteristics: .  |
|         |              | r          | Habitat for:  |
|         |              | •          | Federally Listed species. Explain findings: .   |
|         |              |            |   |
|         |              |            | Fish/spawn areas. Explain findings: .   |
|         |              |            | Other environmentally-sensitive species. Explain findings:  |
|         |              |            | Aquatic/wildlife diversity. Explain findings: .   |
| 2.      | Cha          | aracı      | teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
|         | (i)·         |            | ysical Characteristics; General Wetland Characteristics; Properties; Wetland size: Wetland type. Explain;   |
|         |              |            | Wetland quality. Explain:   |
|         |              | (b)        | General Flow Relationship with Non-TNW: Flow is: Perennial Flow Explain:  |
|         |              |            | Surface flow is: Characteristics: .   |
|         |              |            | Subsurface flow: Unknown Explain findings: .  Dye (or other) test performed: .  |
|         |              | (c)        | Wetland Adjacency Determination with Non-TNW:  Directly abutting  |
|         |              |            | Not directly abutting   |
|         |              |            | Discrete wetland hydrologic connection. Explain:  |
|         |              |            | Ecological connection. Explain:   |
|         |              |            | Separated by berm/barrier. Explain: .   |
|         |              | (d)        | Proximity (Relationship) to TNW Project wetlands are river miles from TNW. Project waters are aerial (straight) miles from TNW. Flow is from: Estimate approximate location of wetland as within the floodplain.                      |
|         | (ii)         | Cha        | emical Characteristics:<br>aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristic<br>etc.). Explain: .<br>ntify specific pollutants, if known: .          |
|         | (iii)        | Bio        | logical Characteristics. Wetland supports (check all that apply):  Riparian buffer. Characteristics (type, average width): .  |
|         |              | Γ.         | Vegetation type/percent cover. Explain: .   |
|         |              | Γ.         | Habitat for:  |
|         |              |            | Federally Listed species. Explain findings: .   |
|         |              |            | Fish/spawn areas. Explain findings: .   |
|         |              |            | Other environmentally-sensitive species. Explain findings:  |
|         |              |            | Aquatic/wildlife diversity. Explain findings:   |
| 3.      | Cha          | All<br>App | teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: proximately acres in total are being considered in the cumulative analysis. each wetland, specify the following: |
| trabit. | andara Vants | santaki    | <u>Directly abuts? (Y/N)</u> Size (in acres)  |

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

#### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into
  TNWs. Ephemeral Stream 7 flows indirectly to TNW Chartiers Creek by flowing directly into Wetland F which discharges
  into Stream 5 which flows to the TNW.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

Tributary waters: 159 linear feet 0.5 width (ft).

Wetlands directly abutting a RPW that flow directly or indirectly into TNWs.

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

Other non-wetland waters: acres.
Identify type(s) of waters: .

abutting an RPW: .

|    | 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. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:  |
|    | Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: |
|    | Provide estimates for jurisdictional waters in the review area (check all that apply):   |
|    | Tributary waters: . linear feet . width (ft).  |
|    | Other non-wetland waters: . acres.   |
|    | Identify type(s) of waters: .  |
| 3. | Non-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  |
|    | Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.   |
|    | Provide estimates for jurisdictional waters within the review area (check all that apply):   |

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

D.

|    |        | 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:  |
|----|--------|---|
|    | 5.     | Wetlands adjacent to but not directly abutting a 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 jurisidictional. Data supporting this conclusion is provided at Section III.C. |
|    |        | Provide acreage estimates for jurisdictional wetlands in the review area: acres.  |
|    | 6.     | Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.                             |
|    |        | Provide estimates for jurisdictional wetlands in the review area: #acres.   |
|    | 7.     | Impoundments of jurisdictional waters. <sup>8</sup> As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or  |
|    |        | Demonstrate that water meets the criteria for one of the categories presented above (1-6), or   |
|    |        | Demonstrate that water is isolated with a nexus to commerce (see E below).  |
| E. | OR     | LATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECKLE THAT APPLY):9   |
|    | ]      | 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.  |
|    | 1      | which are or could be used for industrial purposes by industries in interstate commerce.  |
|    | , ,    | Interstate isolated waters. Explain:  |
|    | 1      | Other factors. Explain: .   |
|    | Ider   | ntify water body and summarize rationale supporting determination:  |
|    | Γ      | ride 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:   |
|    | 1      | Wetlands: acres.  |
| F. | NO     | N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):   |
|    | Γ      | 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): .   |
|    | (i.e., | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment ck all that apply):  |
|    | 1      | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |
|    | Γ      | Lakes/ponds: acres.   |
|    |        | Other non-wetland waters: acres. List type of aquatic resource: .   |
|    | Γ      | Wetlands: acres.  |
|    | find   | vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ing is required for jurisdiction (check all that apply):  |
|    | 1.:    | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).   |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

| <b>T</b> :    | Lakes/ponds: acres.   |
|---------------|---|
| Γ             | Other non-wetland waters: acres. List type of aquatic resource: .   |
| Г             | Wetlands: . acres.  |
|               |   |
| er cri        | ON IV: DATA SOURCES.  |
|               |   |
|               | PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked are uested, appropriately reference sources below):  |
|               | Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and   |
| ŕ             | stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but   |
| V             | designs were not finalized and were not included.  Data sheets prepared/submitted by or on behalf of the applicant/consultant.  |
| lai           | 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:  |
| ':<br>[7]     | U.S. Geological Survey Hydrologic Atlas:  |
| 1 .:          | USGS NHD data.  |
|               | USGS 8 and 12 digit HUC maps.   |
| V             | U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads   |
| V             | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015   |
| V             | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015   |
| ĥ             | State/Local wetland inventory map(s):   |
| V             | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |
| Ē             | 100-year Floodplain Elevation is:   |
| V             | Photographs: Aerial (Name & Date): Application aerial, 9/30/2016  |
|               | or   Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016   |
| Г             | Previous determination(s). File no. and date of response letter:  |
| Π             | Applicable/supporting case law:   |
|               | Applicable/supporting scientific literature:  |
| <b>M</b>      | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017   |
|               |   |
| B, ADDI       | TIONAL COMMENTS TO SUPPORT JD:  The most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5"  |
| throu         | ghout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently  |
| active        | e work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The pad is relatively flat, and is  |
| drain<br>work | ed by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various (agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation. |
| ,,,,,,,,      | ,   |
|               | 1/4/  |
| i i           | June 15, 2017   |
|               | Tayler Date   |
|               | et Manager  |
| -             |   |



# 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 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania County/parish/borough: Washington County Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

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

#### REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY);

Office (Desk) Determination. Date:

June 5, 2017

Field Determination. Date(s): January 30, 2017

#### 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 waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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

<sup>&</sup>lt;sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 mouths).

#### 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 rationalc supporting determination: .

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

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

#### (i) General Area Conditions:

Watershed size: . acres
Drainage area: . acres

Average annual rainfall: 38.8 inches Average annual snowfall: 29 inches

# (ii) Physical Characteristics:

# (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

Natural

Artificial (man-made). Explain: .

Manipulated (man-altered). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before. Stream 8 occasionally receives discharge from Culvert 9 which directs runoff from an old dirt road.

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

Average width: 1.2 feet Average depth: 0.3 feet Average side slopes:

|     |  | ibutary substrate c<br>Silts  |  | ion (check a<br>Sands   | ll that app              | oly):   | Г  | Concrete  |
|-----|--|---|--|---|--------------------------|---|--|---|
|     |  | Cobbles   |  | Gravel  |                          |   | Г  | Muck  |
|     |  |   |  |   | m 107                    |   | 1  | Muck  |
|     |  | Bedrock<br>Other, Explain:  | 1  | Vegetation.   | Type/%                   | cover;  |  |   |
|     | (described<br>Presence of<br>Tributary | condition/stability<br>I as "moderately un<br>of run/riffle/pool co<br>geometry: Relativo<br>gradient (approxin   | nstable"<br>omplexe<br>ely Straig  | in the Appli<br>s. Explain:<br>ght  | cant's hal<br>Riffle/poo | itat assessi  | nent fi  |   |
| (c) | Estimate a<br>Desc                     | provides for: Ephe<br>werage number of<br>ribe flow regime: .<br>rmation on duratio   | flow eve   | ents in revie   | w area/yea               | ar:   |  |   |
|     |  |   |  |   |                          |   |  | t of Culvert 9 which brought flow from an upland<br>ills or gullies in the banks or surrounding upland                |
|     |  | e flow: Unknown<br>Dye (or other) test  |  |   |                          |   |  |   |
|     | If factors of                          | shelving vegetation matt leaf litter distur sediment depos water staining other (list): Discontinuous OH other than the OHV High Tide Line ind oil or scum line fine shell or del | l indicate the imprecharacter ed down bed or wition  WM.6 E WM were licated by along sloris depo | ssed on the of soil  beth, bent, or above ashed away  explain:  cused to det  cused to det  cuses to de  cuses to | sent F                   | destruction the present sediment scour multiple of abrupt cha teral extent teral extent teral High W survey to physical m | n of teace of vesorting  observe  ange in  of CW  ater M  availab  narking | d or predicted flow events plant community.  (A jurisdiction (check all that apply):  [ark indicated by: ] ole datum; |
|     | I .                                    |   |  |   |                          |   |  |   |
| Cha | acterize tri<br>Explain: .             | racteristics:<br>butary (e.g., water  |  | clear, discol   | ored, oily               | film; wate  | r quali  | ty; general watershed characteristics, etc.).   |

(iii)

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

6 Ibid.

|    |            | iological Characteristics. Channel supports (check all that apply):  |
|----|------------|--|
|    | Г          | Riparian corridor. Characteristics (type, average width): .  |
|    | 1          | Wetland fringe. Characteristics: .   |
|    | Γ          | Habitat for:   |
|    |            | Federally Listed species. Explain findings: .  |
|    |            | Fish/spawn areas. Explain findings: .  |
|    |            | Other environmentally-sensitive species. Explain findings: .   |
|    |            | Aquatic/wildlife diversity. Explain findings: .  |
| 2. | Charac     | eteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
|    |            | ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: Wetland type. Explain: Wetland quality. Explain:  |
|    | (b)        | ) General Flow Relationship with Non-TNW: Flow is: Perennial Flow Explain:   |
|    |            | Surface flow is: Characteristics: .  |
|    |            | Subsurface flow: Unknown Explain findings: .  Dye (or other) test performed: .   |
|    | (6)        | 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 river miles from TNW. Project waters are aerial (straight) miles from TNW. Flow is from: Estimate approximate location of wetland as within the floodplain.   |
|    | Cha        | emical Characteristics: racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics etc.). Explain: . tify specific pollutants, if known: . |
|    | (iii) Biol | ogical Characteristics. Wetland supports (check all that apply):   |
|    |            |  |
|    | :<br>      | Vegetation type/percent cover. Explain: .  Habitat for:  |
|    | •          | Federally Listed species. Explain findings: .  |
|    |            | Fish/spawn areas. Explain findings: .  |
|    |            | Other environmentally-sensitive species. Explain findings:   |
|    |            | Aquatic/wildlife diversity. Explain findings:  |
| 3. |            | eristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis:  |

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

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

Directly abuts? (Y/N)

Size (in acres)

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

#### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
   Stream 8 flows indirectly into TNW Chartiers Creek by flowing directly into Stream 5.
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

|    | 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. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional.

Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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

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

Other non-wetland waters: . acres. Identify type(s) of waters: .

3. Non-RPWs7 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.

|  |  |  |  | waters |  |  |  |  |  |  |
|--|--|--|--|--------|--|--|--|--|--|--|
|  |  |  |  |        |  |  |  |  |  |  |

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

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

|  | Wetlands directly abu | t RPW and thus are | e jurisdictiona | I as adjacent we | tlands |
|--|-----------------------|--------------------|-----------------|------------------|--------|
|--|-----------------------|--------------------|-----------------|------------------|--------|

D.

| OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (C ALL THAT APPLY):  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:  dentify 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (check all that apply):  Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  Lakes/ponds: acres.   |    |                 | indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:   |
|--|----|-----------------|--|
| 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 terror are access.  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 accus 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.  As a general rule, the impoundment of a jurisdictional tributary tennias jurisdictional.    □ Demonstrate that impoundment of a jurisdictional tributary tennias jurisdictional.    □ Demonstrate that impoundment of a jurisdictional tributary tennias jurisdictional.    □ 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, DEGRADOR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (C ALL THAT APPLY):    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:     Other factors. Explain:     Identify water body and summarize rationale supporting determination:   |    | :               | tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that  |
| 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 shunded 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.   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).   |    | 5.              | 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 jurisidictional. Data       |
| Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent veltands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.  Provide estimates for jurisdictional waters.  7. Impoundments of jurisdictional waters.  8 As a general rule, the impoundment was created from "waters of the U.S.," or Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water next be criefria for one of the categories presented above (1-6), or Demonstrate that water ruces the criefria for one of the categories presented above (1-6), or Demonstrate that water ruces the criefria for one of the categories presented above (1-6), or Demonstrate that water ruces the criefria for one of the categories presented above (1-6), or Demonstrate that water ruces the criefria for one of the categories presented above (1-6), or Demonstrate that water ruces the criefria for one of the categories presented above (1-6), or Demonstrate that water ruces that the criefria 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, DEGRAD OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (C ALL THAT APPLY);  which are or could be used for industrial purposes by industries 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):  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 appropriat     |    |                 | Provide acreage estimates for jurisdictional wetlands in the review area: acres.   |
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| Interstate isolated waters. Explain: .   Other factors. 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.  |    |                 | which are or could be used by interstate or foreign travelers for recreational or other purposes.  |
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| Cother factors. Explain:   |    |                 |  |
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| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:  |    | Γ.              | Other factors. Explain: .  |
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| Other non-wetland waters: acres.  Identify type(s) of waters:  Wetlands: acres.  Wetlands: acres.  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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:   |    | Prov            | vide estimates for jurisdictional waters in the review area (check all that apply):  |
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| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:  |    | П               |  |
| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgmed (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:   |    | -               |  |
| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:  |    | 1,1             | Wetlands: acres.   |
| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:   | F. | NON             | N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  |
| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:  |    | Γ               |  |
| 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 fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:   |    |                 | Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the  |
| Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR fact (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:   |    | Γ.              |  |
| (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgme (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:   |    | Γ               | Other: (explain, if not covered above): .  |
| Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource:   |    | (i.e.,<br>(chec | presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment sk all that apply):   |
| Other non-wetland waters: acres. List type of aquatic resource: .  |    | Γ               | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  |
|  |    |                 | Lakes/ponds: acres.  |
| Wetlands: acres.   |    |                 | Other non-wetland waters: acres. List type of aquatic resource:  |
| \$12 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -   |    |                 | Wetlands: acres.   |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

|                          | ride acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ing is required for jurisdiction (check all that apply):   |
|--------------------------|--|
| 1                        | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  |
| Γ                        | Lakes/ponds: acres.  |
| Г                        | Other non-wetland waters: acres. List type of aquatic resource:  |
| Π                        | Wetlands: . acres.   |
|                          |  |
| SECTIO                   | NIV: DATA SOURCES.   |
|                          | PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and   |
| requ                     | ested, appropriately reference sources below):  Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and a stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but  |
|                          | designs were not finalized and were not included.  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:   |
| Г                        | Corps navigable waters' study:   |
| Г                        | U.S. Geological Survey Hydrologic Atlas:   |
|                          | USGS NHD data.   |
|                          | USGS 8 and 12 digit HUC maps.  |
| <b>▽</b>                 | U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads  |
| V                        | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015  |
| ত                        | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015  |
| П                        | State/Local wetland inventory map(s):  |
| V                        | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E  |
|                          | 100-year Floodplain Elevation is:  |
| V                        | Photographs: Aerial (Name & Date): Application aerial, 9/30/2016   |
| Г                        | or 🔽 Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016  |
| Г                        | Previous determination(s). File no. and date of response letter:   |
| <u></u>                  | Applicable/supporting case law:  |
| Γ-                       | Applicable/supporting scientific literature:   |
| V                        | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017  |
| R ADDY                   | TIONAL COMMENTS TO SUPPORT JD:   |
| throu<br>active<br>drain | The most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5" ighout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently e work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The pad is relatively flat, and is led by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various a (agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation. |
|                          |  |
|                          |  |
|                          | June 15, 2017  |
|                          | Taylor Date  |
| <b>Proje</b>             | oct Manager  |

В.

# 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 26, 2016
- DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania

County/parish/borough: Washington County

City: Glyde

Center coordinates of site: Lat. 40,132797 N, Long. -80,157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC); Little Chartiers Creek

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

# REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date:

June 5, 2017

1 Field Determination, Date(s): January 30, 2017

# 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.

### 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]

- - a. Indicate presence of waters of U.S. in review area (check all that apply): 1
- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

# 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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

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

#### SECTION III: CWA ANALYSIS

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

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

| 1 | TNW |
|---|-----|
|   |     |

Identify TNW:

Summarize rationale supporting determination: .

#### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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) | Gene | rai | Area | a Conditions: |  |
|----|------|-----|------|---------------|--|
|    |      |     |      |               |  |

Watershed size:

. acres

Drainage area:

, acres

Average annual rainfall: 38.8 inches Average annual snowfall: 29 inches

#### (ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 15-20 river miles from TNW.

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

Project waters are 10-15 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: .

Tributary stream order, if known:

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

Tributary is:

Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: It has been noted that this area has a history of industrial and agricultural work, and its drainage has been redirected before. This stream receives off-site flow from Culvert 12.

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

Average width: 4.0 feet Average depth: 0.5 feet Average side slopes:

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

|       |                 | Primary  | tributary substrate   | ompo:  | sition (check all t   | that app         | oly):   |  |  |
|-------|-----------------|--|---|--|---|------------------|---|--|--|
|       |                 | Γ  | Silts   | J  | Sands   |                  |   |  | Concrete   |
|       |                 | <b>!</b>   | Cobbles   | <b>V</b> .   | Gravel  |                  |   | . 🏳  | Muck   |
|       |                 | Γ  | Bedrock   | Γ  | Vegetation, Ty  | /pe/% (          | cover:  |  |  |
|       |                 |  | Other. Explain:   |  |   |                  |   |  | e e  |
|       |                 | sloughing<br>described<br>Presence<br>visit<br>Tributary   | g during the USACI<br>l as "moderately sta<br>of run/riffle/pool co   | E site v<br>ble" in<br>omplex<br>ring  | visit, though there<br>the Applicant's<br>ses. Explain: Rif   | appea<br>habitat | red to be sl<br>assessmen   | ight u<br>t field  | in: Stream 9 has shallow banks that were not<br>ndercutting at some points. Stream 9 was<br>data sheet.<br>puent and were not observed during USACE site |
|       | (c)             | Tributary<br>Estimate<br>Desc  | provides for: Sease<br>average number of<br>cribe flow regime: .<br>ormation on duratio   | flow e   | vents in review ar  | rea/yea          | r:  |  |  |
|       |                 | in the pro   |   | l"). Tl  | he riparian gradin  | ng was           | also signifi  | cant ei  | of Culvert 12 which brought flow into Stream 9 nough to bring surrounding upland runoff into r gullies.  |
|       |                 |  | e flow: Unknown I<br>Dye (or other) test j  | _  | -   |                  |   |  |  |
|       |                 | ☑<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□<br>□ | shelving vegetation matter leaf litter disturb sediment deposit water staining other (list): Discontinuous OHW ther than the OHW ligh Tide Line indie oil or scum line a fine shell or debr physical marking tidal gauges | indica e impr haracte d down ed or v tion  /M.6 I M were cated b tlong s is depo | essed on the banker of soil  n, bent, or absent washed away  Explain: e used to determine the banker objects sosits (foreshore) | ine late         | destruction the presence sediment so scour multiple ob abrupt chan ral extent o on High Wa survey to av ohysical ma | of tende of working served age in place of the control of the cont | f or predicted flow events  plant community .  A jurisdiction (check all that apply):  ark indicated by:  e datum;                                       |
| (iii) | Chara<br>I<br>t | ecterize trib<br>Explain: St<br>he Applica   |   | ear on   |   |                  |   |  | ; general watershed characteristics, etc.).<br>nown to be cloudy as in the photographs from  |

