

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): February 8, 2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Baltimore, (DDC BRAC General Purpose Warehouse)
NAB-2008-00299-P02**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Pennsylvania County/parish/borough: York County City:
Center coordinates of site (lat/long in degree decimal format): Lat. 40.20208° **N**, Long. -76.834236° **W**.

Universal Transverse Mercator:

Upstream point of relevant reach: 40.204734° **N**, Long. -76.849868° **W**.

Downstream point of relevant reach: Lat. 40.20075° **N**, Long. -76.817544° **W**.

Name of nearest waterbody: Marsh Run

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

Name of watershed or Hydrologic Unit Code (HUC): 02050306, Lower Susquehanna

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

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

Office (Desk) Determination. Date:

Field Determination. Date(s): January 17, 2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. Waters of the U.S.

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

TNWs, including territorial seas

Wetlands adjacent to TNWs

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

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: 0 linear feet: 0 width (ft) and/or acres.

Wetlands: Wetland A = 0.117 acre, Wetland B = 0.812 acre, cumulative total of 0.929 acre. The review area corresponds to the approximately 15 acre limits of disturbance of the proposed DDC BRAC General Purpose Warehouse project.

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

Elevation of established OHWM (if known): .

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

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

Explain: **Approximately 475-linear feet of non-jurisdictional vegetated swale located between the second 18-inch RCP**

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

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

³ Supporting documentation is presented in Section III.F.

outfall of Wetland B to a 36-inch RCP inlet structure at the terminus of the swale. Approximately 200-linear feet of erosion gully from the outfall of a 24-inch RCP to the 36-inch RCP inlet structure that carries only untreated storm water runoff.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

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

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

(i) General Area Conditions:

Watershed size: 2440 square miles (Susquehanna River)

Drainage area: ~ 6 square miles

Average annual rainfall: 42 inches

Average annual snowfall: 40 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

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

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

Project waters are **1 (or less)** 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: .

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

Identify flow route to TNW⁵: Marsh Run flows directly into the Susquehanna River.
Tributary stream order, if known: 2.

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: Marsh Run has been subject to channelization, channel relocation through fill activities, and impoundments.

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

Average width: 10 feet
Average depth: 1 feet
Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Varies, ranging from stable, vegetated bank areas to unstable eroding banks.

Presence of run/riffle/pool complexes. Explain: No.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 0.02 %

(c) **Flow:**

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Marsh Run is a perennial stream within the relevant reach.

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics:

Subsurface flow: **Unknown**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

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

Discontinuous OHWM.⁷ Explain: .

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

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) **Chemical Characteristics:**

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

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

⁷Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water color was observed to be clear during Corps 17 January 2008 site visit. Marsh Run is located within a developing watershed containing residential, commercial, and institutional developments, and also major transportation routes (PA Turnpike and I-83) and is expected to carry non-point source pollutants originating from the developed areas.
Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width): Large wetland complex bordering Marsh Run.
- Wetland fringe. Characteristics: Large wetland complex bordering Marsh Run of approximately 95 acres.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: The approximately 95 acres of mixed wetland habitat within the Marsh Run wetland complex provides habitat for mammals, birds, reptiles and amphibians, and fish species within Marsh Run and Marsh Lake. The Marsh Run wetland complex is located within approximately 140 undeveloped acres within the 100-year floodplain of Marsh Run.

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.929 acres (Wetland A, 0.117 acres, Wetland B = 0.812 acres)

Wetland type. Explain: Wetland A, PEM, and Wetland B, PEM/PSS.

Wetland quality. Explain: Moderate to good, several wetland functions identified and detailed in Section III.C.3.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain:

Surface flow is: **Confined**

Characteristics: Surface flow from the wetlands is expected to mainly occur during runoff events, and is confined within a non-jurisdictional swale and culverts, both serving as a discrete hydrologic connection to Marsh Run (RPW) and the Susquahanna River (TNW).

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: Wetland A maintains a discrete hydrologic connection to Marsh Run via 1,976-linear feet of culvert including 24" RCP, 42" RCP, 48" RCP and 54" RCP. Wetland A does not drain into Wetland B. Wetland B maintains a discrete hydrologic connection to Marsh Run via two 18" RCP inlet structures which connects to the overall storm line system draining Wetland A. From the first (upgradient) outfall of Wetland B to the outfall at Marsh Run is 1,576-linear feet, and from the second outfall of Wetland B to the outfall at Marsh Run is 1,213-linear feet. Wetland B also maintains a discrete hydrologic connection to Marsh Run via 475-linear feet of non-jurisdictional swale, which drains into the storm line system within a 36" RCP inlet structure approximately 738-linear feet from the outfall at Marsh Run.

Ecological connection. Explain:

Separated by berm/barrier. Explain: Examination of historical aerial photographs from September 20, 1937, indicates that Wetland B may have been part of the larger Marsh Run Wetland Complex prior to being separated by parking areas and a capped landfill area at the DDC/DDSP military base which effectively formed a wide berm/barrier between Wetland B and Marsh Run. Historical soil mapping indicating a hydric soil unit extending to the vicinity of the present Wetland B and soil samples taken during the Corps field inspections exhibiting a well developed hydric soil profile supports this position. Once Wetland B was separated from Marsh Run by fill activities, the hydrologic connection was maintained by the culvert system described above.

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

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

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

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Wetlands A and B are subject to storm water runoff from the DDC/DDSP facility, and are subject to non-source pollutants.
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: PEM/PSS wetland system.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: Wetland B provides for marginal wildlife habitat.

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

All wetland(s) being considered in the cumulative analysis: **12**
Approximately (96.23) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
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* In April 1997, a base wide delineation of the 850 acre DDC/DDSP facility was conducted by the U.S. Army Corps of Engineers, Baltimore District, Planning Division. The findings of this investigation were included in a wetland delineation report dated March 1998. This study encompassed all wetlands adjacent to Marsh Run, totaling 95.35 acres, but excluded Wetland A and Wetland B within the review area. The area of the wetland delineation as described in the report, including Marsh Run, is consistent with the relevant reach subject to this significant nexus determination, with the inclusion of Wetlands A and B. The Planning Division study identified a diverse wetland complex, consisting of the following wetland types (acres not provided for each individual wetland area):

- Wetland A (Planning Division delineation): R2UB3
- Wetland B (Planning Division delineation): PEM1H, PFO1E, R2UB3
- Wetland W: R4SB3, PFO1E
- Wetland K: PFO1E
- Wetland C: PEM1H, PUBHx, R2UB3, R4UB1G, R2SB3
- Wetland D: PFO1E, R4UB1, PEM1H, PUBHX with PFO1E fringe
- Wetland L: PFO1E
- Wetland E: R4UB1, PFO1E, PEM1Hx, PUBHx
- Wetland F-1: PEM1Hx, PUBHx
- Wetland F-2: PEM1Hx

Summarize overall biological, chemical and physical functions being performed: The Marsh Run Wetland Complex performs the following functions: fish and wildlife habitat, flood water attenuation, sediment trapping, water quality functions (toxicant uptake and transformation), production export of nutrients and organic carbon to support food webs in TNW, and groundwater discharge. These functions will be described in more detail in Section III.C.3.

C. SIGNIFICANT NEXUS DETERMINATION

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

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

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?

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

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

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

Habitat for Wildlife – Describe the food, water, shelter and space. The Marsh Run wetland complex, including Wetlands A and B within the JD review Area, comprise over 96 acres of diverse wetland and open water habitats located within approximately 140 acres of undeveloped land within the DDC/DDSP facility. The opportunity to perform this function is high within the relevant reach. The diversity of wetland habitats, stream and open water impoundment, and adjoining upland areas would provide for habitat for a variety of wildlife species including fish, reptiles, amphibians, mammals, birds, and invertebrates. Habitat enhancement structures including waterfowl nesting boxes have been placed in and around Marsh Lake.

Aquatic Life (Organisms) – examples of aquatic life or signs of aquatic life. Finfish were observed within Marsh Run (species not identified). The Marsh Run wetland complex including Marsh Run and Marsh Lake provide habitat for finfish, amphibians, and aquatic macro invertebrates. Marsh Run is a direct tributary to the Susquehanna River (TNW) and provides for fish spawning habitat.

Support Nutrient Cycling – watering, decomposition, fertilizers, flooding. The Marsh Run wetland complex has a high opportunity to perform this function. The large wetland acreage, dense vegetation, and open water habitats contribute to the uptake, retention, and transformation of excessive nutrients in runoff water from surrounding residential, commercial, and institutional developments. The wetland complex also has a high opportunity for production export of nutrients including organic carbon and detritus important for the food web of downstream waters.

Sediment Transport – Describe if system is in balance or is there excess erosion or depositional features. Marsh Run within the relevant reach exhibits areas of bank instability and erosion which contributes to sedimentation in downstream waters. Overall the system appears to be in balance without excessive erosion or depositional features.

