

**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): June 17, 2020**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:NAO-2005-01678-rhs Bull Run Reserve**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Virginia County/parish/borough: Loudoun City:  
Center coordinates of site (lat/long in degree decimal format): Lat. 38.884722° **N**, Long. 77.508333° **W**.  
Universal Transverse Mercator: Zone 18N - 282,432m East, 4,306,975m North  
Name of nearest waterbody: Ellick Run -- Distance: 0 ft.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Occoquan River  
Name of watershed or Hydrologic Unit Code (HUC): 020700100704

- 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): May 21, 2020

**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):<sup>1</sup>**

- 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: 11,837 linear feet: width (ft) and/or 5.3 acres.  
Wetlands: 9.8 acres.

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

Elevation of established OHWM (if known): .

**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: .

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

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

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

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

**1. TNW**

Identify TNW: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

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

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

**(i) General Area Conditions:**

Watershed size: 33,508 acres

Drainage area: 5,135 acres

Average annual rainfall: inches

Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

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

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

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

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

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

Identify flow route to TNW<sup>5</sup>: Ellick Run to Cub Run to Bull Run to Occoquan River (31 miles total length) .

Tributary stream order, if known: .

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

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

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

Tributary is:  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: Culverts; see Attachment I.

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

Average width: 3-20 feet  
Average depth: 2-5 feet  
Average side slopes: **Vertical (1:1 or less).**

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: Moderate-high eroding banks.

Presence of run/riffle/pool complexes. Explain: Moderate.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Perennial and intermittent.

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  
 OHWM<sup>6</sup> (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.<sup>7</sup> Explain: .

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

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

(iii) **Chemical Characteristics:**

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

Explain: Water color is clear, but quality is likely affected by development within the watershed.

Identify specific pollutants, if known: Unknown.

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

<sup>7</sup>Ibid.

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

- Riparian corridor. Characteristics (type, average width): Upland forest; >50 feet; upland scrub-shrub, >100 feet.  
 Wetland fringe. Characteristics: PFO (>30% tree cover); PSS (>30% sapling/shrub cover); PEM (>30% herbaceous cover).
- Habitat for:
- Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: .

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.1 acres

Wetland type. Explain: PFO (>30% tree cover), PSS (>30% sapling/shrub cover), PEM (>30% herbaceous cover).

Wetland quality. Explain: Fair.

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

(b) General Flow Relationship with Non-TNW:

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

Surface flow is: **Discrete**

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 **30 (or more)** river miles from TNW.

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

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

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water color is clear, but quality is likely affected by development within the watershed. Identify specific pollutants, if known: Unknown.

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

- Riparian buffer. Characteristics (type, average width): .  
 Vegetation type/percent cover. Explain: PFO (>30% tree cover), PSS (>30% sapling/shrub cover), PEM (>30% herbaceous cover).
- 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: **30 (or more)**

Approximately ( 9.8 ) 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>
W-1	Y	0.012	PEM	
W-2	Y	0.153	PFO	
W-3	Y	0.033	PEM	
W-4	Y	1.616	PFO	
W-5	Y	0.037	PFO	
W-6	Y	0.015	PEM	
W-7	N	0.109	PFO	
W-8	N	0.035	PEM	
W-9	Y	0.017	PEM	
W-10	Y	0.007	PEM	
W-11	Y	0.012	PSS	
W-12	Y	0.082	PFO	
W-13	N	0.065	PFO	
W-14	N	0.017	PFO	
W-15	N	0.048	PEM	
W-16	N	0.137	PFO	
W-17	N	0.014	PEM	
W-18	N	0.102	PFO	
W-19	Y	0.013	PEM	
W-20	y	0.009	PSS	
W-21	Y	0.065	PFO	
W-22	Y	0.026	PFO	
W-23	Y	0.027	PFO	
W-24	Y	0.008	PFO	
W-25	y	0.034	PSS	
W-26	y	0.035	PSS	
W-27	y	0.060	PEM	
W-28	y	0.336	PFO	
W-29	Y	0.034	PEM	
W-30	Y	0.053	PFO	
W-31	Y	0.001	PFO	
W-32	Y	0.004	PEM	
W-33	Y	0.068	PFO	
W-34	Y	0.014	PEM	
W-35	Y	0.062	PEM	
W-36	Y	0.027	PFO	
W-37	Y	0.007	PSS	
W-38	Y	0.029	PEM	
W-39	Y	0.003	PSS	
W-40	Y	0.003	PEM	
W-41	Y	0.017	PEM	
W-42	Y	0.055	PEM	
W-43	Y	0.001	PEM	
W-44	Y	0.022	PEM	
W-45	Y	0.003	PEM	
W-46	Y	0.005	PFO	
W-47	Y	0.015	PEM	
W-48	Y	0.020	PSS	
W-49	Y	0.002	PSS	
W-50	Y	0.021	PEM	
W-51	Y	0.060	PSS	
W-52	Y	0.002	PEM	
W-53	Y	0.028	PEM	
W-54	Y	0.003	PEM	
W-55	Y	0.002	PEM	
W-56	Y	0.038	PFO	
W-57	Y	0.150	PFO	
W-58	N	0.002	PFO	
W-59	Y	0.022	PFO	
W-60	Y	0.005	PFO	
W-61	Y	0.078	PEM	
W-62	Y	0.033	PSS	

W-63	Y	0.004	PFO
W-64	Y	0.064	PEM
W-65	Y	0.006	PFO
W-66	Y	0.004	PFO
W-67	N	0.017	PSS
W-68	Y	0.007	PFO
W-69	Y	0.089	PEM
W-70	Y	0.004	PSS
W-71	Y	0.105	PEM
W-72	Y	0.004	PSS
W-73	Y	0.019	PFO
W-74	Y	0.031	PSS
W-75	Y	0.042	POW
W-76	Y	0.093	PEM
W-77	Y	0.218	PSS
W-78	Y	0.391	PSS
W-79	Y	0.215	PSS
W-80	Y	1.015	PSS
W-81	Y	0.033	PFO
W-82	Y	0.062	PEM
W-83	Y	0.460	PFO
W-84	N	0.144	PSS
W-85	N	0.066	PEM
W-86	N	0.054	PFO
W-87	N	0.021	PFO
W-88	N	0.002	PFO
W-89	Y	1.970	PFO
W-90	Y	0.018	PEM
W-91	Y	0.014	PFO
W-92	Y	0.021	PFO
W-93	N	0.083	PSS
W-94	N	0.050	PFO
W-95	N	0.046	PFO
W-96	Y	0.012	PFO
W-97	Y	0.179	PFO
W-98	N	0.006	PFO
W-99	N	0.016	PFO
W-100	Y	0.132	PEM
W-101	Y	0.021	PSS
W-102	N	0.069	PFO
W-103	N	0.006	PFO

Summarize overall biological, chemical and physical functions being performed: Wetlands can trap and store sediment and pollutants prior to reaching RPW and TNW.

### 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: S-1 (R6) shares border with Ellick Run.
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: S-8 (R6) shares border with W-50 (PEM) that shares border with S-7 (R4); S-3 shares borders with S-2 (R3) and W-12, a PFO that shares borders with S-2 (R3).
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: Wetlands are located within the floodplain of perennial streams and are connected to respective streams by surface water runoff; see Attachment I.

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
  - TNWs: linear feet      width (ft), Or,      acres.
  - Wetlands adjacent to TNWs:      acres.
2. **RPWs that flow directly or indirectly into TNWs.**
  - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Ellick Run is a USGS-mapped perennial stream; S-2 is perennial based on prior field evaluations using the NCDWQ and Fairfax DPWES stream evaluation methods.
  - 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: S-4, S-5 to S-7, and S-9 to S-12 are intermittent based on March 2020 and prior field evaluations using the NCDWQ and Fairfax DPWES stream evaluation methods.

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

- Tributary waters: **7,800** linear feet **3-20** width (ft).
  - Other non-wetland waters:      acres.
- Identify type(s) of waters:      .

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

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

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

- Tributary waters: **479** linear feet **5-15** 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

<sup>8</sup>See Footnote # 3.

directly abutting an RPW: See Attachment I; wetlands share borders with R3 streams (Elklick Run and S-2).

- 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: See Attachment I; wetlands share borders with R4 streams.

Provide acreage estimates for jurisdictional wetlands in the review area: **3.1** 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: **1.1** 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: **0.002** acres.

**7. Impoundments of jurisdictional waters.<sup>9</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):<sup>10</sup>**

- 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): .

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

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



Provide 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: "Waters of the U.S. (Including Wetlands) Delineation Map, April 9, 2020".
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1" = 2,000' / Arcola, VA 1990.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Loudoun County Digital Data.
- National wetlands inventory map(s). Cite name: USFWS NWI, Updated March 2019.
- State/Local wetland inventory map(s): Loudoun County Predicted Areas of Wetlands.
- FEMA/FIRM maps: Panel: 51059C0095E, Effective: 09/17/2010 and 51107C0370E, Effective: 02/17/2017.
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Fall 2002 Natural Color Imagery from VBMP, Spring 2009 Natural Color Imagery from VBMP, Spring 2017 Near Color Infrared Imagery from VBMP, Spring 2019 Natural Color Imagery from Loudoun Office of Mapping and Geographic Information.
  - or  Other (Name & Date): Ground photographs, between March 11 and March 27, 2020.
- Previous determination(s). File no. and date of response letter: JD#2005-1678, issued February 2, 2011, expired February 2, 2016.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** .