

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): **SEP 15 2015**

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENAB-OP-RMS (DANSHE'S PROPERTY/JD) 2011-02749

PROJECT LOCATION AND BACKGROUND INFORMATION: The subject 37.68 acre property is located on the east side of Georgia Avenue, Olney, in Montgomery County, Maryland. The site is bordered to the west by Georgia Avenue, to the north and east by existing residential properties, and to the south by the Sandy Spring Fire Station. An approximately 1,555 linear foot channels and 1.58 acres of wetlands within a 6.8-acre area of undeveloped land predominately comprised of forested wetlands.

State: **Maryland** County/parish/borough: **Montgomery County** City: **Olney**
Center coordinates of site (lat/long in degree decimal format): **Lat. N 39°08'04.25"**, **Long. W 77°04'06.89"**.

Reach 1, central portion of the site, main stem of Batchellors Run , perennial flow that toward eastern property line but intersects.

Reach 2, eastern portion of the site, unnamed tributary to Batchellors Run , perennial flow toward southern property line that is intersected in the middle by Reach 1.

Reach 3, southern portion of the site, unnamed ephemeral tributary to Reach 2 that flows parallel to Reach 2 emptying back into that stream reach at the southern property line.

Wetlands along Reaches 1 and 2 - approximately 70 feet wide by 100-foot long 0.16 (7,000 square feet) acres.

Name of nearest waterbody: **unnamed tributaries draining to Batchellors Run**

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

The site contains tributaries to Batchellors Run, which is a perennial tributary flowing north to south onsite and draining to the Anacostia River, a nontidal, navigable, interstate tributary of the Potomac River, a TNW. Batchellors Run enters the Potomac River approximately 7,490 river miles emptying first into the North West Branch (NWB) of the Anacostia River before flowing south to the middle reaches of the Potomac River. The main channel of the Anacostia River is 8.4 miles in length, extending from the confluence of the North West Branch and the North East Branch, in Bladensburg, MD, to its confluence with the Potomac River.

Name of watershed or Hydrologic Unit Code (HUC): **02070010 Middle Potomac-Anacostia-Occoquan**

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: N/A

Field Determination. Date(s): **7 October 2011 with Mr. Mike Klebasko, Klebasko Environmental, Inc.**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are not "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

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

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are and are not "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

TNWs, including territorial seas

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

- 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: **(There are PFO wetlands that seem mostly influenced by groundwater. These wetlands are abutting and drain to the stream systems.)**
- 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: The project site consists of a perennial and ephemeral stream channels and adjacent forested nontidal wetlands.

Wetlands: approximately 68,608 square feet (1.58 acres) of nontidal forested/ emergent wetlands. These wetlands drain to and abut the perennial stream systems.

Non-wetland waters: 1,335 linear feet and/or 19,303 square feet (0.44 acres) of perennial stream: average width 15 (ft) and/or acres and 210 linear feet and/or 1,668 square feet (0.04 acres) of ephemeral stream channel flowing indirectly into TNW.

- c. Limits (boundaries) of jurisdiction based on: 1987 U.S. Army Corps of Engineers Wetlands 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 not to be jurisdictional. Explain:

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

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

³ Supporting documentation is presented in Section III.F.

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

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: 33,474 acre site. The HUC area is 52.3 square miles (non-water).
 Drainage area: 37.68 acres
 Average annual rainfall: 34.77 inches.
 Average annual snowfall: 13.4 inches.

(ii) Physical Characteristics:

(a) Relationship with TNW:

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

Project waters are 6.20 (or less) river miles from TNW. Anacostia River
 Project waters are 0.2 (or less) river miles from RPW. Batchellors Run
 Project waters are 7.00 aerial miles from TNW. Anacostia River
 Project waters are 0.2 (or less) aerial miles from RPW. Batchellors Run
 Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: The stream channels flow west to east before joining with Batchellors Run, a RPW which carries flows directly to the north to south flowing 7,490 linear feet and joining with the North West Branch of the Anacostia River a tributary of the Potomac River, a traditionally navigable waterway. The Potomac River is an interstate tidal, traditionally navigable waterway that drains directly into the Chesapeake Bay, an interstate tidal navigable waterway. The main channel of the Anacostia River is 8.4 miles in length, extending from the Confluence of the North West Branch and the North East Branch, in Bladensburg, MD, to its confluence with the Potomac River.

Tributary stream order, if known:

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

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: The channel exhibits intermittent flows onsite and contains a well-defined bed and bank profile. The hydrological pattern exhibits flows southeast following topographic elevations where it then empties into a culvert crossing under Emory Church Road entering a channelized stream system flowing southeast under Batchellors Forest Road. These are headwater streams that carry topographic flow in addition to groundwater flow typical of the Piedmont. Southeast of the review area is a series of integrated stormwater conveyance channels and other man-made structures for purposes of stormwater management and conveying flow off developed parcels of land that include roadside ditches and internal ditches. The off-site channels convey topographic and groundwater flows to the North West Branch of the Anacostia River. There are numerous off-site stormwater drainage and detention systems with positive flow into Batchellors Run. Drainage is to the southeast as intermittent/perennial stream which smaller ephemerals that flow through the project area. This channel originates onsite at the south west quadrant towards Georgia Avenue and then discharges under Emory Church Road via culvert pipes offsite.

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

Average width: 16 feet.
 Average depth: 3 feet.
 Average side slopes: 2:1. / side slopes 2%

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: grasses/sedges / ~85% of a 411 linear foot portion of the overall 545 linear foot area; portion is 75% of overall channel.
- Other. Explain:

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **The natural soils are partially hydric. Man-made improvements to the channel exist for stormwater improvements that include culverts, roadside ditches and internal drainage lined with riprap off-site.**

Tributary geometry: **Slightly Meandering**

Tributary gradient (approximate average slope): **1 to 3 %**

(c) Flow:

Tributary provides for: **Batchellors Run contains perennial flows and is classified (USGS NHD data set).**

Estimate average number of flow events in review area/year: **There is a well-defined channel that contains water only part of the year (typically greater than or equal to 3 months). The flow is heavily supplemented by stormwater conveyance from surrounding landscape in addition to groundwater typical of headwater streams of Montgomery County, Maryland.**

Describe flow regime:

Intermittent – During storm events and potentially directly following major storm events. Base flows are highest in winter and spring with high precipitation events and seasonal high water table. Batchellors Run is a perennial system onsite in addition to the intermittent/ephemeral channel reaches which join flows before exiting the site.

Other information on duration and volume: **N/A**

Surface flow is: **Partially Confined** Characteristics: **Overland flows combine with flow through elliptical culverts at the downstream limit of the channel offsite. There is a series of culverted flows off-site through agricultural and residential lands. Southeast of the channel are man-made stormwater conveyance structures for purposes of stormwater management that include roadside ditches and internal ditches which convey topographic flows continuing south to the North West Branch of the Anacostia River. The intermittent channel originates onsite at the south east quadrant towards Georgia Avenue and then discharges under Emory Church Road via culvert pipes offsite via Batchellors Run. Flows then proceed into roadside ditches and internal ditches which convey topographic flow and stormwater down through a golf-course under Batchellors Forest Road. Flow continues through man-made channels where it converges back into typical stream meandering channels, and would be expected to briefly flow overland to connect to another nearby channels at the same elevation, and then flow south east off-site directly into Anacostia River before entering the Middle Potomac River.**

Subsurface flow: Explain findings: **some component of groundwater is characteristic of these streams in addition to surface water since all streams were flowing during the Corps site visit 7 October 2011. The watershed is located in the Piedmont Plateau Physiographic Province often dominated by ground aquifers, wetland seeps and stream hydrology.**

Dye (or other) test performed: **N/A.**

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (check all indicators that apply):

clear, natural line impressed on the bank

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.⁷ Explain: **N/A.**

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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

High Tide Line indicated by:

oil or scum line along shore objects

fine shell or debris deposits (foreshore)

physical markings/characteristics

tidal gauges

other (list):

Mean High Water Mark indicated by:

survey to available datum;

physical markings;

vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**

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

⁷Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: **During the 7 October 2011 Corps site visit, the channel was flagged and the channel exhibits hydrological characteristics commonly associated with continuous conveyances of water.**

Identify specific pollutants, if known: It would be expected that nutrients and sediments from adjacent properties and roadside pollutants, such as sand for deicing, would be the primary pollutants discharging into the channel. This channelized system is most likely the result of high velocity stormwater flows. Both the North East Branch and the North West Branch are tributaries of the Anacostia River, which turn flows into the Potomac River, a tributary of the Chesapeake Bay. Approximately 70 percent of the Anacostia River watershed is drained by these two main tributaries. Combined the two watersheds are approximately 127 square miles. According to the 2006 land cover data (USGS 2009), land use in the NEB and NWB watersheds can be classified as predominantly urban. Urban land occupies approximately 62.3% of these watersheds, while 24.4% is forested and 6.6% is agricultural. The remaining 6.7% is classified as barren, unconsolidated shore, grassland, herbaceous, scrub, shrub, water, or wetland.⁸

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

- Riparian corridor. Characteristics (type, average width): These are headwater streams which exhibit RPW flow characteristics exhibit biological indicators onsite indicate that the trophic structure of the site including riparian plants and animals are utilizing the onsite tributaries. This may include microbial communities, macrophyte communities, benthic macroinvertebrate communities, fish communities and landscape connectivity. The overall assessment does not include a species of interest. Physical breaks in the connectivity of the channels like roads and man-made alterations create discontinuity to habitat upstream and downstream.
- Wetland fringe. Characteristics: Riparian wetlands and seep wetlands in the channels principally driven by groundwater. The soil series was confirmed by sampling to be mapped unit, Baile Silt Loam. These wetlands drain to intermittent systems onsite. This channel has the remains of an off-line prior farm road about halfway down the channel that is connected by a downstream pipe and channel section. The old pond has grown into an emergent wetland with deciduous hardwood trees along the border.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: **In consideration of the urban and highly disturbed nature of the off-site areas, the channel would be expected to provide habitat primarily for aquatic biota inhabiting the small intermittent stream, but limited for aquatic life use based on physico-chemical parameters. Without a functional assessment and support data, it is difficult to ascertain the quality of the in-stream habitat. A visual assessment confirmed riparian wetlands, and seep wetlands at the head of both channels.**

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties: N/A

Wetland size: **Wetlands are approximately 1.58 acres in area**

Wetland type: **PFO**

Wetland quality. Explain: **Refer to Section IV.B.**

Project wetlands cross or serve as state boundaries. Explain: **N/A.**

(b) General Flow Relationship with Non-TNW:

Flow is: **intermittent**

Explain: **directly abutting, first-order, intermittent stream; RPW**

Surface flow is: **highest following storm events and during at least a portion of the wet season.**

Characteristics: **Because of the generally level to moderate sloping topography and a soil texture consisting mostly of sandy soil in the drainage basin, minimum stream velocity is commonly observed during the low flow season.**

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 **approximately 6.2** river miles from TNW.

Project waters are **approximately 7.0** aerial (straight) miles from TNW.

Flow is from: **wetlands draining west to east.**

Estimate: **wetlands in the area of review are within the floodplain of intermittent stream**

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Unknown – no ponded water on surface of wetland**

Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width): **Wetlands are located approximately 0.2 mile thick forested riparian zone.**

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

All wetland(s) being considered in the cumulative analysis: **N/A**

Approximately **1.58** acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

YES

Size (in acres)

1.58 acres

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: **Refer to Section IV.B.**

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:

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:
 Wetlands adjacent to TNWs:

2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: **Batchellors Run is a perennial stream system. The NHD data classifies the flow regime as such based on USGS data.**
- 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: **The intermittent/ ephemeral sections of the stream system are fed by a combination of ground water and stream hydrology.**

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

- Tributary waters:
 Other non-wetland waters: **1,335 linear feet and/or 19,303 square feet (0.44 acres) of perennial stream: average width 15 (ft) and/or acres and 210 linear feet and/or 1,668 square feet (0.04 acres) of intermittent stream channel flowing indirectly into TNW.**

Identify type(s) of waters: **The channel is intermittent until flags B39 and C22 where the stream flows split due to lower topographic break that is flatter**

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

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above.
Provide rationale indicating that wetland is directly abutting an RPW:
- 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: **Approximately 68,608 square feet (1.58 acres) of nontidal forested/ emergent wetlands. These wetlands drain to intermittent stream systems at flags B39 and C22 before being driven by groundwater and stream hydrology B81.**

Provide acreage estimates for jurisdictional wetlands in the review area:

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

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

Provide acreage estimates for jurisdictional wetlands in the review area:

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

⁸ http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/TMDL_Final_Nontidal_Anacostia_PCBs.aspx

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:

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

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

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

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

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

Identify water body and summarize rationale supporting determination:

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

- Tributary waters:
 Other non-wetland waters:
Identify type(s) of waters:
 Wetlands:

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
 Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
 Other: (explain, if not covered above):

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

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

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):
 Lakes/ponds:
 Other non-wetland waters: acres. List type of aquatic resource:
 Wetlands:

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: **Charles P. Johnson & Associates, Inc. plans dated February 2011.**
 Data sheets prepared/submitted by or on behalf of the applicant/consultant. **Klebasko Environmental, LLC. Wetland Delineation Report dated 7 March 2011.**

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 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. **NHD data overlay available in Google Earth Pro accessed 8/29/2013 to determine hydrological connectivity and flow pattern of waters of the U.S.**
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000; Olney Quadrangle**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Montgomery County; Web Soil Survey <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, accessed 8/29/2013.**
- National wetlands inventory map(s). Cite name: **NWI Wetlands Mapper, <http://107.20.228.18/Wetlands/WetlandsMapper.html>, accessed 8/29/2013.** The NWI map (Olney Quadrangle) for this section of Montgomery County does not indicate presence of mapped wetlands within the study area. A palustrine forested wetland in mapped southeast of the project site.
- State/Local wetland inventory map(s): **Maryland Department of Natural Resources Nontidal Wetland Guidance Map; Olney Quadrangle**
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:
- Photographs: Aerial (Name & Date): **Google Earth Pro, 1988, 2001, 2002, 2005, 2006, 2007, 2008, 2009 2010, 2011, 2012; on behalf of the Corps of Engineers.**
 - or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Site visit photos dated 7 October 2011 by Mr. Steve Hamman and Mr. Mike Klebasko.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Man-made conveyance structures do not extinguish Federal jurisdiction under Section 404 of the Clean Water Act. The intermittent stream channel is hydraulically connected via surface water flows through culverts offsite. The nonnavigable water has a continuous surface water connection to downstream navigable waters and therefore are by definition regulated waters of the U.S.

References:

USDA-NRCS WETS Table, Montgomery County, Maryland. <http://www.wcc.nrcs.usda.gov/ftpref/support/climate/wetlands/md/24033.txt>; Accessed 8/14/2013.