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break. <sup>9</sup>Ibid.

|    | (iv)  | Bio | logical Characteristics. Channel supports (check all that apply):  Riparian corridor. Characteristics (type, average width): .   |
|----|-------|-----|--|
|    |       | [편  | Wetland fringe. Characteristics: Stream 9 is one of the main water sources for Wetland E. It flows directly through it before combining with Stream 5.   |
|    |       | Г   | Habitat for:   |
|    |       | • . | Federally Listed species. Explain findings: .  |
|    |       |     | Fish/spawn areas. Explain findings: .  |
|    |       |     | Other environmentally-sensitive species. Explain findings:   |
|    |       |     |  |
|    |       |     | Aquatic/wildlife diversity. Explain findings: .  |
| 2. | Cha   |     | teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW  |
|    | (i)   |     | ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: 0.519 acres Wetland type. Explain: Palustrine Emergent Wetland quality. Explain:  |
|    |       | (b) | General Flow Relationship with Non-TNW: Flow is: Perennial Flow Explain: Stream 9 is characterized as perennial and flows directly through Wetland E. Wetland E also directly discharges into Stream 5.  |
|    |       |     | Surface flow is: Overland Sheetflow Characteristics: .   |
|    |       |     | Subsurface flow: Unknown Explain findings: .  Dye (or other) test performed: .   |
|    |       | (c) | Wetland Adjacency Determination with Non-TNW:  Directly abutting   |
|    |       |     | Not directly abutting  |
|    |       |     | Discrete wetland hydrologic connection. Explain:   |
|    |       |     | Ecological connection. Explain:  |
|    |       |     | Separated by berm/barrier. Explain: .  |
|    |       | (d) | Proximity (Relationship) to TNW Project wetlands are 15-20 river miles from TNW. Project waters are 10-15 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)  | Che | emical Characteristics:  |
|    | , ,   |     | racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .  ntify specific pollutants, if known: .  |
|    | (iii) |     | logical Characteristics. Wetland supports (check all that apply):  |
|    | (111) |     |  |
|    |       |     | Vegetation type/percent cover. Explain: There is a dry patch within Wetland E that was characterized as "PFO" by the Applicant in the request. However, no hydrophytic trees were delineated (only dying crabapple trees), and none were observed during the USACE site visit. This dry patch (likely due to slightly higher elevation) did have hydric soils and wetland hydrology. The rest of the area of Wetland E had vegetation that would be characterized for a PEM (e.g. Leersia oryzoides and Acorus calamus). |
|    |       | 厂   |  |
|    |       |     | Federally Listed species. Explain findings: .  |
|    |       |     | Fish/spawn areas. Explain findings:  |
|    |       |     | Other environmentally-sensitive species. Explain findings:   |
|    |       |     | Aquatic/wildlife diversity. Explain findings:  |

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

All wetland(s) being considered in the cumulative analysis: 1

Approximately 0.519 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres)
Wetland E. Y 0.519

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

#### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.

|    | 3. | Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.   |
|----|----|---|
| 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. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: See 2016 delineation report by Dieffenbauch and Hritz.            |
|    |    | 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: 239 linear feet 2.0 width (ft).   |
|    |    | Other non-wetland waters: . acres.  |
|    |    | Identify type(s) of waters:   |
|    | 3. | Non-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C. |
|    |    | Provide estimates for invisdictional waters within the review area (check all that anniv):  |

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

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

Other non-wetland waters: acres.

Identify type(s) of waters: .

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

|    |        | Ī                    | 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 E exists at the confluence of Streams 5 and 9 and receives flow from both of them.   |
|----|--------|----------------------|---|
|    |        | Γ                    | 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:  |
|    |        | Pr                   | rovide acreage estimates for jurisdictional wetlands in the review area: 0.571 acres.   |
|    | 5.     | T W                  | nds adjacent to but not directly abutting a RPW that flow directly or indirectly into TNWs.  Vetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are lijacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data upporting this conclusion is provided at Section III.C. |
|    |        | Provide              | e acreage estimates for jurisdictional wetlands in the review area: acres.  |
|    | 6.     | W ar                 | Inds adjacent to non-RPWs that flow directly or indirectly into TNWs.  Yetlands 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 is conclusion is provided at Section III.C.                             |
|    |        | Provide              | e estimates for jurisdictional wetlands in the review area: #acres.   |
|    | 7.     | As a ge              | ndments of jurisdictional waters. <sup>8</sup> eneral rule, the impoundment of a jurisdictional tributary remains jurisdictional. emonstrate that impoundment was created from "waters of the U.S.," or   |
|    |        |                      | emonstrate that water meets the criteria for one of the categories presented above (1-6), or  |
|    |        | 1 · Do               | emonstrate that water is isolated with a nexus to commerce (see E below).   |
| E. | OR     | DESTR<br>. THAT      | D [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK APPLY): <sup>9</sup> are or could be used by interstate or foreign travelers for recreational or other purposes.  |
|    | Ė      |                      | hich fish or shellfish are or could be taken and sold in interstate or foreign commerce.  |
|    |        |                      | are or could be used for industrial purposes by industries in interstate commerce.  |
|    |        | Intersta             | te isolated waters. Explain: .  |
|    |        | Other fi             | actors. Explain: .  |
|    | Iden   | tify wa              | ter body and summarize rationale supporting determination:  |
|    | Prov   | Tributa              | nates for jurisdictional waters in the review area (check all that apply); ry waters: linear feet width (ft). on-wetland waters: acres.   |
|    |        | Ide                  | ntify type(s) of waters:  |
|    |        | Wetland              | ds: acres.  |
| г  | NO     | ,<br>                | CINICTIONAL WATERS INCLUDING WETLANDS (CHECK ALL THAT ARM V).   |
| F. |        |                      | SDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):   |
|    | ]      | Wetlan               | ntial wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers d Delineation Manual and/or appropriate Regional Supplements.   |
|    | 1      | Pri                  | rarea included isolated waters with no substantial nexus to interstate (or foreign) commerce.  for to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the digratory Bird Rule" (MBR).  |
|    | Γ      |                      | do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:   |
|    | Γ      | Other: (             | (explain, if not covered above):  |
|    | (i.e., | presenc<br>ck all th | age estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors be of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment at apply):  |
|    |        |                      | etland waters (i.e., rivers, streams): linear feet width (ft).  |
|    | j      | _                    | conds: acres.   |
|    | 1      | Other n              | on-wetland waters: acres. List type of aquatic resource:  |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

