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 22, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB-2015-00714, 2850 Grand Island Boulevard

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Grand Island
Center coordinates of site (lat/long in degree decimal format): Lat. 43.03776 ° N, Long. 78.98159 ° W
Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Woods Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Niagara River
Name of watershed or Hydrologic Unit Code (HUC): 04120104

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

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

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

☐ Office (Desk) Determination. Date:

☑ Field Determination. Date(s): August 19, 2015

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 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

☐ 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: Tributary A (approximately1000 linear feet); Tributary B (approximately 575 linear feet)
Wetlands A (1.24 acres), D (0.41-acre), C (0.25-acre), all directly abut Tributary A;
Wetland B (1.06 acres) directly abuts Tributary B
Wetlands G (0.09-acre), H (0.08-acre), I (0.05-acre), and J (0.5-acre) are adjacent to Tributary B

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: The entire perimeter of wetlands E (0.03-acre) and F (0.03-acre) were walked. No outlets were found. These two wetland areas are within depressions at the ends of a kidney bean shaped area that appears to have been a borrow pit for the construction of the building that is on site; it is unlikely that the wetlands receive sufficient surface water to overcome the distance to the nearest tributary or even to

[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.

Wetland A, which is the nearest wetland. Wetland E is approximately 500 feet from Tributary A and Wetland F is approximately 300 feet from Tributary A. Due to distance and mapped soils it is unlikely that there is a shallow subsurface connection between the wetlands and Tributary A. Further, due to small size and limited function of the isolated waters, there is no ecological continuum between the isolated waters and the nearest trib. The factors at 328.3(a)(i-iii) were considered and determined there is no substantial nexus to interstate or foreign commerce.

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: acres
Drainage area: acres

Average annual rainfall:
Average annual snowfall:

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through *Choose an item.* tributaries before entering TNW.

Project waters are *Choose an item.* river miles from TNW.
Project waters are *Choose an item.* river miles from RPW.
Project waters are *Choose an item.* aerial (straight) miles from TNW.
Project waters are *Choose an item.* 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]: *Click here to enter text.*
Tributary stream order, if known: *Click here to enter text.*

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

Tributary is: ☐ Natural

☐ Artificial (man-made). Explain: *Click here to enter text.*

☐ Manipulated (man-altered). Explain: *Click here to enter text.*

[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: # feet
Average depth: # feet
Average side slopes: *Choose an item.*

Primary tributary substrate composition (check all that apply):

☐ 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: *Click here to enter text.*
Presence of run/riffle/pool complexes. Explain: *Click here to enter text.*
Tributary geometry: *Choose an item.*
Tributary gradient (approximate average slope): #%

(c) Flow:
Tributary provides for: *Choose an item.*
Estimate average number of flow events in review area/year: *Choose an item.*
Describe flow regime: *Click here to enter text.*
Other information on duration and volume: *Click here to enter text.*

Surface flow is: *Choose an item.* 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):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community *Click here to enter text.*
☐ other (list): *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:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list): *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: *Click here to enter text.*
Identify specific pollutants, if known: *Click here to enter text.*

[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): *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: *Click here to enter text.*

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 and type: Wetlands G (0.09-acre PFO), H (0.08-acre PEM), I (0.05-acre PSS), and J (0.5-acre PEM/PFO), adjacent to Tributary B
Wetland quality. Explain: Low to medium quality due to proximity to development and disturbance history.
Project wetlands cross or serve as state boundaries. Explain: N/A

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

Surface flow is: Overland Sheetflow
Characteristics: based on close proximity and topography overland sheetflow would flow from wetlands to tributaries

Subsurface flow: Unknown 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: *Click here to enter text.*
  - ☑ Ecological connection. Explain: Wetlands G, H, I and J are part of a wetland complex with wetlands A, B, C, and D, as they are in close proximity and continue off-site as part of larger wetlands
  - ☐ 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 100 - 500-year 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 observed in some areas at the time of the site visit. The general watershed characteristics include residential, commercial, and industrial development in the immediate vicinity of the wetlands.

Identify specific pollutants, if known: Specific pollutants are unknown; however, pollutants typical of residential, commercial, and industrial development are likely introduced to the wetland complex.

(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: The wetlands are heavily vegetated with a combination of scrub/shrub, emergent and forested vegetation.
- ☑ Habitat for:
  - ☑ Federally Listed species. Explain findings: the forested wetlands provide habitat for northern long-ear bat
  - ☐ 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: The wetlands provide habitat for the terrestrial stages of various aquatic fauna.

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

All wetland(s) being considered in the cumulative analysis: 8
Approximately 3.68 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)
Wetland A	Yes	1.24	Wetland B	Yes	1.06
Wetland C	Yes	0.25	Wetland G	No	0.09
Wetland D	Yes	0.41	Wetland H	No	0.09
Wetland I	No	0.05			
Wetland J	No	0.50			

Summarize overall biological, chemical and physical functions being performed: These headwater wetlands serve as the primary collectors and processors of organic matter for downstream waters. The wetlands serve to trap sediment and pollutants, thereby preventing the transport of pollutants and sediment downstream to the Niagara River. The wetlands function well to moderate downstream flows and likely have 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: N/A

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: N/A

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:

   a. Relevant Reach
   The relevant reach for this significant nexus determination includes approximately one mile of both unnamed tributaries (Tributaries A and B as labeled in the wetland delineation) from the headwaters just upstream of the subject parcel to their confluence with each other. The tributary then drains into Woods Creek and then into the Niagara River.

   b. 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, the unnamed tributaries flow north through Woods Creek and within less than 2 miles enters directly into the Niagara River. The adjacent wetlands were found to influence the capacity of these perennial tributaries to carry pollutants or flood waters to the Niagara River based on proximity, flow, drainage area, and the characteristics described below.

   Flow characteristics:
   Based on our site visit, photos and information provided in the wetland delineation report, and a review of aerial photography, surface flow occurs year round. The channels have well defined bed and banks and measure an average of five feet in width for Tributary A and 2-3 feet in width for Tributary B. The width increases as the tributaries flow downstream. This flow contributes water, pollutants, sediments and nutrients into the Niagara River.

   Drainage:
   The unnamed tributaries drain an area that is characterized as a suburban landscape with a patchwork of undeveloped and developed areas. Some of the developed areas are characterized as light industrial development. The tributary receives runoff associated with subdivisions and industrial development located on either side of the channels. Many pollutants, sediments, and excessive flows represent untreated inputs flowing directly into the tributaries that flow into the Niagara River.

Adjacent Wetlands:
Wetlands H, I, and J occur entirely within the boundaries of the project site. Wetland G continues off-site into an area mapped as wetland on the NWI maps, has the same hydric soil type and appears to be wetland based on aerial photographs. Other wetlands appear to occur within close proximity to the relevant reach of both tributaries based on NWI maps and aerial photographs. These wetlands, in combination with the wetland complex delineated on the project site, serve 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 wetlands function to moderate downstream flows and have the capacity to prevent excess sediment, suspended solids, pollutants, and nutrients from reaching the downstream TNW. Flood attenuation /runoff storage, pollutant trapping/water quality, dissolved solids, toxins and retention/treatment of nitrogen and phosphorus, functions are considered to be moderate for the wetland complex. 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.

c. 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 tributaries flow through Woods Creek only a short distance (less than 2 miles) into the Niagara River. Given the flow regime and close proximity to the Niagara River, the unnamed tributaries and their 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 Niagara River. It is likely that Niagara River fish species would also be found within the tributary. These species would be there specifically for such activities such as feeding, nesting, and spawning. In summary, the unnamed tributaries that lie adjacent to Wetlands G, H, I, and J have the capacity to support fish species that also utilize the Niagara River.

d. 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 headwater wetlands, the wetland complex 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 wetland functions moderate downstream flows thereby 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.

e. Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

The perennial tributaries are jurisdictional by definition. In addition, its adjacent wetlands were 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 unnamed tributary and its adjacent wetlands and Lake Erie. Therefore, the entire reach of the unnamed tributaries, its directly abutting wetlands A, B, C, and D; and Wetlands G, H, I, and J 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: Both Tributary A and B have well defined beds and banks, have been observed to carry water all year based on site photos and information provided in the wetland delineation report and based on several years of aerial photographs; although not named, they do appear as blue lines on the USGS topo maps.
- ☐ 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: *Click here to enter text.*.

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

- ☑ Tributary waters: Tributary A (approximately1000 linear feet); Tributary B (approximately 575 linear feet)
- ☐ Other non-wetland waters: # acres.
  Identify type(s) of waters:

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:

[8]See Footnote # 3.

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: Both Tributary A and B are perennial as documented above in section D.2. Wetlands A, D, and C directly abut Tributary A. Based on our site visit, aerial photography, soil maps and NWI maps, it was determined that Wetland A continues off-site and is contiguous all the way to Tributary A. Wetlands D and C clearly maintain wetland characteristics along the tributary. Wetland B directly abuts Tributary B and clearly maintains wetland characteristic along the tributary.
     - ☐ 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.*

     Provide acreage estimates for jurisdictional wetlands in the review area: Wetlands A (1.24 acres), D (0.41-acre), C (0.25-acre), all directly abut Tributary A; Wetland B (1.06 acres) directly abuts Tributary B

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: Wetlands G (0.09-acre), H (0.08-acre), I (0.05-acre), and J (0.5-acre) are adjacent to Tributary B

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.

[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: see section II.B.2. above.
- ☐ 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:

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: *Click here to enter text.*.
- ☑ Wetlands: Wetland E (0.03-acre) and Wetland F (0.03-acre)

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: *Click here to enter text.*
- ☐ 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: NY-Tonawanda West
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: *Click here to enter text.*
- ☑ National wetlands inventory map(s). Cite name: USFWS
- ☐ State/Local wetland inventory map(s): *Click here to enter text.*
- ☐ FEMA/FIRM maps: *Click here to enter text.*
- ☐ 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodectic Vertical Datum of 1929)
- ☑ Photographs: ☑ Aerial (Name & Date): Google Earth, various years
  - ☑ or ☑ Other (Name & Date): photos provided with the delineation report
- ☐ 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.*

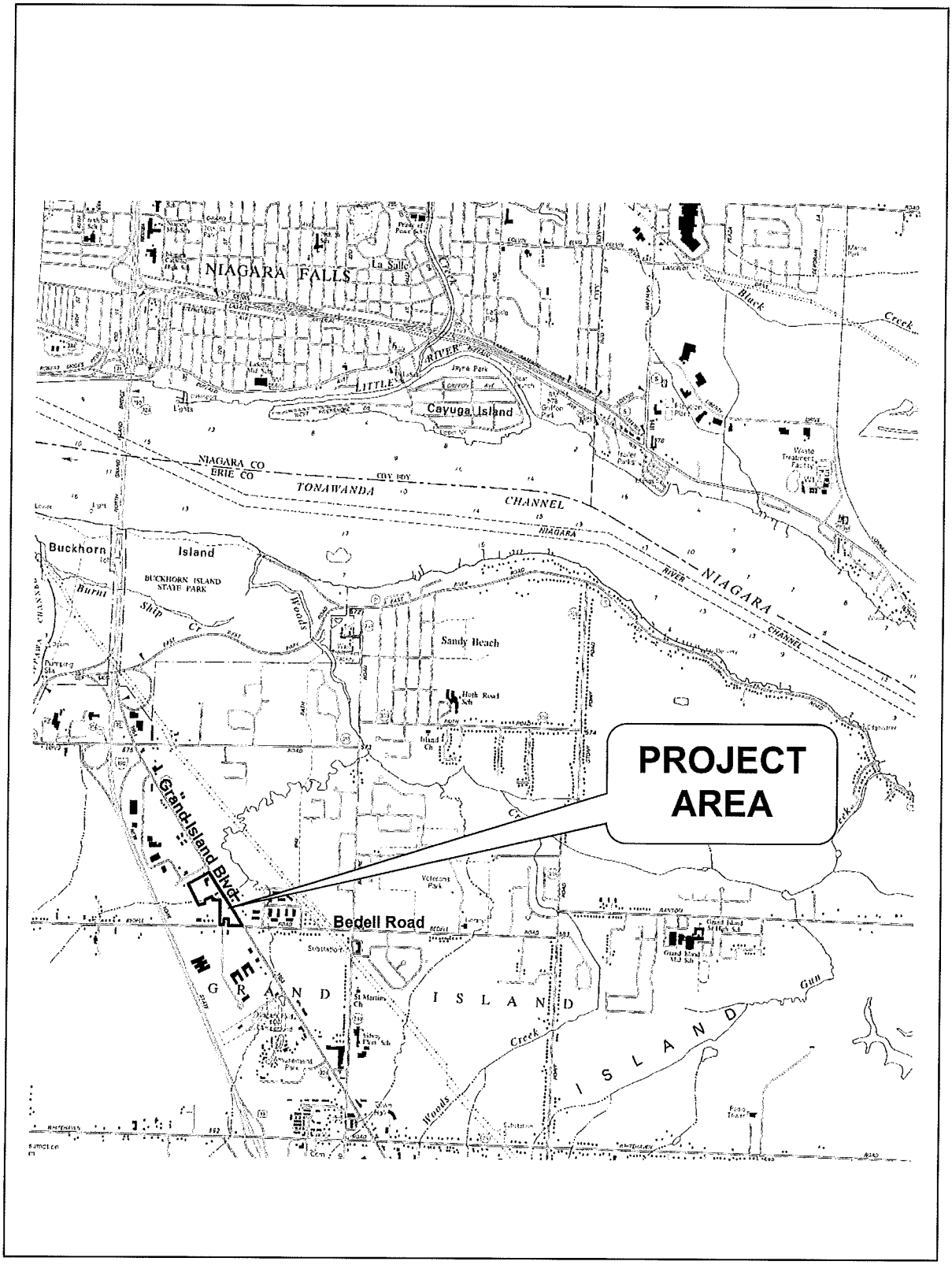
B. ADDITIONAL COMMENTS TO SUPPORT JD:

ADAMS.HEATHER.L.1257722933

Digitally signed by ADAMS.HEATHER.L.1257722933
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=ADAMS.HEATHER.L.1257722933
Date: 2015.12.22 11:32:14 -05'00'

Heather Adams
Project Manager

December 22, 2015
Date

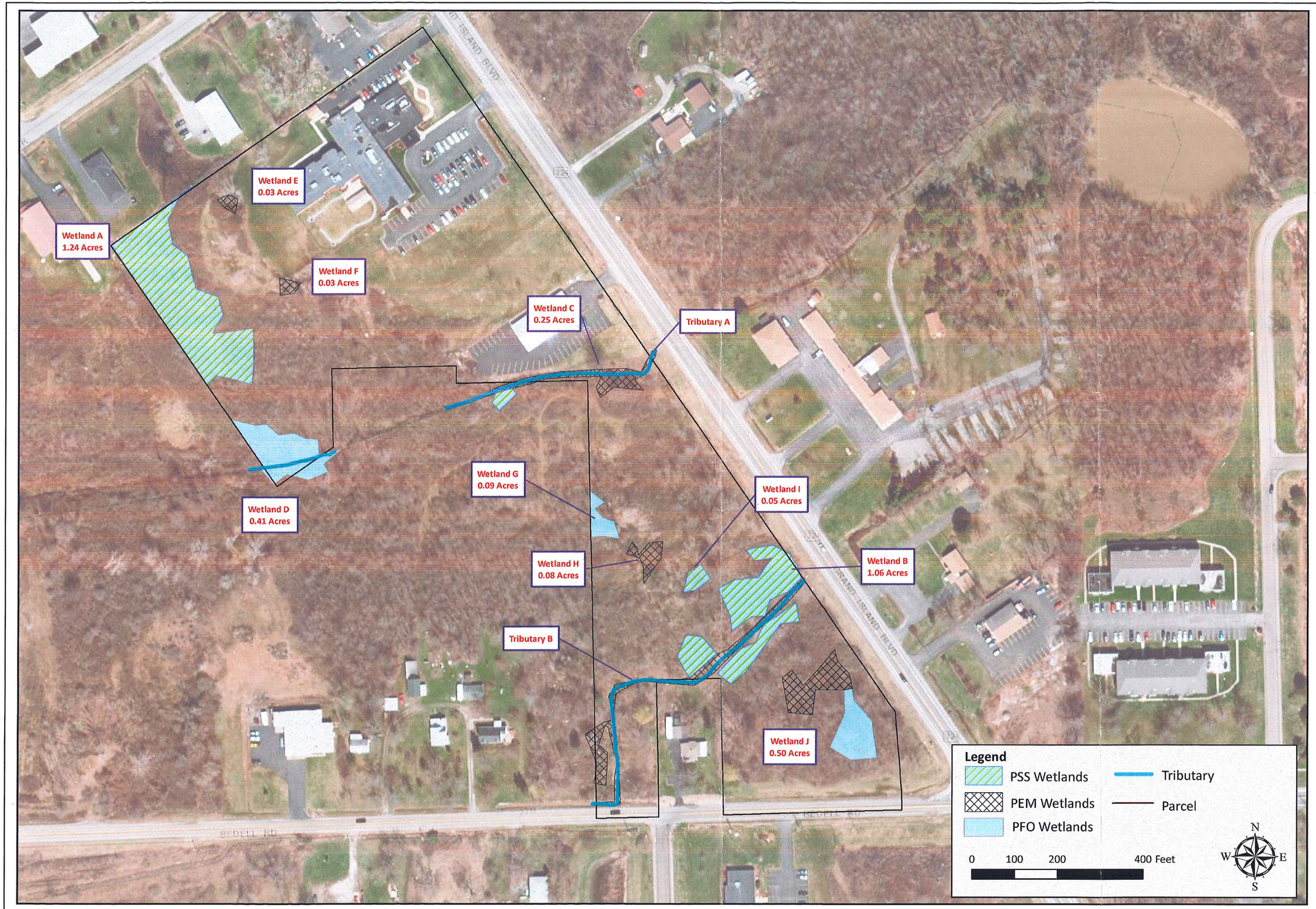


Lu Engineers
175 Sully's Trail, Suite 202
Pittsford, NY 14534
Tel. 585.385.7417
Fax 585.385-3741

Figure 1. Site Location Map

Elderwood Grand Island
2850 Grand Island Blvd
Erie County, New York

Date: July 2015
Scale: Not to scale
Drawn by BB
Source: NYSDOT Raster Quadrangle Map 1996



DATE: May 2015
SCALE: 1 Inch = 200 Feet
DRAWN/CHECKED: CSB/BB
DATA SOURCE: ESRI Online.
Lu Engineers

GRAND ISLAND WETLAND

2850 Grand Island Blvd, Grand Island, NY 14072

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