

**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 8, 2014**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB 2014-01121 - Parrone Engineering. JD for Wetlands A and B and Unnamed tributary to Black Creek. Form 1 of 1.**

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

State: New York      County/parish/borough: Ontario      City: Farmington  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.985 **N**, Long. -77.351 **W**.

Universal Transverse Mercator: 18

Name of nearest waterbody: Unnamed tributary to Black Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 04140201

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

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

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

Office (Desk) Determination. Date: December 8, 2014

Field Determination. Date(s): November 13, 2014

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

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

Waters subject to the ebb and flow of the tide.

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

Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

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

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

Wetlands: Wetland A: 1.66 acres.

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

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

Explain: Wetland B (0.57 acres) is located in a closed depression. At the time of the November site visit, there was no observable evidence of surface flow out of Wetland B. The wetland is surrounded on all sides by upland vegetation, and is located approximately 1,500 feet from the nearest tributary. Wetland B is located approximately 75 feet from the southern

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

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

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

boundary of Wetland A; however, there is no evidence of surface flow between the wetlands. The soils that underlie Wetland A and the area between Wetland A and Wetland B are classified as Palmyra gravelly loam, which consists of very deep, well drained to somewhat excessively drained soils formed in glacial outwash. This soil type precludes the possibility of a shallow subsurface connection between the two wetlands.

Wetland B does not maintain surface hydrology at a depth or duration sufficient to support amphibian egg masses or aquatic insect larvae. Therefore, there is no potential for a significant biological nexus between Wetland B and the nearest tributary. Wetland B has been determined to be an intrastate, non-navigable, isolated water. Therefore, Wetland B has no potential to affect interstate commerce under 328.3(a)(3)(i-iii) (See Section IV B).

### **SECTION III: CWA ANALYSIS**

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

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

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

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

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

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

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

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

(i) **General Area Conditions:**

Watershed size: Canandaigua Outlet: 195 square miles

Drainage area: ~20 acres

Average annual rainfall: ~35 inches

Average annual snowfall: ~80 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

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

Project waters are **10-15** river miles from TNW.  
 Project waters are **1-2** 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:

Identify flow route to TNW<sup>5</sup>: The site's topography slopes gradually to the north. Wetland A flows to the north and ponds against the railroad embankment that constitutes the northern property boundary. The ponded wetland drains into a large wooded wetland north of the railroad tracks via two culverts and a drain tile located under the tracks. An unnamed seasonal tributary to Black Creek originates in the wetland located north of the railroad tracks and flows for approximately 6,000 river feet before eventually flowing into Black Creek (perennial RPW). Black Creek flows into the Canandaigua Outlet, which then flows into the Erie Canal (TNW).  
 Tributary stream order, if known: As described in the Guidebook, first order.

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

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

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

Average width: 4-5 feet  
 Average depth: 1-2 feet  
 Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. Explain: none observed.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: A review of sequential aerial images indicates that the channel supports flowing water during winter and early spring months. The channel supports hydrophytic vegetation, which indicates that a constant or at least seasonal source of hydrology is provided by the channel. A portion of the channel is depicted as a solid blue line on the USGS NY Canandaigua Quadrangle. On this same map, the upstream stretch and downstream stretch before its confluence with Black Creek are depicted as wetland.

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics: At the point where the unnamed seasonal tributary exits the large wooded wetland, the flow is confined to a natural, shallow, meandering channel that measures about 30 feet in width.

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

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):

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

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

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

Discontinuous OHWM.<sup>7</sup> Explain: .

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

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

**(iii) Chemical Characteristics:**

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

Explain: The tributary originates in and flows through a relatively intact forested wetland that is located in a rural watershed. There is some industrial development occurring in the vicinity of the tributary. Pollutants attributable to industrial developments are likely introduced into the system through overland runoff.

Identify specific pollutants, if known: specific pollutants are unknown.

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

- Riparian corridor. Characteristics (type, average width): The tributary flows through a large forested wetland.
- Wetland fringe. Characteristics: The wetland fringe consists of a forested wetland measuring about 85 acres in size.
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: The channel and associated forested wetland provide breeding, rearing, and foraging habitat for many common wetland species.

**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: Wetland A: 1.66 acres

Wetland type. Explain: palustrine forested.

Wetland quality. Explain: high due to minimal disturbance.

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

**(b) General Flow Relationship with Non-TNW:**

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

Surface flow is: **Overland sheetflow**

Characteristics: The wetland receives its hydrology from a roughly 20-acre drainage area, this surface hydrology ponds at the southern railroad embankment. Numerous aerial images depict this seasonal ponding. The flow is conveyed beneath the railroad embankment via two culverts and a drain tile.

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

Dye (or other) test performed: .

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Flow is conveyed to the seasonal RPW via two culverts and a drain tile beneath the railroad embankment.

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

**(d) Proximity (Relationship) to TNW**

Project wetlands are **10-15** 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:**

<sup>7</sup>Ibid.

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: At the time of the November site visit, water within the wetland was clear.  
 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: The wetland is palustrine forested and has a diverse overstory and understory.
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings: The wetland provides breeding, foraging, and refugia for common

wetland species.

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

All wetland(s) being considered in the cumulative analysis: **1**  
 Approximately ( 1.66 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

| <u>Directly abuts? (Y/N)</u> | <u>Size (in acres)</u> | <u>Directly abuts? (Y/N)</u> | <u>Size (in acres)</u> |
|------------------------------|------------------------|------------------------------|------------------------|
| Wetland A (N)                | 1.66                   |                              |                        |

Summarize overall biological, chemical and physical functions being performed: This headwater wetland serves as the primary collector and processor of organic matter for downstream waters. The November 2014 site visit showed the wetland in a saturated and partly inundated condition, and slowly releasing ponded water to the adjacent wetland located north of the railroad embankment. The wetland functions well to moderate downstream flows and likely has the capacity to recharge local groundwater. Flood attenuation /runoff storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and treatment of nitrogen and phosphorus, functions are considered to be moderate. Wildlife habitat functions are considered to be moderate.

**C. SIGNIFICANT NEXUS DETERMINATION**

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

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

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

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

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

#### RELEVANT REACH

The relevant reach for this significant nexus determination is from Wetland A to the confluence with a seasonal RPW that represents an unnamed tributary to Black Creek, which eventually flows into the Erie Canal, a TNW. As described in Section B, the unnamed seasonal tributary consists of a naturally meandering channel that originates in the large forested wetland located to the north of the subject parcel.

#### SIGNIFICANT FACTORS

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?

Yes, although the seasonal RPW portion of the unnamed tributary is jurisdictional by definition, the tributary and its adjacent wetlands was found to influence the capacity of the seasonal RPW to carry pollutants or flood waters to the Erie Canal based on proximity, flow, drainage area, and adjacent wetland characteristics as explained below.

#### Flow Characteristics:

Wetland A drains indirectly into the seasonal RPW. Wetland A drains into the offsite forested wetland via two culverts and a drain tile that subtend the railroad tracks. The offsite forested wetland conveys flow from Wetland A via overland sheetflow to the seasonal RPW. At the time of the November 2014 site visit, surface flow was not apparent; however, flow occurs on at least a seasonal basis and after heavy precipitation events. Flow is considered seasonal through these conveyances.

#### Drainage:

The unnamed tributary drains an area that is characterized as a rural landscape with a patchwork of undeveloped and developed areas. This headwater tributary receives surface hydrology from a ~85 acre forested wetland. This forested wetland is surrounded on many sides by industrial development. The forested wetland and headwater tributary treat pollutants that would otherwise be transported downstream to the Erie Canal.

#### Wetlands:

Wetland A occurs mostly within the boundaries of the undisturbed 26.9 acre site. The 1.66 acre wetland is characterized as a seasonally saturated palustrine forested wetland dominated with mid-successional to mature red maple (*Acer rubrum*) and silver maple (*Acer saccharinum*). Surface hydrology in Wetland A ponds against the railroad embankment that serves as the wetland's northern boundary. The southern boundary of wetland A is defined by a gradual to abrupt change in slope. Water flows to the north out of wetland A via two culverts under the railroad track. Water from Wetland A has been confirmed, by the DEC's Wildlife Biologist Scott Jones, to flow through these culverts to the north when it reaches an elevation that would permit flow through these culverts.

Functioning as a headwater wetland, the wetland serves as the primary collector and processor of organic matter for downstream waters. The storage and transformation of organic matter is important because it prevents downstream water quality degradation as a result of excess organic matter. The November 2014 site visit showed the wetland in a partly inundated condition, slowly releasing water to its primary drainages. The wetland was functioning well to moderate downstream flows and has the capacity to recharge local groundwater. Flood attenuation /runoff storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and retention/treatment of nitrogen and phosphorus, functions are considered to be moderate for Wetland A. The water quality of receiving waters is strongly influenced by the quality of water coming from the headwater streams and wetlands that feed into them. Wildlife habitat functions are considered to be moderate.

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?

Yes. The unnamed tributary flows directly into Black Creek, a perennial RPW. Black Creek then flows into the Canandaigua Outlet, which eventually flows into the Erie Canal (a TNW). The entire reach, from the unnamed tributary, to the Black Creek confluence, to the Erie Canal measures about 15 river miles. Given the flow regime and proximity to the Erie Canal, the unnamed tributary and its wetlands, through their capacity to store, process, and transport food and nutrients and their capacity to treat stormwater runoff play an important cumulative role in improving water quality and providing habitat and lifecycle support functions for fish and other species present in the Erie Canal. In addition, an examination of the aerial photographs indicates there are no significant fish barriers between the confluence of the unnamed tributary and the Erie Canal. As a result it is likely that Erie Canal fish species would also be found within the perennial tributary for which the unnamed tributary and its adjacent wetlands drain directly into. These species would be there specifically for such activities such as feeding, nesting, and spawning. In summary, the unnamed tributary and its adjacent Wetland A flows directly into a perennial waterway that has the capacity to support fish species that also utilize the Erie Canal.

Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?

Yes, functioning as a headwater wetland, the 1.66-acre forested wetland serves as the primary collector and processor of organic matter and nutrients for downstream waters. The storage and transformation of organic matter is important to these types of systems because it prevents downstream water quality degradation as a result of excess organic matter. It also transforms unusable organic matter (inorganic carbon) into food for aquatic organisms (organic carbon). The November site visit showed the wetland in a 50 percent inundated condition, slowly releasing water to its primary drainages. The wetland was functioning well to moderate downstream flows preventing excess organic matter from reaching downstream waters. In addition, this system is also functioning to retain and process excess nutrients, such as nitrogen and phosphorus, transforming them into biologically useful forms that are slowly released to downstream waters.

#### CONCLUSION

The seasonal RPW is jurisdictional by definition. In addition, the adjacent Wetland A was found to influence the chemical, physical, and biological integrity of downstream waters. Based upon the evaluation presented herein, there is a significant nexus between the seasonal tributary and its adjacent wetland and the Erie Canal. Therefore, the entire reach of the unnamed tributary and Wetland A are jurisdictional waters of the US.

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

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

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

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

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .  
 Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The shallow channel measures about 30 feet in width and has moderately defined bed and banks. The channel flows for about 7,000 linear feet before it confluences with Black Creek (perennial RPW). The seasonal RPW is identifiable on aerial imagery, and surface water is evident within the channel.

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

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

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

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

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

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

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

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

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

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

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

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

Provide acreage estimates for jurisdictional wetlands in the review area: **1.66** 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.<sup>9</sup>**

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

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

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

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

**Identify water body and summarize rationale supporting determination:**            .

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

- Tributary waters:            linear feet            width (ft).
- Other non-wetland waters:            acres.  
Identify type(s) of waters:            .
- Wetlands:            acres.

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

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

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

- Non-wetland waters (i.e., rivers, streams):            linear feet            width (ft).
- Lakes/ponds:            acres.
- Other non-wetland waters:            acres. List type of aquatic resource:            .
- Wetlands: 0.57 acres.

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

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

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

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

**SECTION IV: DATA SOURCES.**

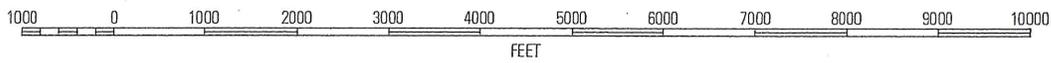
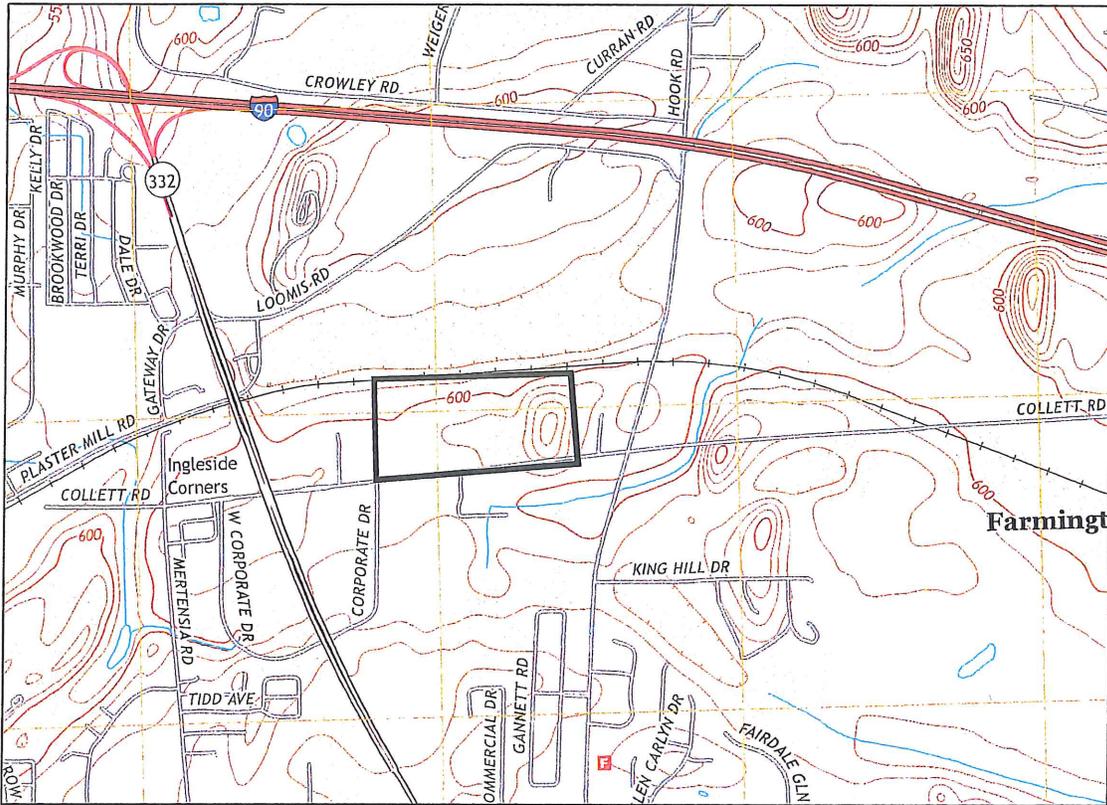
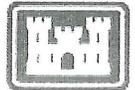
**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Fran Reese (October 2014).
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:          .
- Corps navigable waters' study:          .
- U.S. Geological Survey Hydrologic Atlas:          .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 7.5 Minute USGS NY Canandaigua Quadrangle.
- USDA Natural Resources Conservation Service Soil Survey. Citation: <http://websoilsurvey.nrcs.usda.gov/app/>.
- National wetlands inventory map(s). Cite name:<http://www.fws.gov/wetlands/Data/Mapper.html> .
- State/Local wetland inventory map(s):<http://www.dec.ny.gov/imsmaps/ERM/viewer.htm>.
- FEMA/FIRM maps:          .
- 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Bing Maps Oblique Aerial Imagery (date unk.).  
or  Other (Name & Date): Ground-level photographs (November 2014).
- Previous determination(s). File no. and date of response letter:          .
- Applicable/supporting case law:          .
- Applicable/supporting scientific literature:          .
- Other information (please specify):          .

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

Wetland B is outside Department of the Army jurisdiction as it does not meet the criteria for a jurisdictional water of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. does not/has not supported interstate or foreign commerce;
2. is not an interstate water/wetland;
3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:
  - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (iii) which are used or could be used for industrial purpose by industries in interstate commerce
4. is not an impoundment of water otherwise defined as WOUS under the definition;
5. is not a tributary of waters identified in paragraphs (a)(1)-(4) of this section;
6. is not a territorial sea;
7. is not wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section.



CONTOUR INTERVAL 10 FEET  
 NORTH AMERICAN VERTICAL DATUM OF 1988



Parcel Boundary  
 (approximate)



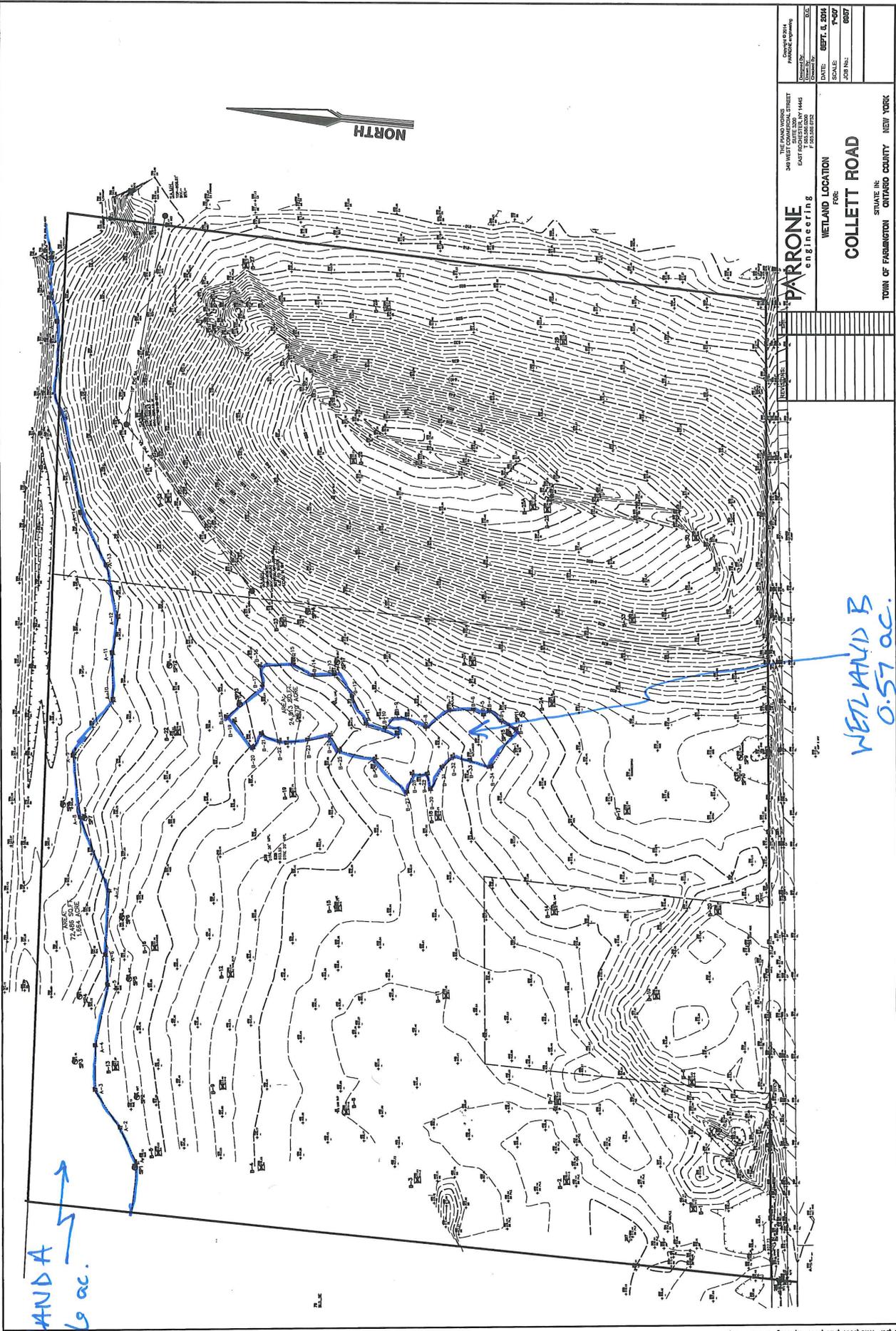
QUADRANGLE LOCATION



8 Osage Trail  
 Spencerport, NY  
 585.727.5785  
 Fran.reese9@gmail.com

Figure 1. Site Location Map  
 Collett Road Properties  
 Town of Farmington, Ontario County  
 New York

Scale: As shown  
 Drawn by: FAR  
 Source: U.S. Geological Survey,  
 Canandaigua, NY 7.5' Topographic  
 Quadrangle, 2013



P:\P-144\0937\0937-topoging Number 12, 2014

Parrone Engineering  
 D/A Processing No. 2014-01121  
 Ontario County, New York  
 Quad: Canandaigua  
 Sheet 2 of 2