Pollutant Trapping/Filtration - The Marsh Run wetland complex has a high opportunity to perform this function. Stormwater runoff from residential, commercial and institutional developments, and major transportation corridors (PA Turnpike and I-83) carrying non-point source pollutants and sediment that enters the wetland complex receives pollutant trapping and filtration treatment. The large amount of wetland acreage, dense wetland vegetation, open water areas, and relatively low gradient contributes to longer retention time and treatment of storm water runoff.

WQ Improvement – Overall existing setting (nitrogen & phosphorus). As described above, Marsh Run and the adjacent wetland complex has a high opportunity to perform functions important to water quality improvement, including the trapping and removal of sediments, toxicants (grease, oils, pesticides and herbicides), excessive nutrients (fertilizers), and pathogens originating in up gradient developed areas and entering the Marsh Run wetland complex through storm water runoff.

Temperature/PH – water chemistry, buffers and land use. Marsh Run has a PADEP Chapter 93 Water Quality Standard designation of warm water fishery (WWF). Although the stream is not capable of supporting a cold water fishery, cooler headwater streams flowing north into Marsh Run from wooded areas contributes to lower water temperatures in the summer months than the receiving Susquehanna River, and may provide a thermal refuge for fish species in the river during times of thermal stress.

Flood Storage – Does subject waters and/or wetland serve to store any storm water and/or floodwaters? The opportunity to perform this function is moderate, as the overall drainage area to Marsh Run is relatively small (estimated 6 square miles). However, increasing development in the watershed will increase the amount of storm water runoff entering marsh Run. The wetland complex adjacent to marsh Run is large (96 + acres) and is located on a relatively low gradient, thus storm water entering the system has a large area for flood flow alteration including flood storage and desynchronization.

Commerce – known or documented use from out of state. The relevant reach has a low opportunity to perform this function.

- Navigation – movement of crafts or vessels on water. The relevant reach has a low opportunity to perform this function.
- Recreation – use of waters or methods by general public use boating, swimming, fishing, etc. The relevant reach has a low opportunity to perform this function, as it is located within a restricted area on the DDC/DDSP facility.
- Public Health – overall health of a community. The relevant reach has the opportunity to perform this function through many of the functions cited above.
- Groundwater discharge/recharge. Marsh Run as a perennial stream provides a constant source of water to the receiving Susquehanna River (TNW), and although minor individually, when considered cumulatively with all such perennial sources is important to maintaining the overall base flow within the river.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS (* WETLAND A AND WETLAND B WITHIN THE REVIEW AREA) ARE (CHECK ALL THAT APPLY):

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

- TNWs: linear feet width (ft), Or, acres.
- Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

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-RPWs⁸ that flow directly or indirectly into TNWs.

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

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

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.

Identify type(s) of waters:

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

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

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

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: **0.929** acre.

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.

⁸See Footnote # 3.

7. **Impoundments of jurisdictional waters.**⁹

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

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):**¹⁰

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

Identify water body and summarize rationale supporting determination:

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): **Approximately 475-linear feet of non-jurisdictional vegetated swale located between the second 18-inch diameter RCP outfall of Wetland B to a 36-inch RCP inlet at the terminus of the swale. Approximately 200-linear feet of erosion gully from the outfall of a 24-inch RCP to the 36-inch RCP inlet structure that carries only untreated stormwater runoff.**

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

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

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

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

SECTION IV: DATA SOURCES.

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. Wetland and Other Waters Investigation DDC BRAC Warehouse Project, Defense Distribution Depot Susquehanna Pennsylvania (DDSP), Fairview Township, York County, Pennsylvania, (undated), prepared and forwarded to the Corps by e-mail from Weston Solutions, Inc., on January 25, 2008. The attendant wetland delineation plan indicates that the 475-linear feet vegetated swale is non-jurisdictional.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- 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: Steelton, PA., 1963, photorevised 1987.
- USDA Natural Resources Conservation Service Soil Survey. Citation: York County, PA., 1963 and 2002.
- National wetlands inventory map(s). Cite name: Steelton, PA., 1987.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): PennPilot Sep 20 1937.
 - PAMAP 2004-2006
 - NHAP83-CIR-309-84, 85, 86-4/13/83
 - NAPP-CIR-104-210-9/4/87
 - NAPP-CIR-105-042-9/26/87
- or Other (Name & Date): Ground level color photos, USACE Planning Division, 1997.
- Previous determination(s). File no. and date of response letter:
 - DDC BRAC Warehouse, 200601878, Preliminary JD (PJD) issued on April 18, 2006.
 - Memorandum for Chief, Planning Division, from CENAB-OP-RR, providing jurisdictional determination dated June 6, 1997, for base wide wetland delineation at the Defense Distribution Center, final report dated March 1998 with accompanying wetland delineation plan dated July 1997.
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: