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): March 31, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo, Mastopietro, Anthony, LRB-2013-00868, Unnamed Wetland (0.16-acre on-site) and Unnamed tributary #1 to Kellogg Creek (off-site)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lake County City: Concord Township
Center coordinates of site (lat/long in degree decimal format): Lat. 41.68035 °, Long. -81.24568 °
Universal Transverse Mercator: *Click here to enter text.*
Name of nearest waterbody: Kellogg Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Grand River
Name of watershed or Hydrologic Unit Code (HUC): 4110004

- [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: March 14, 2014
- [x] Field Determination. Date(s): August 20, 2013, *Click here to enter a date.*

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: *Click here to enter text.*

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There *Choose an item.* "*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
- [ ] 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: # linear feet: # width (ft) and/or # acres.
   Wetlands: 0.16-acres.

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

   Elevation of established OHWM (if known): *Click here to enter text.*

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: *Click here to enter text.*

[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: *Click here to enter text.*

Summarize rationale supporting determination: *Click here to enter text.*

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": *Click here to enter text.*

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: 705- square miles
Drainage area: 0.06 -square miles

Average annual rainfall: 53.71-inches
Average annual snowfall: 7.5-inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☑ Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 1-2 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: *Click here to enter text.*

Identify flow route to TNW[5]: Waters from the Unnamed Wetland flow north off-site into a linear portion of the Unnamed Wetland. The linear portion of the Unnamed Wetland flows north/northwest approximately 50-feet enters an approximately 100-ft long culvert then outflows into a small intermittent (seasonal RPW) unnamed stream **(**Unnamed tributary#1 to Kellogg Creek)**.** Unnamed tributary#1 to Kellogg Creek flows northeast approximately 500-linear feet and converges with a larger perennial (perennial RPW) unnamed stream (Unnamed tributary#2 to Kellogg Creek). Unnamed tributary#2 to Kellogg Creek flows approximately 3,000-linear feet north into Kellogg Creek (perennial RPW). Kellogg Creek flows northeast approximately 2-miles into Big Creek (perennial RPW). Big Creek flows northeast approximately 1,000-linear feet into the Grand River (TNW). Grand River is a tributary to Lake Erie and is navigable from mouth to Farmington, Ohio 91.8 miles. (about 2-1/2 miles downstream of the Baltimore and Ohio Railroad Bridge in W. Farmington, Ohio)

[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 stream order, if known: 1

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

Tributary is:
- ☑ Natural
- ☐ Artificial (man-made). Explain: *Click here to enter text.*
- ☑ Manipulated (man-altered). Explain: Upstream portion of the Unnamed tributary#1 to Kellogg Creek was impounded prior to 1994. A 1.5-acre pond is located at the headwaters of the stream.

Tributary properties with respect to top of bank (estimate):
Average width: 5 feet
Average depth: 1- feet
Average side slopes: 3:1

Primary tributary substrate composition (check all that apply): Viewed from roadside

☑ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☑ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover: *Click here to enter text.*	
☐ Other. Explain: *Click here to enter text.*		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable – Review of aerial photographs indicates stream has been relatively stable since 1994.
Presence of run/riffle/pool complexes. Explain: *Click here to enter text.*
Tributary geometry: Meandering
Tributary gradient (approximate average slope): #%

(c) Flow: Unnamed tributary #1 to Kellogg Creek
Tributary provides for: Intermittent but not Seasonal Flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Intermittent
Other information on duration and volume: *Click here to enter text.*

Surface flow is: Confined Characteristics: *Click here to enter text.*

Subsurface flow: *Choose an item.* Explain findings: *Click here to enter text.*
- ☐ Dye (or other) test performed: *Click here to enter text.*

Tributary has (check all that apply): Stream observed from road and review of multiple aerial photographs
- ☑ 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): *Click here to enter text.*
  - ☐ 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 *Click here to enter text.*
- ☐ Discontinuous OHWM.[7] Explain: *Click here to enter text.*

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

[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.

☐ other (list): *Click here to enter text.*

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Surface water was clear at time of site visit, and originates from 1.5-acre pond and runoff from adjacent hillsides.
Identify specific pollutants, if known: Run off from roadways, and fertilizers/pesticides from residential properties.

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

☐ Riparian corridor. Characteristics (type, average width): *Click here to enter text.*

☐ Wetland fringe. Characteristics: *Click here to enter text.*

☑ Habitat for:

☐ Federally Listed species. Explain findings: *Click here to enter text.*

☐ Fish/spawn areas. Explain findings: *Click here to enter text.*

☐ Other environmentally-sensitive species. Explain findings: *Click here to enter text.*

☑ Aquatic/wildlife diversity. Explain findings: Amphibians, Avian Spp, invertebrates

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: 0.16- acres
Wetland type. Explain: Emergent
Wetland quality. Explain: Medium – Cat 2. Vegetation is comprised of emergent species: boneset, soft rush, path rush, carex species, willow herb, etc.
Project wetlands cross or serve as state boundaries. Explain: *Click here to enter text.*

(b) General Flow Relationship with Non-TNW:
Flow is: Intermittent Flow Explain: During the site visit waters were observed flowing from wetland into vegetated swale.

Surface flow is: Confined
Characteristics: *Click here to enter text.*

Subsurface flow: *Choose an item.* Explain findings: *Click here to enter text.*
☐ Dye (or other) test performed: *Click here to enter text.*

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☑ Not directly abutting
☑ Discrete wetland hydrologic connection. Explain: Waters from the Unnamed wetland flow off-site into a linear portion of the Unnamed wetland. The linear portion of the Unnamed wetland flows north/northwest into an approximately 100-linear foot culvert that outfall into Unnamed tributary #1 to Kellogg Creek (small intermittent stream).
☐ Ecological connection. Explain: *Click here to enter text.*
☐ Separated by berm/barrier. Explain: *Click here to enter text.*

(d) Proximity (Relationship) to TNW
Project wetlands are 2-5 river miles from TNW.
Project waters are 1-2 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: Surface water was clear at time of site visit.
Identify specific pollutants, if known: Run off from roadways, and fertilizers/pesticides from residential properties

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

☐ Riparian buffer. Characteristics (type, average width): *Click here to enter text.*

☑ Vegetation type/percent cover. Explain: Carex 20%, Juncus 20%, Composites, 20%

☑ Habitat for:

☐ Federally Listed species. Explain findings: *Click here to enter text.*

☐ Fish/spawn areas. Explain findings: *Click here to enter text.*

☐ Other environmentally-sensitive species. Explain findings: *Click here to enter text.*

☑ Aquatic/wildlife diversity. Explain findings: Amphibian, mammalian, avian species, aquatic invertebrates

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

All wetland(s) being considered in the cumulative analysis: *Choose an item.*
Approximately (0.16) 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)
Yes	0.16	*Y/N*	#
Y/N	#	*Y/N*	#
Y/N	#	*Y/N*	#
Y/N	#	*Y/N*	#

Summarize overall biological, chemical and physical functions being performed: Due to the Unnamed wetlands' position on the landscape, surface water leaves the wetland flows off-site into a linear portion of the Unnamed wetland. The linear portion of the Unnamed wetland flows north/northwest into an approximately 100-linear foot culvert that outfall into Unnamed tributary #1 to Kellogg Creek (off-site**).** The wetland plays an important role in attenuating local flooding through runoff storage, and has a capacity to stabilize and retain sediments and retain and process pollutants to benefit downstream surface water quality.

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: *Click here to enter text.*

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: *Click here to enter text.*

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:

The Unnamed Wetland is adjacent and connected to Unnamed tributary #1 to Kellogg Creek (off-site) via a 100-ft long culvert. Waters from the Unnamed Wetland flow north off-site through a linear portion of the Unnamed Wetland. The linear portion of the Unnamed Wetland flows north/northwest approximately 50-feet enters an approximately 100-ft long culvert then outflows into a small intermittent (seasonal RPW) unnamed stream (Unnamed tributary#1 to Kellogg Creek). Unnamed tributary#1 to Kellogg Creek flows northeast approximately 500-linear feet and converges with a larger perennial (perennial RPW) unnamed stream (Unnamed tributary#2 to Kellogg Creek). Unnamed tributary#2 to Kellogg Creek flows approximately 3,000-linear feet north into Kellogg Creek (perennial RPW). Kellogg Creek flows northeast approximately 2-miles into Big Creek (perennial RPW). Big Creek flows northeast approximately 1,000-linear feet into the Grand River (TNW). Grand River is a tributary to Lake Erie and is navigable from mouth to Farmington, Ohio 91.8 miles. (about 2-1/2 miles downstream of the Baltimore and Ohio Railroad Bridge in W. Farmington, Ohio).

The Ohio Environmental Protection Agency's Ohio 2012 Integrated Water Quality Monitoring and Assessment Report, states that "the top five aquatic life impairment causes for the period 2001, through 2010 are: siltation/sedimentation, nutrients, habitat modification, hydromodification (i.e. urbanization of watersheds), organic enrichment /dissolved oxygen (DO) [10]." The Unnamed Wetland plays an important role in attenuating local flooding through runoff storage, and has a capacity to stabilize and retain sediments and retain and process pollutants to benefit downstream surface water quality. By helping protect water quality and habitat of the Grand River, the

onsite wetland and similarly situated wetlands adjacent to Unnamed tributary#1 to Kellogg Creek, Unnamed tributary#2 to Kellogg Creek, Kellogg Creek, and Big Creek have more than speculative or insubstantial affect on the chemical, physical, and biological integrity of the Grand River; therefore, these wetlands have a significant nexus with the Grand River.

The Unnamed Wetland and similarly situated wetlands adjacent to Unnamed tributary#1 to Kellogg Creek, Unnamed tributary#2 to Kellogg Creek help protect the waters quality of downstream waters, including Kellogg Creek, Big Creek, and the Grand River. Kellogg Creek and Big Creek Aquatic Life Habitat designation is Warm Water Habitat (WWH)* and Seasonal Salmonid Habitat (SSH). Grand Rivers Aquatic Life Habitat designation (Harpersfield dam to st. rte. 2 (RM5.5) where Big Creek enters is Exceptional Warm Water Habitat (EWH)* and SSH [1, 2]. Additionally, Grand River [state route 322 (RM 67.08) to US route 20 (RM 5.67)] is designated as Outstanding state waters (OSW)* based on exceptional ecological values (http://codes.ohio.gov/oac/3745-1-05). The Unnamed Wetlands' vegetation is comprised of emergent species (boneset, soft rush, path rush, carex species, willow herb, etc.) which helps to provide functions and services of processing nutrients, thus helping to remove biological oxygen demand inputs and moderate the amount of nutrients transferred downstream to Kellogg Creek, Big Creek, and the Grand River. *"Biochemical oxygen demand, or BOD, measures the amount of oxygen consumed by microorganisms in decomposing organic matter in stream water. BOD directly affects the amount of dissolved oxygen in rivers and streams. The greater the BOD, the more rapidly oxygen is depleted in the stream. This means less oxygen is available to higher forms of aquatic life. The consequences of high BOD are the same as those for low dissolved oxygen: aquatic organisms become stressed, suffocate, and die. Sources of BOD include leaves and woody debris; dead plants and animals; animal manure; effluents from pulp and paper mills, wastewater treatment plants, feedlots, and food-processing plants; failing septic systems; and urban stormwater runoff."* [9] *"Wetlands remove BOD from surface water through decomposition of organic matter or oxidation of inorganics (*qtd. in *Hemond and Benoit 1988). BOD removal by wetlands may approach 100% (*qtd. in *Hemond and Benoit 1988).* [9]"

These downstream water courses (Kellogg Creek, Big Creek, and the Grand River) all provide recreational activities [5, 6] such as whitewater kayaking, rafting, paddling, and fishing. Moreover, Kellogg Creek has been identified as containing fish populations [6] of bluegill, bass, and trout [5, 6]. Big Creek and the Grand River have been identified as containing populations of steelhead as well as other fish species [7, 8]. As stated previously the Unnamed Wetlands ability to filter out sediments, nutrients, and removal biological oxygen demand inputs, contributes to the ecological health of the streams, so that recreation actives can continue.

During the site visit the Corps also observed that the subject wetlands provide habitat for amphibians, insects, and birds. The Corps observed waters flowing from the Unnamed Wetland through the off-site linear portion of the Unnamed Wetland into a culvert that outfalls into Unnamed tributary#1 to Kellogg Creek**.** Due to the observance of water flow and the topographic connection between the on-site wetland and the Unnamed tributary#1 to Kellogg Creek (off-site), it is more than speculative that the there is a ecological corridor in which amphibians and insects can travel to downstream waters. *"Diverse species of plants, insects, amphibians, reptiles, birds, fish, and mammals depend on wetlands for food, habitat, or temporary shelter. Although wetlands make up only about 3.5 percent of U.S. land area, of the 209 animal species listed as endangered in 1986, about 50% depend on wetlands for survival an viability [12]." "An additional 20% of the United States' threatened and endangered species use or inhabit wetlands at some time in their life.*[7]". The subject wetlands provide on-site wildlife habitat and in combination with other similarly situated wetlands adjacent to the Unnamed tributary#1 to Kellogg Creek (off-site) function as a riparian and wildlife corridor that provides more than a speculative effect on the integrity of the Grand River watershed; therefore, these wetlands have a significant nexus with the Grand River.

The Ohio EPA October 2011 report titled *"Total Maximum Daily Loads for the Grand River (lower) Watershed"* [4] indicates that "*land use within the Big Creek-Red Creek subbasin are predominantly forested and developed* [4] ". "Forty-one percent of the subbasin is developed; therefore, urbanization of the watershed is a significant contributor of the watershed impairments. [4]" Wetland plants provide roughness to reduce the velocity of surface water runoff and allow sediment to drop out of the water column; helping to improve aquatic wildlife habitat by clarifying water and slowing surface water flow.

As stated previously, the Unnamed Wetland plays an important role in attenuating local flooding through runoff storage, and has a capacity to stabilize and retain sediments and retain and process pollutants to benefit downstream surface water quality. By helping protect water quality and habitat of the Grand River, the onsite wetland and similarly situated wetlands adjacent to Unnamed tributary#1 to Kellogg Creek, Unnamed tributary#2 to Kellogg Creek, Kellogg Creek, and Big Creek have more than speculative or insubstantial affect on the chemical, physical, and biological integrity of the Grand River; therefore, these wetlands have a significant nexus with the Grand River.

Resources:

1. Ohio Administrative Code, Chapter 3745-1-10 Grand river drainage basin, Retrieved March 7, 2014 from http://codes.ohio.gov/oac/3745-1-10 and http://www.epa.ohio.gov/portals/35/rules/01-10.pdf
2. Ohio Administrative Codes, Chapter 3745-1-07 Water use designations and statewide criteria, Retrieved March 7, 2014 from (http://codes.ohio.gov/oac/3745-1-07)
3. Yoder C.O. and E.T. Rankin.1996. *Assessing the condition and status of aquatic life designated uses in urban and suburban watersheds, pp. 206-207. in Roesner, L.A. (ed.). Effects of Watershed Development and Management on Aquatic Ecosystems,* American Society of Civil Engineers, New York, NY. Retrieved March 7, 2014 from (http://www.epa.state.oh.us/portals/35/documents/watrshed.pdf)

4. Ohio Environmental Protection Agency. 2011. *Total Maximum Daily Loads for the Grand River (lower) Watershed" report, p. 87*. Retrieved March 7, 2014 from (http://www.epa.ohio.gov/portals/35/tmdl/LowerGrand_PN_Report.pdf)
5. Riverfacts.com, Retrieved March 7, 2014 from http://www.riverfacts.com/states/oh.html
6. Hook and Bullet, Retrieved March 7, 2014 from http://www.hookandbullet.com/fishing-kellogg-creek-painesville-oh/ ; and http://www.hookandbullet.com/fishing-big-creek-painesville-oh/,
7. Ohio department of Natural Resource. *Grand River Lake and Ashtabula Counties Steelhead Trout Fishing Map*. Retrieved March 7, 2014 from http://www.dnr.state.oh.us/Portals/9/pdf/grand.pdf ;
8. Orvis Cleveland, *Grand River, Ohio Fly Fishing Reports and Conditions*, Retrieved March 7, 2014 from http://www.orvis.com/fishing_report.aspx?locationid=6119
9. Watershedss Information on Wetlands, NC State University, Retrieved March 7, 2014 from http://www.water.ncsu.edu/watershedss/info/wetlands/values.html
10. Ohio EPA. *Ohio Integrated Water Quality Monitoring Report, 2012, Section A*. Retrieved March 7, 2014 from http://www.epa.state.oh.us/portals/35/tmdl/2012IntReport/IR12SectionAfinal.pdf
11. United States Environmental Protection Agency. *5.2 Dissolved Oxygen and Biochemical Oxygen Demand*. Retrieved March 7, 2014 from http://water.epa.gov/type/rsl/monitoring/vms52.cfm
12. Mitsch, William J. and James G. Gosselink. *Wetlands.* John Wiley & Sons, Inc. 1993. Print. pg. 517

* The WWH designation indicates, 'typical' warmwater assemblage of aquatic organisms for Ohio rivers and streams; *this use represents the principal restoration target for the majority of water resource management efforts in Ohio*" [3]. The EWH *"use designation - this use designation is reserved for waters which support "unusual and exceptional" assemblages of aquatic organisms which are characterized by a high diversity of species, particularly those which are highly intolerant and/or rare, threatened, endangered, or special status (i.e., declining species); this designation represents a protection goal for water resource management efforts dealing with Ohio's best water resources"* [3]. *"Outstanding state waters" are waters that have special significance for the state because of their exceptional ecological values or exceptional recreational values, and that have been so categorized pursuant to paragraph (E) of 3745-1-05. To qualify on the basis of exceptional ecological values they must meet the qualifications for superior high quality waters and be further distinguished as being demonstratively among the best waters of the state from an ecological perspective."*

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: *Click here to enter text.*.
   - ☑ 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: Review of multiple historic aerial indicates presences of water within the stream 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: *Click here to enter text.*

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: # linear feet # width (ft).
   - ☐ Other non-wetland waters: # acres.
     Identify type(s) of waters: *Click here to enter text.*

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: *Click here to enter text.*
     - ☐ 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: *Click here to enter text.*

[8]See Footnote # 3.

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: 0.16-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: *Click here to enter text.*
☐ Other factors. Explain: *Click here to enter text.*

Identify water body and summarize rationale supporting determination: *Click here to enter text.*

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: *Click here to enter text.*
☐ 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: *Click here to enter text.*
☐ Other: (explain, if not covered above): *Click here to enter text.*

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: *Click here to enter text.*.
☐ Wetlands: # acres.

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

[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.*

- ☐ Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
- ☐ Lakes/ponds: # acres.
- ☐ Other non-wetland waters: # acres. List type of aquatic resource: *Click here to enter text.*.
- ☐ 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):

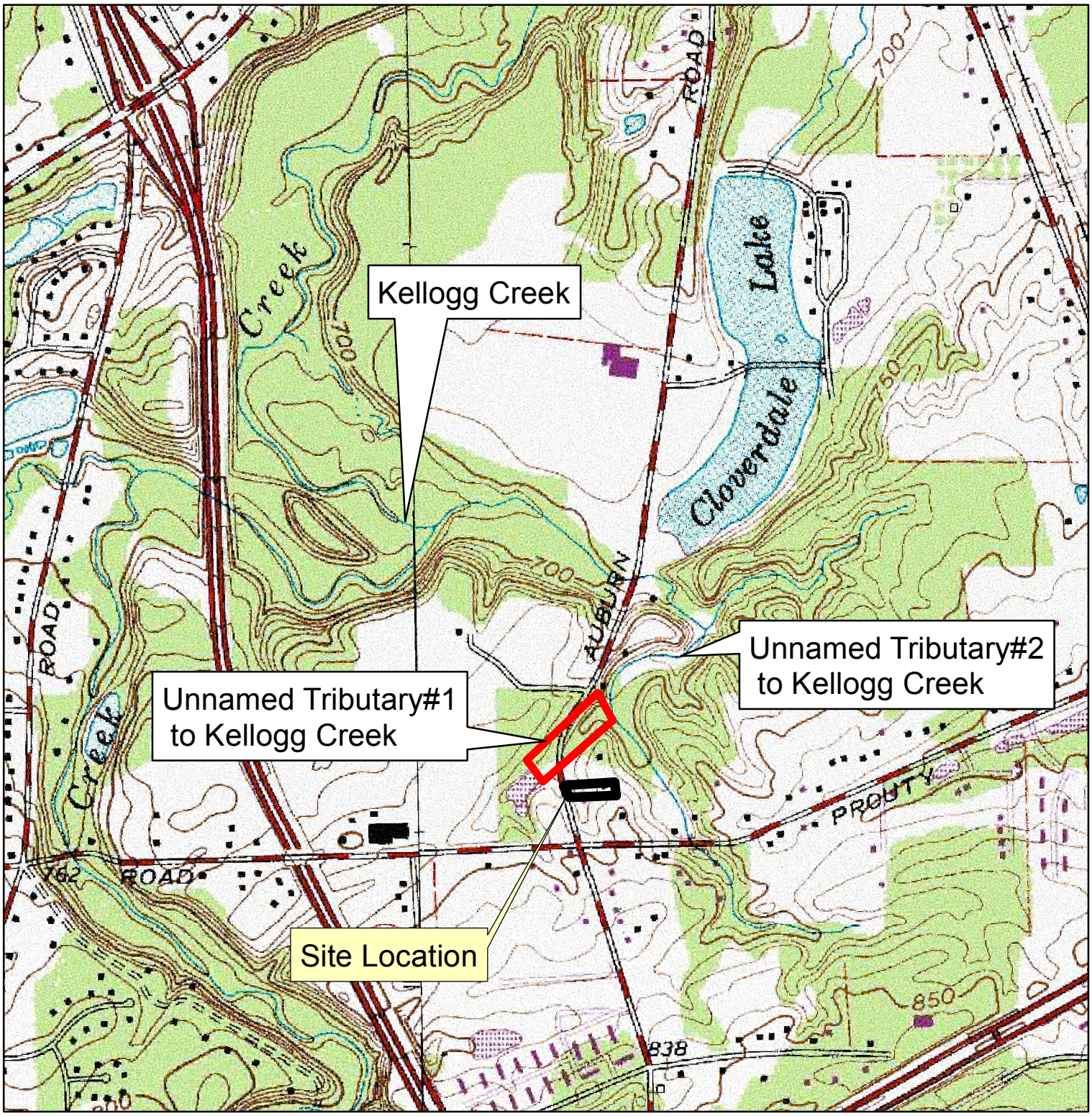
- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: *Click here to enter text.*
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☑ Data sheets prepared by the Corps: Aug 20, 2013
- ☐ Corps navigable waters' study: *Click here to enter text.*
- ☐ U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: Painesville, Ohio
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx
- ☑ National wetlands inventory map(s). Cite name: US Fish and Wildlife Wetland Mapper: http://www.fws.gov/wetlands/Data/Mapper.html
- ☐ State/Local wetland inventory map(s): *Click here to enter text.*
- ☑ FEMA/FIRM maps: 39085C0136F
- ☐ 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodectic Vertical Datum of 1929)
- ☑ Photographs: ☑ Aerial (Name & Date): USGS 1994, 2000, 2003; USDA 2004, 2005, 2009; OSIP 2006; Google 2012
  or ☑ Other (Name & Date): Bing Maps Birds Eye (unknown year), Site Photographs 20-Aug-2013
- ☐ Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- ☐ Applicable/supporting case law: *Click here to enter text.*
- ☐ Applicable/supporting scientific literature: *Click here to enter text.*
- ☐ Other information (please specify): *Click here to enter text.*

B. ADDITIONAL COMMENTS TO SUPPORT JD: Due to the Unnamed wetlands' position on the landscape, surface water leaves the wetland flows off-site into a linear portion of the Unnamed wetland. The linear portion of the Unnamed wetland flows north/northwest into an approximately 100-linear foot culvert that outfall into Unnamed tributary #1 to Kellogg Creek (off-site)**.** The wetland plays an important role in attenuating local flooding through runoff storage, and has a capacity to stabilize and retain sediments and retain and process pollutants to benefit downstream surface water quality. Based on the verified hydrological connection to the Grand River, functions being performed, Unnamed Wetland and Unnamed tributary#1 to Kellogg Creek have a significant effect on the physical, chemical, and biological integrity of the downstream waters, including the Grand River (a TNW). The regulation of these areas and those similar to it is vital to the goals and purpose of the Clean Water Act.

March 14, 2014

Tina Stonemetz
Project Manager

Date



Mastopietro, Anthony
D/A Processing No.: LRB-2013-00868
Lake County, Ohio Quad: Painesville
Sheet 1 of 3

N
W E
S

1 inch = 1,000 feet

JD Review Area

Wetland = 0.16-acre

Mastopietro, Anthony
D/A Processing No.: LRB-2013-00868
Lake County, Ohio Quad: Painesville
Sheet 2 of 3

N
W E
S

1 inch = 50 feet


Unnamed Tributary to-1 to Kellogg Creek
Culvert
Off-site linear portion of wetland
Mastopietro, Anthony
D/A Processing No.: LRB-2013-00868
Lake County, Ohio Quad: Painesville
Sheet 3 of 3
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