| Wetlands: acres.  |  |
|---|--|
| Provide acreage estimates for non-jurisdictional waters in the review area that finding is required for jurisdiction (check all that apply):  | do not meet the "Significant Nexus" standard, where such a   |
| 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  | l items shall be included in case file and, where checked and  |
| requested, appropriately reference sources below):  | Design 110/2/2017 April 2012 Apri |
| Maps, plans, or plots submitted by or on behalf of the applicant/consultant stream-wetland delineation completed by the Applicant/Consultant in designs were not finalized and were not included.   |  |
| 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: 7.5 minute Topog   | ·  |
| USDA Natural Resources Conservation Service Soil Survey. Citation: NRC  |  |
| National wetlands inventory map(s). Cite name: USFWS National Wetland   | Is Inventory 2015  |
| State/Local wetland inventory map(s):   |  |
| FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E   |  |
| 100-year Floodplain Elevation is:   | ·  |
| Photographs: Aerial (Name & Date): Application aerial, 9/30/2016  | the application 9/0/2016 and 10/4/2016   |
| or [v] Other (Name & Date): Field photographs included in   | the application, 6/9/2010 and 10/4/2010  |
| Previous determination(s). File no. and date of response letter:  Applicable/supporting case law:   |  |
|   |  |
| Applicable/supporting scientific literature:  Other information (please specify): Observations and photographs from I   | USACE site visit on 1/30/2017  |
| Will Other motination (piease speerly). Observations and photographs from t   | SOME THE THE ON THE STATE OF TH |
| 3. ADDITIONAL COMMENTS TO SUPPORT JD:   |  |
| The most recent NWI map shows Little Chartiers Creek, a perennial stream throughout the application). The project area is just southwest of CR-40, and top active work pad sits upslope of the right bank of Stream 5 (not in the 100-year flor drained by culverts which guides streams and drainage around and through it into work (agricultural and industrial) since at least the 1970s, and thus many opportunity | pography slopes generally towards the road. The currently god zone of Stream 5). The pad is relatively flat, and is stream 5. The project area has had a history of various  |
|   |  |
| H 11.   | T 17 22-7  |
| Mani Paylon   | June 15, 2017  Date  |
| Alani Taylor<br>Project Manager   | Date   |

В.



# 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 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania County/parish/borough: Washington County City: Glyde Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

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:

June 5, 2017

Field Determination. Date(s): January 30, 2017

#### 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 H.S.
  - a. Indicate presence of waters of U.S. in review area (cheek all that apply): 1

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1,079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

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 D and Stream 1 with Wetland A were found to be isolated topographically from delineated WOUS and did not have a significant nexus to TNW.

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

3 Supporting documentation is presented in Section III.F.

<sup>&</sup>lt;sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

# SECTION III: CWA ANALYSIS

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

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

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

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

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

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

If the waterbody 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

| Charat | teristics of non-11111 stillat flow directly of indirectly into 11111   |  |  |
|--------|---|--|--|
| W      | General Area Conditions: Watershed size: Drainage area:   |  |  |
|        | erage annual rainfall: 38.8 inches<br>erage annual snowfall: 29 inches  |  |  |
|        | 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: |  |  |
| (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:  Average depth:   |  |  |

Average side slopes: .

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

|      | ∏ Si  | outary substrate c<br>ilts<br>obbles  | Sai  | n (check all ti<br>ads<br>avel                        | hat apr  | oly):   | ] :                             | Concrete<br>Muck  |                         |
|------|---|---|--|---|----------|---|---------------------------------|---|-------------------------|
|      |   | edrock  |  | getation. Ty  | na/0/ c  | over  | 1 '                             | · ·   |                         |
|      |   | ther. Explain:  | , ve   | getation. Ty  | ре/ 76 С | over.   |                                 |   |                         |
| (c)  | Presence of<br>Tributary ge<br>Tributary gr<br>Flow:<br>Tributary pr<br>Estimate ave<br>Describ | adient (approxin  | omplexes.  nate averag   | Explain: . e slope): . s in review a                  |          |   | Explai                          | in:   |                         |
|      | Surface flow  | v is: Characteris   | tics: .  |   |          |   |                                 |   |                         |
|      |   | flow: . Explain f<br>ye (or other) test   |  | :.  |          |   |                                 |   |                         |
|      |   | is (check all that ed and banks HWM <sup>5</sup> (check al clear, natural linchanges in the changes in the change of | I indicators<br>ne impress<br>character o<br>ed down, I<br>bed or was<br>ition | ed on the bar<br>f soil<br>bent, or abser<br>hed away | ik [ ].  | the present<br>sediment<br>scour<br>multiple of | on of te<br>nce of v<br>sorting | rrestrial vegetation<br>wrack line  | ents                    |
|      |   | ner than the OHV<br>igh Tide Line ind<br>oil or scum line<br>fine shell or del<br>physical markir<br>tidal gauges<br>other (list):  | icated by:<br>along sho<br>oris deposi   | re objects<br>is (foreshore)                          | — М<br>Г | ean High V<br>survey to<br>physical r           | Vater M<br>availal<br>markinį   | /A jurisdiction (check flark indicated by: ole datum; gs; changes in vegetation |                         |
| Chai | Explain: .  |   |  | ear, discolore  | d, oily  | film; wate                                      | er quali                        | ty; general watershed o   | characteristics, etc.). |

(iii)

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

6Ibid.

|          | (17) 151 | ological Characteristics. Channel supports (eneck all that apply):  |
|----------|----------|---|
|          |          | Riparian corridor. Characteristics (type, average width): .   |
|          | Г        | Wetland fringe. Characteristics: .  |
|          | 1        | Habitat for:  |
|          |          | Federally Listed species. Explain findings: .   |
|          |          | Fish/spawn areas. Explain findings: .   |
|          |          | Other environmentally-sensitive species. Explain findings: .  |
|          |          | Aquatic/wildlife diversity. Explain findings: .   |
| 2.       | Charac   | teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
|          |          | ysical Characteristics:   |
| •        |          | General Wetland Characteristics:  |
|          |          | Properties: Wetland size:   |
|          |          | Wetland type. Explain: .  |
|          |          | Wetland quality. Explain: .   |
|          |          | Project wetlands cross or serve as state boundaries. Explain:   |
|          | (b)      | General Flow Relationship with Non-TNW:   |
|          |          | Flow is: Explain: .   |
|          |          | Surface flow is: Characteristics:   |
|          |          | Subsurface flow: Explain findings: .  |
|          |          | Dye (or other) test performed: .  |
|          | (c)      | Wetland Adjacency Determination with Non-TNW:   |
|          |          | Directly abutting   |
|          |          | Not directly abutting   |
|          |          | Discrete wetland hydrologic connection. Explain:  |
|          |          | Ecological connection. Explain:   |
|          |          | Separated by berm/barrier. Explain: .   |
|          | (d)      | Proximity (Relationship) to TNW   |
|          |          | Project wetlands are river miles from TNW.  |
|          |          | Project waters are aerial (straight) miles from TNW.  Flow is from:   |
|          |          | Estimate approximate location of wetland as within the floodplain.  |
| (ii      |          | mical Characteristics:  |
|          | Cha      | racterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: . |
|          | Iden     | tify specific pollutants, if known: .   |
| G        | ii) Biok | ogical Characteristics. Wetland supports (check all that apply):  |
| <b>\</b> | Ē        | Riparian buffer. Characteristics (type, average width): .   |
|          | *****    | Vegetation type/percent cover. Explain: .   |
|          |          | Habitat for:  |
|          |          | Federally Listed species. Explain findings: .   |
|          |          | Fish/spawn areas. Explain findings: .   |
|          |          | Other environmentally-sensitive species. Explain findings: .  |
|          |          | Aquatic/wildlife diversity. Explain findings:   |
| Ch       |          | ristics of all wetlands adjacent to the tributary (if any)  |

# 3.

All wetland(s) being considered in the cumulative analysis: Approximately (#) acres in total are being considered in the cumulative analysis.

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

# C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

| 1. | TN' | Ws and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: . linear feet width (ft), Or, . acres.   |
|----|-----|---|
|    | Γ   | Wetlands adjacent to TNWs: . acres.   |
| 2. | RP' | Ws that flow directly or indirectly into TNWs.  Tributaries of TNWs where tributaries typically flow year-round are jurisdictional.   |
|    | T : | Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: |
|    |     | Provide estimates for jurisdictional waters in the review area (check all that apply):  |
|    |     | Tributary waters: linear feet . width (ft).   |
|    |     | Other non-wetland waters: . acres.  |

DETERMINATIONS OF JURISDICTIONAL FINDINGS, THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL

3. Non-RPWs7 that flow directly or indirectly into TNWs.

Identify type(s) of waters:

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):

| Γ | Tributary waters: linear feet . width (ft). |
|---|---|
| Γ | 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.

D.

THAT APPLY):

|    |             | <b>3</b>                  | indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:  |
|----|-------------|---------------------------|---|
|    |             | <b>)</b> ;                | 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:  |
|    |             | Prov                      | vide acreage estimates for jurisdictional wetlands in the review area: # acres.   |
|    | 5.          | Wet<br>adja               | Is adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  It ands that do not directly abut an RPW, but when considered in combination with the tributary to which they are acent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data porting this conclusion is provided at Section III.C. |
|    |             | Provide a                 | acreage estimates for jurisdictional wetlands in the review area: acres.  |
|    | 6,          | Wetl                      | s adjacent to non-RPWs that flow directly or indirectly into TNWs.  lands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting conclusion is provided at Section III.C.                                    |
|    |             | Provide es                | stimates for jurisdictional wetlands in the review area: #acres.  |
|    | 7.          | As a gener                | ments of jurisdictional waters. <sup>8</sup> real rule, the impoundment of a jurisdictional tributary remains jurisdictional.  constrate that impoundment was created from "waters of the U.S.," or   |
|    |             | Demo                      | onstrate that water meets the criteria for one of the categories presented above (1-6), or  |
|    |             | Demo                      | onstrate that water is isolated with a nexus to commerce (see E below).   |
| E. | OR          |                           | INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION<br>CTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK<br>PPLY): <sup>9</sup>  |
|    |             | which are                 | or could be used by interstate or foreign travelers for recreational or other purposes.   |
|    |             | from which                | h fish or shellfish are or could be taken and sold in interstate or foreign commerce.   |
|    |             |                           | or could be used for industrial purposes by industries in interstate commerce.  |
|    |             |                           | solated waters. Explain:  |
|    |             | Other facto               | ors. Explain: .   |
|    | Ide         | ntify water l             | body and summarize rationale supporting determination: .  |
|    | Prov        | Tributary w               | es for jurisdictional waters in the review area (check all that apply): waters: linear feet width (ft).   |
|    | Г           |                           | wetland waters: acres.  |
|    | <del></del> |                           | y type(s) of waters:  |
|    | 1.1         | Wetlands:                 | acres.  |
| ₹, | NON         | N-JURISDI                 | CTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  |
|    | • • •       | Wetland De<br>Review area | wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers elineation Manual and/or appropriate Regional Supplements.  a included isolated waters with no substantial nexus to interstate (or foreign) commerce.   |
|    |             | "Migra                    | to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the atory Bird Rule" (MBR).  not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:   |
|    | П           | Other: (expl              | lain, if not covered above): .  |
|    | (i.e.,      |                           | estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors inigratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment pply):   |
|    |             |                           | d waters (i.e., rivers, streams): linear feet width (ft).   |
|    |             |                           | vetland waters: acres. List type of aquatic resource: .   |
|    |             |                           |   |

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will clevate 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.

|             | Г       | Wetlands: acres.   |
|-------------|---------|--|
|             | Pro     | vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a  |
|             |         | ing is required for jurisdiction (check all that apply):   |
|             |         | Non-wetland waters (i.e., rivers, streams): linear feet width (ft).  |
|             |         | Lakes/ponds: acres.  |
|             | Γ       | Other non-wetland waters: acres. List type of aquatic resource: .  |
|             | ✓       | Wetlands: 0.025 acres.   |
|             |         |  |
| SEC         | CTIO    | NIV: DATA SOURCES.   |
| Α.          | SUPI    | PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and   |
|             | requ    | ested, appropriately reference sources below):   |
|             | V       | Maps, plans, or plots submitted by or on behalf of the applicant/consultant: Received 10/26/2016. Application included maps and a stream-wetland delineation completed by the Applicant/Consultant in 2016. A narrative of the future plans was provided, but                    |
|             |         | designs were not finalized and were not included.  |
|             | V.      | 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:   |
|             | Γ       | Corps navigable waters' study:   |
|             | Ī!      | 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: 7.5 minute Topographic Series (1945-1992), Washington East/Amity quads  |
|             | Y       | USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil Survey Data 2015  |
|             | N.      | National wetlands inventory map(s). Cite name: USFWS National Wetlands Inventory 2015  |
|             |         | State/Local wetland inventory map(s):  |
|             | V .     | FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C0344E  |
|             | 1       | 100-year Floodplain Elevation is:  |
|             |         | Photographs: [V] Aerial (Name & Date): Application aerial, 9/30/2016   |
|             |         | or [v] Other (Name & Date): Field photographs included in the application, 8/9/2016 and 10/4/2016  Previous determination(s). File no. and date of response letter:  |
|             |         | Applicable/supporting case law:  |
|             |         | Applicable/supporting case law.  Applicable/supporting scientific literature:  |
|             | []<br>I | Other information (please specify): Observations and photographs from USACE site visit on 1/30/2017  |
|             | V.      | Office information (prease speenly). Observations and protographs from Observation and 1120/2017   |
| D.          | ann     | ITIONAL COMMENTS TO SUPPORT JD:  |
| <b>D.</b> 1 |         | The most recent NWI map shows Little Chartiers Creek, a perennial stream flowing through the project area (referred to as "Stream 5"   |
|             | thro    | ughout the application). The project area is just southwest of CR-40, and topography slopes generally towards the road. The currently  |
|             |         | ve work pad sits upslope of the right bank of Stream 5 (not in the 100-year flood zone of Stream 5). The work pad is relatively flat, and ained by culverts which guides streams and drainage around and through it into Stream 5. The project area has had a history of various |
|             |         | k (agricultural and industrial) since at least the 1970s, and thus many opportunities for disturbance and manipulation.  |
|             |         | No from  |
|             |         |  |
|             |         | June 8, 2017   |
|             |         | i Taylor Date  |
|             | Proj    | ect Managér  |

# 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 26, 2016
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Pittsburgh, Blue Mile Field Office, LRP-2016-1830

| $\boldsymbol{C}$ | DDATECTI | OCATION A | AID DACKCOOLIN | ID INFORMATION: |
|------------------|----------|-----------|----------------|-----------------|
|                  |          |           |                |                 |

State: Pennsylvania County/parish/borough: Washington County City: Glyde Center coordinates of site: Lat. 40.132797 N, Long. -80.157861 W

Universal Transverse Mercator: 571745.7 E, 4442836.4 N

Name of nearest waterbody: Little Chartiers Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Little Chartiers Creek

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:

June 5, 2017

Field Determination. Date(s): January 30, 2017

# 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 waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 3,267 linear feet

Wetlands: 1.079 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 1,125 feet.

# 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 D and Stream 1 with Wetland A were found to be isolated topographically from the delineated WOUS and did not have a significant nexus to a TNW.

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

Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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).

#### 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 percanial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

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

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

| (i)  | General Area Conditions: Watershed size: Drainage area;   |
|------|---|
|      | Average annual rainfall: 38.8 inches<br>Average annual snowfall: 29 inches  |
| (ii) | Physical Characteristics:  (a) Relationship with TNW:  Tributary flows directly into TNW.  Tributary flows through . tributaries before entering TNW.   |
|      | Project waters are river miles from TNW. Project waters are river miles from RPW. Project waters are aerial (straight) miles from TNW. Project waters are aerial (straight) miles from RPW. Project waters cross or serve as state boundaries. Explain: Tributary stream order, if known: |
|      | (b) General Tributary Characteristics (check all that apply):  Tributary is:  Natural  Artificial (man-made). Explain:  Manipulated (man-altered). Explain: .   |
|      | Tributary properties with respect to top of bank (estimate):  Average width:  Average depth:  Average side slopes:  |

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

|            | Primary t   | ributary substrate   | composi   | tion (check all  | that ap   | ply):  |   |                            |                       |          |
|------------|---|--|---|--|-----------|--|---|----------------------------|-----------------------|----------|
|            | <b></b>   | Silts  | <b></b>   | Sands  |           |  |   | Concrete                   |                       |          |
|            |   | Cobbles  | Γ.  | Gravel   |           |  |   | Muck                       |                       |          |
|            |   | Bedrock  |   | Vegetation. Ty   | ype/%     | cover:   |   |                            |                       |          |
|            |   | Other, Explain:  |   |  |           |  |   |                            |                       |          |
|            | Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: . Presence of run/riffle/pool complexes. Explain: . Tributary geometry: . Tributary gradient (approximate average slope): . |  |   |  |           |  |   |                            |                       |          |
| (c)        | Flow: Tributary provides for: . Estimate average number of flow events in review area/year: . Describe flow regime: . Other information on duration and volume: .   |  |   |  |           |  |   |                            |                       |          |
|            | Surface flo   | Surface flow is: Characteristics: .  |   |  |           |  |   |                            |                       |          |
|            | Subsurface flow: Explain findings: .  Dye (or other) test performed: .  |  |   |  |           |  |   |                            |                       |          |
|            |   | shelving<br>vegetation matt<br>leaf litter distur<br>sediment depos<br>water staining  | I indicated impression in the | essed on the ban<br>r of soil<br>, bent, or absen<br>vashed away |           | destruction the present sediment sedime | n of tern<br>ice of w<br>sorting<br>bserved | restrial vegeta            | tion                  |          |
|            | П Н<br>П  | ther than the OHW<br>figh Tide Line ind<br>oil or scum line<br>fine shell or deb<br>physical markin<br>tidal gauges<br>other (list): | icated by<br>along sh<br>ris depo   | r: Fore objects sits (foreshore)                                 | Me        | an High W<br>survey to a<br>physical m   | ater Ma<br>vailable<br>arkings              | rk indicated b<br>e datum; |                       | ):       |
| Chara<br>I | Explain: .  |  |   | lear, discolored   | l, oily t | film; water  | quality                                     | ; general wate             | rshed characteristics | , etc.). |

(iii)

<sup>&</sup>lt;sup>5</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>6</sup>Ibid.

| Riparian corridor. Characteristics (type, average width):  Wetland fringe. Characteristics:  Habitat for:  Federally Listed species. Explain findings:  Fish/spawn areas. Explain findings:  Other environmentally-sensitive species. Explain findings: |
|---|
| Habitat for:  Federally Listed species. Explain findings: .  Fish/spawn areas. Explain findings: .  |
| Federally Listed species. Explain findings: .  Fish/spawn areas. Explain findings: .  |
| Fish/spawn areas. Explain findings: .   |
|   |
| Other environmentally-sensitive species. Explain findings:  |
|   |
| Aquatic/wildlife diversity. Explain findings: .   |
| teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW   |
| ysical Characteristics: General Wetland Characteristics: Properties: Wetland size: Wetland type. Explain: Wetland quality. Explain: Project wetlands cross or serve as state boundaries. Explain:   |
| General Flow Relationship with Non-TNW: Flow is: Explain: .   |
| Surface flow is: Characteristics:   |
| Subsurface flow: Explain findings: .  Dye (or other) test performed: .  |
| Wetland Adjacency Determination with Non-TNW: Directly abutting   |
| Not directly abutting   |
| Discrete wetland hydrologic connection, Explain:  |
| Ecological connection. Explain:   |
| Separated by berm/barrier. Explain; .   |
| Proximity (Relationship) to TNW Project wetlands are river miles from TNW. Project waters are aerial (straight) miles from TNW. Flow is from: Estimate approximate location of wetland as within the floodplain.  |
| emical Characteristics:  aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristic etc.). Explain: .  entify specific pollutants, if known: .                                  |
| ological Characteristics. Wetland supports (check all that apply):  |
| Riparian buffer. Characteristics (type, average width): .  Vegetation type/percent cover. Explain: .  Habitat for:  |
| Federally Listed species. Explain findings: .   |
| Fish/spawn areas, Explain findings:   |
| Other environmentally-sensitive species. Explain findings:  |
| Aquatic/wildlife diversity. Explain findings:   |
| a   |

# 3.

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

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

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

#### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

- 1. Significant nexus findings for non-RPW that have no adjacent wetlands and flows directly or indirectly into TNWs.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.

|     | 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.  Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: |
|     | Provide estimates for jurisdictional waters in the review area (check all that apply):  Tributary waters: linear feet . width (ft).  Other non-wetland waters: . acres.  Identify type(s) of waters:  |
| 3.  | Non-RPWs <sup>7</sup> that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.   |
|     | Provide estimates for jurisdictional waters within the review area (check all that apply):  |

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

Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

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

D.

|                | Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:   |
|----------------|--|
|                | Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:   |
|                | Provide acreage estimates for jurisdictional wetlands in the review area: # acres.   |
| 5.             | Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C. |
|                | Provide acreage estimates for jurisdictional wetlands in the review area: acres.   |
| 6.             | Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.                              |
|                | Provide estimates for jurisdictional wetlands in the review area: #acres.  |
| 7.             | Impoundments of jurisdictional waters. <sup>8</sup> As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or   |
|                | Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  |
|                | Demonstrate that water is isolated with a nexus to commerce (see E below).   |
|                | 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:  |
| Iden           | ntify water body and summarize rationale supporting determination: .   |
| Г              | ride 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.  |
| NON            | N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):  |
| Γ              | 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:   |
| Г              | Other: (explain, if not covered above):  |
| (i.e.,<br>(che | vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment ck 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: .  |

E.

 $\mathbf{F}$ 

<sup>8</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
9 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.

| Wetlands: acres.   |   |
|--|---|
| Provide acreage estimates for non-jurisdictional waters in the review finding is required for jurisdiction (check all that apply):   | area that do not meet the "Significant Nexus" standard, where such a  |
| Non-wetland waters (i.e., rivers, streams): Stream 1 is 168 linear   | feet, 1.5 at top-of-bank width (ft).  |
| Lakes/ponds: acres.  | , ,   |
| Other non-wetland waters: acres. List type of aquatic resource:  |   |
|  | •   |
| Wetlands: 0.025 acres (Wetland A).   |   |
| •  | •   |
| SECTION IV: DATA SOURCES.  |   |
|  | onsultant: Received 10/26/2016. Application included maps and a ultant in 2016. A narrative of the future plans was provided, but   |
| 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: 7,5 min   | nte Topographic Series (1945-1992), Washington East/Amity quads   |
| USDA Natural Resources Conservation Service Soil Survey. Citat   | ion: NRCS Soil Survey Data 2015   |
| National wetlands inventory map(s). Cite name: USFWS National  | Wetlands Inventory 2015   |
| State/Local wetland inventory map(s):  |   |
| FEMA/FIRM maps: FIRM Map Numbers 42125C0343E, 42125C   | 0344E   |
| 100-year Floodplain Elevation is:  |   |
| Photographs: Aerial (Name & Date): Application aerial, 9/3   | 30/2016   |
| or Other (Name & Date): Field photographs inc  | luded in the application, 8/9/2016 and 10/4/2016  |
| Previous determination(s). File no. and date of response letter:   |   |
| Applicable/supporting case law:  |   |
| Applicable/supporting scientific literature:   |   |
| Other information (please specify): Observations and photograph  | ns from USACE site visit on 1/30/2017   |
| B. ADDITIONAL COMMENTS TO SUPPORT JD:  The most recent NWI map shows Little Chartiers Creek, a perennia throughout the application). The project area is just southwest of CR-40 active work pad sits upslope of the right bank of Stream 5 (not in the 100 is drained by culverts which guides streams and drainage around and thr work (agricultural and industrial) since at least the 1970s, and thus many | O-year flood zone of Stream 5). The work pad is relatively flat, and ough it into Stream 5. The project area has had a history of various opportunities for disturbance and manipulation. |
| ALC: Tax of  | June 8, 2017  |
| Alani Taylor<br>Project Manager  | Date  |

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