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): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 1, and Wetlands B, D, E, H, I, J, N, Q, S, T, W, and Z, Form 1 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [x] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [ ] Non-RPWs that flow directly or indirectly into TNWs
- [x] Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- [x] Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- [ ] Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- [ ] Impoundments of jurisdictional waters
- [ ] Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 3,236 linear feet: 5 width (ft) and/or 5T acres.
   Wetlands: 1.967 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T 7T
Drainage area: 7T 7T

Average annual rainfall: 7T inches
Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.
Project waters are 7T river miles from RPW.
Project waters are 7T aerial (straight) miles from TNW.
Project waters are 7T aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: 7T
Tributary stream order, if known: 7T

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

Tributary is: ☐ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover: 7T
- ☐ Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T
Presence of run/riffle/pool complexes. Explain: 7T
Tributary geometry: 7T
Tributary gradient (approximate average slope): 7T%

(c) Flow:
Tributary provides for: 7T
Estimate average number of flow events in review area/year: 7T
Describe flow regime: 7T
Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T
- ☐ Dye (or other) test performed: 7T

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (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): 7T
  - ☐ 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 7T
- ☐ Discontinuous OHWM.[7] Explain: 7T

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): 7T
- ☐ Mean High Water Mark indicated by:
  - ☐ survey to available datum;
  - ☐ physical markings;
  - ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: 7T
Identify specific pollutants, if known: 7T

[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.
[7]Ibid.

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

- ☐ Riparian corridor. Characteristics (type, average width): 7T
- ☐ Wetland fringe. Characteristics: 7T
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: 7T
  - ☐ Fish/spawn areas. Explain findings: 7T
  - ☐ Other environmentally-sensitive species. Explain findings: 7T
  - ☐ Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.983 acres

Wetland type. Explain: Forested

Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetlands are low to medium quality.

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetlands into the adjacent stream.

Surface flow is: Overland Sheetflow

Characteristics: Overland sheetflow was observed from the wetlands to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T

- ☐ Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

- ☑ Directly abutting
- ☑ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: 7T
  - ☐ Ecological connection. Explain: 7T
  - ☐ Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- ☑ Riparian buffer. Characteristics (type, average width): > 100 feet forested
- ☐ Vegetation type/percent cover. Explain: 7T
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: 7T
  - ☐ Fish/spawn areas. Explain findings: 7T
  - ☐ Other environmentally-sensitive species. Explain findings: 7T
  - ☐ Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 12

Approximately (1.967) 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)	
N (Wetland B)	0.598	Y (Wetland D)	0.303	7T
Y (Wetland E)	0.669	Y (Wetland H)	0.012	
N (Wetland I)	0.023	N (Wetland J)	0.003	
N (Wetland N)	0.266	N (Wetland Q)	0.021	
N (Wetland S)	0.005	N (Wetland T)	0.002	
N (Wetland W)	0.061	N (Wetlnad Z)	0.004	

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: Stream 1 is identified as perennial on the Aurora topo map.
   - ☐ 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: 7T.

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

- [x] Tributary waters: 3,236 linear feet 5 width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 7T linear feet 7T width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - [x] 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: There was no upland observed between Wetlands D, E, and H and Stream 1.
     - [ ] 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: **7T**

   Provide acreage estimates for jurisdictional wetlands in the review area: 0.984 acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: 0.983 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: 7T 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 1, an RPW, flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

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U.S. Army Corps of Engineers

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SECTION I: BACKGROUND INFORMATION

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B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 10, and Wetlands U and V, Form 10 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
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- [ ] 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: 40 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.091 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 10, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.091 acres

Wetland type. Explain: forested

Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetlands as medium to medium-high quality.

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetlands into the adjacent stream.

Surface flow is: Overland Sheetflow

Characteristics: Overland sheetflow was observed from the wetlands to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 2

Approximately (0.091) 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)
N (Wetland U)	0.057	N (Wetland V)	0.034

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 40 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☑ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: 0.091 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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 10, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 11, Form 11 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 159 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 11, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 159 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 11, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 12, Form 12 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 219 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 12, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 219 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 12, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 13, and Wetlands L and M, Form 13 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [x] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [ ] Non-RPWs that flow directly or indirectly into TNWs
- [x] Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- [x] 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: 553 linear feet: 7 width (ft) and/or 5T acres.
   Wetlands: 0.286 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T 7T
Drainage area: 7T 7T

Average annual rainfall: 7T inches
Average annual snowfall: 7T inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.
Project waters are 7T river miles from RPW.
Project waters are 7T aerial (straight) miles from TNW.
Project waters are 7T aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: 7T
Tributary stream order, if known: 7T

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

Tributary is: ☐ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 7T feet
Average depth: 7T feet
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover: 7T
- ☐ Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T
Presence of run/riffle/pool complexes. Explain: 7T
Tributary geometry: 7T
Tributary gradient (approximate average slope): 7T%

(c) Flow:
Tributary provides for: 7T
Estimate average number of flow events in review area/year: 7T
Describe flow regime: 7T
Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T
- ☐ Dye (or other) test performed: 7T

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (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): 7T
  - ☐ 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 7T
- ☐ Discontinuous OHWM.[7] Explain: 7T

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): 7T
- ☐ Mean High Water Mark indicated by:
  - ☐ survey to available datum;
  - ☐ physical markings;
  - ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: 7T
Identify specific pollutants, if known: 7T

[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.
[7]Ibid.

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

- ☐ Riparian corridor. Characteristics (type, average width): 7T
- ☐ Wetland fringe. Characteristics: 7T
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: 7T
  - ☐ Fish/spawn areas. Explain findings: 7T
  - ☐ Other environmentally-sensitive species. Explain findings: 7T
  - ☐ Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.286 acres

Wetland type. Explain: scrub shrub and emergent

Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetlands are low quality.

Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:

Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetlands into the adjacent stream.

Surface flow is: Overland Sheetflow

Characteristics: Overland sheetflow was observed from the wetlands to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T

- ☐ Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:

- ☑ Directly abutting
- ☑ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: 7T
  - ☐ Ecological connection. Explain: 7T
  - ☐ Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW

Project wetlands are 5-10 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- ☑ Riparian buffer. Characteristics (type, average width): > 100 feet forested
- ☐ Vegetation type/percent cover. Explain: 7T
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: 7T
  - ☐ Fish/spawn areas. Explain findings: 7T
  - ☐ Other environmentally-sensitive species. Explain findings: 7T
  - ☐ Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 2

Approximately (0.286) 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)	
N (Wetland L)	0.215	Y (Wetland M)	0.071	7T

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: Stream 13 is identified as perennial on the Aurora topo map.
   - ☐ 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☑ Tributary waters: 553 linear feet 7 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 7T linear feet 7T width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - [x] 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: There was no upland observed between Wetland M and Stream 13.
     - [ ] 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: **7T**

   Provide acreage estimates for jurisdictional wetlands in the review area: 0.071 acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [x] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: 0.215 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: 7T 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 13, an RPW, flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 14, Form 14 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 745 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 14, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 745 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 14, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 15, Impoundment 1, and Wetland F, Form 15 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- [x] 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: 962 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: 0.175 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T 0.02 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 15, a non-RPW, flows into Stream 17, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.175 acres
Wetland type. Explain: forested
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetland is low quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetland to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.
Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 1
Approximately (0.175) 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)
Y (Wetland F)	0.175		

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 962 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [x] 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: 0.175 acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - [x] 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 15, a non-RPW, flows into Stream 17, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW. In addition, Impoundment 1 impounds Stream 15 and is therefore jurisdictional.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 16, and Wetland C, Form 16 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: 201 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.024 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 16, a non-RPW, flows into Stream 17, a n on-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.024 acres
Wetland type. Explain: forested
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetland as medium quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetland to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 1
Approximately (0.024) 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)
N (Wetland C)	0.024		

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 201 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [x] 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: 0.024 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 16, a non-RPW, flows into Stream 17, a n on-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 17, and Wetland R, Form 17 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: 253 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.170 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 17, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.170 acres
Wetland type. Explain: forested
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetland as medium quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetland to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 1
Approximately (0.170) 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)
N (Wetland R)	0.170		

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 253 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☑ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: 0.170 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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 17, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 18, Wetlands A, G, and P, Form 18 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 53 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [x] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: There was no surface water connection between Wetlands A, G, and P and the downstream TNW.

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream18, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Intermittent but not Seasonal Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 53 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☑ Wetlands: 0.190 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 18, a non-RPW, flows Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 19, and Wetlands O and X, Form 19 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: 79 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.24 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 19, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.24 acres
Wetland type. Explain: scrub shrub and emergent
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetlands are low quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetland to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.
Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 2
Approximately (0.24) 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)
N (Wetland O)	0.164	N (Wetland X)	0.076

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 79 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [x] 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: 0.24 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 19, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

12721272APPROVED 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): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 2, Form 2 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 770 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 2, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Intermittent but not Seasonal Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 770 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 2, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 20, Form 20 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 276 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 20, a non-RPW, flows into Stream 21, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Intermittent but not Seasonal Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 276 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 20, a non-RPW, flows into Stream 21, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 21, and Wetland Y, Form 21 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: 67 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.029 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 21, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.029 acres
Wetland type. Explain: forested
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetland is low quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetland to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.

Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 1
Approximately (0.029) 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)
N (Wetland Y)	0.029		

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 67 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [x] 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: 0.029 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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 21, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 3, Form 3 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 118 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T 0.02 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 3, a non-RPW, flows into Stream 2, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 118 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8]See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 3, a non-RPW, flows into Stream 2, a non-RPW, which flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW. In addition, Impoundment 1 impounds Stream 15 and is therefore jurisdictional.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 4, Form 4 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 120 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 4, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 120 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 4, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 5, Form 5 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 151 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 5, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 151 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 5, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 6, and Wetland K, Form 6 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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
- [x] 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: 167 linear feet: 3 width (ft) and/or 5T acres.
   Wetlands: 0.065 acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 6, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):
- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: 0.065 acres
Wetland type. Explain: forested
Wetland quality. Explain: Based on Ohio Rapid Assessment Method scores the wetland is medium quality.
Project wetlands cross or serve as state boundaries. Explain: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: Ephemeral Flow Explain: It started raining during the site visit. Water was observed flowing from the wetland into the adjacent stream.

Surface flow is: Overland Sheetflow
Characteristics: Overland sheetflow was observed from the wetlands to the adjacent stream.

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [x] Directly abutting
- [x] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 5-10 river miles from TNW.
Project waters are 5-10 aerial (straight) miles from TNW.
Flow is from: Wetland to Navigable Waters
Estimate approximate location of wetland as within the 500-year or greater 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: The water within the wetlands was turbid due to the recent rainfall. The wetlands are located within forested areas with large buffers and little disturbance. There are commercial/industrial sites located off-site that contribute some surface water.
Identify specific pollutants, if known: Pollutants typically associated with industrial/commercial developments.

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

- [x] Riparian buffer. Characteristics (type, average width): > 100 feet forested
- [ ] Vegetation type/percent cover. Explain: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 1
Approximately (0.065) 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)
Y (Wetland K)	0.065		7T

Summarize overall biological, chemical and physical functions being performed: The wetlands store precipitation and runoff, filter pollutants, and settle sediment.

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: 7T

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: 7T

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: According to the Ohio Environmental Protection Agency's September 2004 final report titled *Total Maximum Daily Loads for the Upper Cuyahoga River*, major causes of impairment within the upper Cuyahoga River watershed are nutrient/organic enrichment, low dissolved oxygen, flow alteration, and habitat alteration caused predominately by municipal and industrial discharges, septic systems, agriculture, channelization, and natural causes (http://epa.ohio.gov/portals/35/tmdl/upCuy_final_090304.pdf). The on-site wetlands help to reduce impairments to the Cuyahoga River. Several of the on-site wetlands are located in areas without any of these major causes of impairment. Thus, these wetland help to contribute clean/clear water to the downstream TNW which contributes to reducing impairments. In addition, several on-site wetlands receive water from adjacent commercial/industrial operations. These wetlands help to settle sediment, and filter pollutants. Thereby, supplying the downstream TNW with cleaner water and thus reducing impairments.

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 167 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☑ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: 0.065 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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 6, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 7, Form 7 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 230 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 7, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 230 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 7, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 8, Form 8 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 108 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 8, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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 7T
  - [ ] other (list): 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - [x] 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):
   - [x] Tributary waters: 108 linear feet 3 width (ft).
   - [ ] Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - [ ] Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - [ ] Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- [ ] Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [ ] Tributary waters: 7T linear feet 7T width (ft).
- [ ] Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- [ ] Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 8, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): December 1, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Steele Hill Properties II, LLC, DA No. 2014-00299, Stream 9, Form 9 of 21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Portage City: Streetsboro
Center coordinates of site (lat/long in degree decimal format): Lat. 41.27431 °, Long. -81.35519 °
Universal Transverse Mercator: 5T
Name of nearest waterbody: unnamed tributary to Tinkers Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Cuyahoga River
Name of watershed or Hydrologic Unit Code (HUC): Cuyahoga

- [x] 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):

- [x] Office (Desk) Determination. Date: December 1, 2014
- [x] Field Determination. Date(s): August 5, 2014, 5T

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: 5T

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

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

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]

- [ ] TNWs, including territorial seas
- [ ] Wetlands adjacent to TNWs
- [ ] Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
- [x] 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: 105 linear feet: 3 width (ft) and/or 1acres.
   Wetlands: acres.

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

   Elevation of established OHWM (if known): 5T

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

- [ ] Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: 7T

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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: 7T

Summarize rationale supporting determination: 5T

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

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[4] 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: 5T <0.01 square miles
Drainage area: 7T 809 square miles

Average annual rainfall: 41.8 inches
Average annual snowfall: 61.6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW[5]: Stream 9, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.
Tributary stream order, if known: 7T

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

Tributary is: ☑ Natural

☐ Artificial (man-made). Explain: 7T

☐ Manipulated (man-altered). Explain: 7T

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[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 properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: <1 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- [x] Silts
- [ ] Sands
- [ ] Concrete
- [x] Cobbles
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/% cover: 7T
- [ ] Other. Explain: 7T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The stream appeared to be eroding at a natural rate.

Presence of run/riffle/pool complexes. Explain: No riffle/run/pool complexes were observed.
Tributary geometry: Meandering
Tributary gradient (approximate average slope): 2%

(c) Flow:
Tributary provides for: Ephemeral Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow is ephemeral. It started raining during the site visit and water was then observed within the stream channel.
Other information on duration and volume: 7T

Surface flow is: Discrete and Confined Characteristics: There was a defined bed and bank.

Subsurface flow: Unknown Explain findings: 7T

- [ ] Dye (or other) test performed: 7T

Tributary has (check all that apply):

- [x] Bed and banks
- [x] OHWM[6] (check all indicators that apply):
  - [x] 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): 7T
  - [ ] 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 7T
- [ ] Discontinuous OHWM.[7] Explain: 7T

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): 7T
- [ ] Mean High Water Mark indicated by:
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The water within the stream was turbid due to the recent rainfall. The stream is located within a forested area but there are commercial/industrial businesses in immediately off-site.
Identify specific pollutants, if known: Pollutants typically associated with commercial/industrial developments.

[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.
[7]Ibid.

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

- [x] Riparian corridor. Characteristics (type, average width): > 100 feet forested.
- [ ] Wetland fringe. Characteristics: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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: 7T

(b) General Flow Relationship with Non-TNW:
Flow is: 7T Explain:

Surface flow is: 7T
Characteristics:

Subsurface flow: Unknown Explain findings: 7T
- [ ] Dye (or other) test performed: 7T

(c) Wetland Adjacency Determination with Non-TNW:
- [ ] Directly abutting
- [ ] Not directly abutting
  - [ ] Discrete wetland hydrologic connection. Explain: 7T
  - [ ] Ecological connection. Explain: 7T
  - [ ] Separated by berm/barrier. Explain: 7T

(d) Proximity (Relationship) to TNW
Project wetlands are 7T river miles from TNW.
Project waters are 7T aerial (straight) miles from TNW.
Flow is from: 7T
Estimate approximate location of wetland as within the 7T 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: 7T
- [ ] Habitat for:
  - [ ] Federally Listed species. Explain findings: 7T
  - [ ] Fish/spawn areas. Explain findings: 7T
  - [ ] Other environmentally-sensitive species. Explain findings: 7T
  - [ ] Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T
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: The stream has a significant nexus with the downstream TNW. There is a surface water connection to the downstream TNW. This surface water connection transports sediment, pollutants, and organic carbon to the downstream TNW. This transport provides a significant nexus to the downstream TNW.

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: 7T

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: 7T linear feet 7T width (ft), Or, 7T acres.
   - ☐ Wetlands adjacent to TNWs: 7T 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: 7T.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

3. **Non-RPWs[8] 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: 105 linear feet 3 width (ft).
   - ☐ Other non-wetland waters: 7T acres.
     Identify type(s) of waters: 7T

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: **7T**

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. **Impoundments of jurisdictional waters.[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: 7T
- ☐ Other factors. Explain: 7T

Identify water body and summarize rationale supporting determination: 7T

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: 7T linear feet 7T width (ft).
- ☐ Other non-wetland waters: 7T acres.
  Identify type(s) of waters: 7T
- ☐ Wetlands: 7T acres.

[8] See Footnote # 3.
[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.*

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: 7T
- ☐ Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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): 7T linear feet 7T width (ft).
- ☐ Lakes/ponds: 7T acres.
- ☐ Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- ☐ Wetlands: 7T 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: Strategic Environmental and Ecological Services, Inc.
- ☑ 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: 7T
- ☐ Corps navigable waters' study: 7T
- ☐ U.S. Geological Survey Hydrologic Atlas: 7T
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Aurora 7.5 min
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: 7T
- ☐ National wetlands inventory map(s). Cite name: 7T
- ☐ State/Local wetland inventory map(s): 7T
- ☐ FEMA/FIRM maps: 7T
- ☐ 100-year Floodplain Elevation is: 7T (National Geodectic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date): 7T
  - ☐ or ☐ Other (Name & Date): 7T
- ☐ Previous determination(s). File no. and date of response letter: 7T
- ☐ Applicable/supporting case law: 7T
- ☐ Applicable/supporting scientific literature: 7T
- ☐ Other information (please specify): 7T

B. ADDITIONAL COMMENTS TO SUPPORT JD: Stream 9, a non-RPW, flows into Stream 1, an RPW, which flows into Tinkers Creek, an RPW, which flows into the Cuyahoga River, a TNW.

7T

Date