

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 3, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District; Auburn Field Office; MV Edge (Marcy Nanocenter Parkway Project); File No. 2021-00950

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York

County: Oneida

City: Marcy

Center coordinates of site (lat/long in degree decimal format): Lat: 43.1317 Long: -75.2415

Name of nearest waterbody: Gridley Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): 0202004

- 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. A Preliminary Jurisdictional Determination was prepared concurrently with this Approved JD using the same File Number (2021-00950) for Wetlands 004 and 005, Streams 003 and 004.

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

- Office (Desk) Determination. Date: 06/03/2022
- Field Determination. Date: 04/25/2022

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 NO** "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

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).

Form 1 of 1
 Stormwater Management Ponds 1 and 2
 Isolated Wetlands 003, 006, 007
 Ditches 1, 2, 3
 Page 2

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

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

c. Limits (boundaries) of jurisdiction based on: **Pick List**

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.

Wetland 003	Emergent	0.8 acre
Wetland 006	Emergent	0.2 acre
Wetland 007	Forested	0.1 acre

Explain: Wetlands 003, 006, and 007 established in depressional areas resulting from prior clearing and preliminary grading that has occurred over several decades associated with the overall MV EDGE development plan. All three areas are isolated, intrastate features that have no interstate or foreign commerce nexus.

Stormwater Management Pond 1	0.3 acre
Stormwater Management Pond 2	0.3 acre

Explain: Stormwater Management Ponds 1 and 2. These features were excavated entirely in upland soils having hydric ratings of “0” and “4” respectively, and function as retention/settling basins for the surrounding internal roads associated with the MV EDGE development. Features such as SWM Ponds were clarified as generally non-jurisdictional in the preamble of the November 13, 1986, Federal Register as follows: Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

Ditch 1	Ephemeral	1072 linear feet
Ditch 2	Ephemeral	508 linear feet
Ditch 3	Ephemeral	914 linear feet

Explain: Ditches 1 and 2 are man-made features associated with the construction of the Marcy Parkway within the MV EDGE development. Conveyance of stormwater varies along the parkway with some areas as maintained lawn swales, underground culverts that connect to the stormwater system, and riprap lined open channels. The ditches occur in soils having a hydric rating of “0”. Specifically, Ditches 1 and 2 were excavated wholly in and drain only uplands and do not carry relatively permanent flow.

Ditch 3 is a man-made feature located within a former agricultural field. It touches the edge of isolated Wetland 3 and extends into the upland areas surrounding the wetland. However, the ditch diffuses into the surrounding upland area and does not convey water to downstream waters. Although the ditch was not excavated wholly in upland, it is an ephemeral and isolated feature.

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

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

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

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: _____ inches

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

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW
- Project waters are **Pick List** river miles from TNW
- Project waters are **Pick List** river miles from RPW
- Project waters are **Pick List** aerial (straight) miles from TNW
- Project waters are **Pick List** aerial (straight) miles from RPW
- Project waters cross or serve as state boundaries. Explain:
- Identify flow route to TNW⁵:
- Tributary stream order, if known:

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

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

- Average width: feet
 Average depth: feet
 Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

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

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

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

- Dye (or other) test performed:
- Tributary has (check all that apply):
- Bed and banks
- OHWM⁶ (check all indicators that apply):

<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
- Discontinuous OHWM.⁷ 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.

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.

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

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

(iii) Chemical Characteristics:

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

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

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

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

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

Flow is from: **Pick List**.

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:
 Identify specific pollutants, if known:

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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

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

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

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** 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: 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: acres.

⁸See Footnote # 3.

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

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional.

Data supporting this conclusion is provided at Section III.C.

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

7. Impoundments of jurisdictional waters.⁹

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

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

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

- 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):

On April 25, 2022, the USACE conducted a site visit to make observations pertaining to all of the features discussed below:

During the site visit, the perimeters of Wetlands 003, 006, and 007 were confirmed and observations made in order to determine if any of the features had a downstream connection. On-site observations suggest that all three wetlands established in very shallow depressional areas resulting from changes in drainage patterns resulting from the construction of the Marcy Parkway associated with the overall MV EDGE development plan and specifically the Nanocenter Project.

Wetland 003: Is approximately 50-foot downslope from the nearest conveyance which is roadside Ditch 002. The wetland is a very shallow depression and according to the on-line Web Soil Survey, formed in Udorthents, smoothed soils having a hydric rating of 4. A hydrologic connection from Wetland 003 to Ditch 002 is impeded by topographic elevation, an approximately 10-12 foot paved walking/biking path, and a maintained lawn median between the path and the ditch.

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.

Form 1 of 1
Stormwater Management Ponds 1 and 2
Isolated Wetlands 003, 006, 007
Ditches 1, 2, 3
Page 9

Wetland 006: Using the Google Earth measuring tool, Wetland 006 is approximately 140 feet downslope from the nearest conveyance which is roadside Ditch 002. As described for Wetland 003 above, the wetland is a very shallow depression and according to the on-line Web Soil Survey, formed in Udorthents, smoothed soils having a hydric rating of 4. A hydrologic connection from Wetland 006 to Ditch 002 is impeded by topographic elevation, an approximately 10-12 foot paved walking/biking path, and a maintained lawn median between the path and the ditch.

Wetland 007: Using the Google Earth measuring tool, Wetland 007 is approximately 270 feet downslope from the nearest conveyance which is roadside Ditch 002. As described for Wetlands 003 and 006 above, the wetland is a very shallow depression and according to the on-line Web Soil Survey, formed in Udorthents, smoothed soils having a hydric rating of 4. A hydrologic connection from Wetland 007 to Ditch 002 is impeded by topographic elevation, an approximately 10-12 foot paved walking/biking path, and a maintained lawn median between the path and the ditch.

Historic aerials in 1957 and 1974 show the review area in active agriculture. The 1986 historic aerial suggests that farming activities were no longer practiced and has remained idle since that time. Successional vegetation has established, and wetlands have established in depressional areas.

Google Earth aerials between 1995 and 2009 show the area as vacant, undeveloped land. Construction activity is evident in the 2011 aerial, suggesting that construction of the Parkway began sometime between 2009 and 2011.

All three wetland areas were found to be isolated, intrastate features that have no interstate or foreign commerce nexus. Based on this information it was determined that Wetlands 003, 006, and 007 do not meet adjacency criteria. Further, due to topography and other factors impeding connection to the nearest conveyance, the presence of a shallow subsurface flow connection is very unlikely.

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.

Stormwater Management Pond 1	0.3 acre
Stormwater Management Pond 2	0.3 acre

Explain: Stormwater Management Ponds (SWM) 1 and 2 were excavated entirely soils having hydric ratings of “0” and “4” respectively and function as retention/settling basins for the surrounding internal roads associated with the MV EDGE development. Features such as SWM Ponds were clarified as generally non-jurisdictional in the November 13, 1986, Federal Register preamble as follows: “Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.” Based on the above information, the SWM ponds not meet the criteria as a water of the United States as clarified in the preamble.

Ditch 1	Ephemeral	1072 linear feet
Ditch 2	Ephemeral	508 linear feet
Ditch 3	Ephemeral	914 linear feet

Explain: Ditches 1 and 2 are man-made features associated with the Marcy Parkway construction within the MV EDGE development. Conveyance of stormwater within these features varies along the parkway with some areas as maintained lawn swales, underground culverts that connect to the stormwater system, and riprap lined open channels. The ditches occur in soils having a hydric rating of “0”. Specifically, Ditches 1 and 2 were excavated wholly in and drain only uplands and do not carry relatively permanent flow. Further, these features do not meet federal wetland criteria.

Ditch 3 is a man-made feature located within a former agricultural field. It touches the edge of isolated Wetland 3 and extends into the upland areas surrounding the wetland. However, the ditch diffuses into the surrounding upland area and does not convey water to downstream waters. Although the ditch was not excavated wholly in upland, it is an ephemeral and isolated feature. Further, this feature does not meet federal wetland criteria.

<input checked="" type="checkbox"/>	Wetlands:		
	Wetland 003	Emergent	0.8 acre
	Wetland 006	Emergent	0.2 acre
	Wetland 007	Forested	0.1 acre

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 on behalf of the applicant by EDR, contained in the Delineation Report dated May 2021
- 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: Scale: 24000; South Trenton, NY
- USDA Natural Resources Conservation Service Soil Survey: on-line Web Soil survey – map generated on 04/18/2022
- National wetlands inventory map(s). South Trenton, NY - generated in ARCMAP 05/10/20221
- State/Local wetland inventory map(s): South Trenton, NY - generated in ARCMAP 05/10/20221
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:
 - Aerial (Name & Date): Google Earth 1995, 2009; Historic Aerials 1957, 1974, 1995, 2019
 - Other (Name & Date): Photos taken in November 2020 and April 2021 contained in the delineation report
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: