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): January 15, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB 2009-00916 - Steuben Foods. JD for Wetlands 1, 2, 6, 7, 8, 9, 14, 15, and 16. For Tributaries 1 and 7, and for Drainage 3 and6. Form 1 of 2.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Elma
Center coordinates of site (lat/long in degree decimal format): Lat. 42.8037 **N**, Long. -78.62814 **W**.
Universal Transverse Mercator: 17
Name of nearest waterbody: Unnamed tributary to Pond Brook
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Buffalo River
Name of watershed or Hydrologic Unit Code (HUC): 04120103

- ☒ 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: January 15, 2015
- ☒ Field Determination. Date(s): May 12, 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):** [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 1 (Perennial RPW): 2,256 linear feet, 14 width (ft); Tributary 7 (Seasonal RPW): 594 linear feet, 5 width (ft).
   Wetlands: Wetland 1: 0.45 acre; Wetland 2: 1.00 acre; Wetland 6: 0.34 acre; Wetland 8: 1.29 acre; and Wetland 9: 0.04 acre; for a total of 3.12 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):**[3]

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[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).

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetland 7 (1.86 acres), Wetland 14 (0.67 acre), Wetland 15 (0.60 acre), and Wetland 16 (0.18 acre), have been determined to be isolated. (The factors at 328.3(a)(i-iii) were considered and determined there is no substantial nexus to interstate or foreign commerce). Also, Drainage 3 (177 linear feet) and Drainage 6 (372 linear feet) have been determined to be unregulated man-made conveyances. The following is a summary of the physical characteristics that were reviewed for this jurisdictional determination.

Wetland 7 (1.86 acres): The entire perimeter of Wetland 7 was walked by Mark Lester (Corps of Engineers Regulatory) on May 12, 2014. No outlets were found, and the wetland is surrounded on all sides by upland vegetation. Wetland 7 lies approximately 370 feet to the west of Tributary 1, which represents the nearest conveyance. Wetland 7 is a shrub swamp that does not receive or maintain enough surface water of sufficient duration or depth to sustain amphibian egg masses or aquatic insect larvae. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyance, preclude the possibility of a biological nexus. The soils that underlie Wetland 7 and the surrounding area are Danley Silt Loam (DaC) and Darien Silt Loam (DbB), both of which have a depth of at least 80 inches to the restrictive layer. These soil types preclude the possibility of a shallow sub-surface hydrological connection between the wetland and the tributary. Wetland 7 receives its hydrology from Drainage 3 and from overland sheetflow from a drainage area measuring about 7.3 acres in size. Due to the small drainage area, it is unlikely that the wetland will receive enough surface water to overcome the distance to the nearest tributary. Therefore, the wetland is unlikely to have a chemical nexus to a downstream TNW.

Wetland 14 (0.67 acre): The entire perimeter of Wetland 14 was walked by Mark Lester (Corps of Engineers Regulatory) on May 12, 2014. No outlets were found. Wetland 14 lies approximately 880 feet to the south of Tributary 5, which represents the nearest conveyance, and is described on Form 2 of 2. Wetland 14 is a *Phragmites* marsh that lies in an area that has been stripped of topsoil with the underlying shale exposed. Wetland 14 is sandwiched between a developed area to the east and a hill on the west. Evidence of a small ephemeral stream (Drainage 6) was observed entering Wetland 14 from the west; however, no outlet to Wetland 14 is present due to its location on the landscape. Wetland 14 does not receive or maintain enough surface water of sufficient duration or depth to sustain amphibian egg masses or aquatic insect larvae. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyance, preclude the possibility of a biological nexus. The soils that underlie Wetland 14 and the surrounding area are Darien Silt Loam (DbB), which has a depth of more than 80 inches to the restrictive layer. This soil type precludes the possibility of a shallow sub-surface hydrological connection between the wetland and the tributary. Wetland 14 receives its hydrology from Drainage 6 and from overland sheetflow from a drainage area measuring about 10 acres in size. Due to the small drainage area, it is unlikely that the wetland will receive enough surface water to overcome the distance to the nearest tributary. Therefore, the wetland is unlikely to have a chemical nexus to a downstream TNW.

. Wetland 15 (0.60 acre): The entire perimeter of Wetland 15 was walked by Mark Lester (Corps of Engineers Regulatory) on May 12, 2014. No outlets were found. Wetland 15 lies approximately 1,000 feet to the south of Tributary 5, which represents the nearest conveyance, and is described on Form 2 of 2. Wetland 15 is a *Phragmites* marsh that lies in an area that has been stripped of topsoil with the underlying shale exposed. Wetland 15 is sandwiched between a developed area to the east and a hill on the west. Wetland 15 does not receive or maintain enough surface water of sufficient duration or depth to sustain amphibian egg masses or aquatic insect larvae. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyance, preclude the possibility of a biological nexus. The soils that underlie Wetland 15 and the surrounding area are Darien Silt Loam (DbB), which has a depth of more than 80 inches to the restrictive layer. This soil type precludes the possibility of a shallow sub-surface hydrological connection between the wetland and the tributary. Wetland 15 receives its hydrology from overland sheetflow from a drainage area measuring about 10 acres in size. Due to the small drainage area, it is unlikely that the wetland will receive enough surface water to overcome the distance to the nearest tributary. Therefore, the wetland is unlikely to have a chemical nexus to a downstream TNW.

Wetland 16 (0.18 acre): The entire perimeter of Wetland 16 was walked by Mark Lester (Corps of Engineers Regulatory) on May 12, 2014. No outlets were found. Wetland 16 lies approximately 2,000 feet to the south of Tributary 5, which represents the nearest conveyance, and is described on Form 2 of 2. Wetland 16 is an emergent marsh wetland that lies in an area that has been stripped of topsoil with the underlying shale exposed. Wetland 16 does not receive or maintain enough surface water of sufficient duration or depth to sustain amphibian egg masses or aquatic insect larvae. Therefore, the wetland's hydrological characteristics, combined with the distance between the wetland and the nearest conveyance, preclude the possibility of a biological nexus. The soils that underlie Wetland 16 and the surrounding area are Darien Silt Loam (DbB), which has a depth of more than 80 inches to the restrictive layer. This soil type precludes the possibility of a shallow sub-surface hydrological connection between the wetland and the tributary. Wetland 16 receives its hydrology from overland sheetflow from a drainage area measuring about 10 acres in size. Due to the small drainage area, it is unlikely that the wetland will receive enough surface water to overcome the distance to the nearest tributary. Therefore, the wetland is unlikely to have a chemical nexus to a downstream TNW.

Drainage 3 (177 linear feet): This drainage is a shallow ditch that flows directly into Wetland 7 (Isolated). This drainage feature does not exhibit wetland characteristics. Further, this drainage feature was constructed in uplands, drains only uplands, and carries less than perennial flow; therefore, Drainage 3 is not considered a Water of the U.S.

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[3] Supporting documentation is presented in Section III.F.

Drainage 6 (325 linear feet): This drainage is a shallow ditch that flows directly into Wetland 14 (Isolated). This drainage feature does not exhibit wetland characteristics. Further, this drainage feature was constructed in uplands, drains only uplands, and carries less than perennial flow; therefore, Drainage 3 is not considered a Water of the U.S.

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[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: Buffalo-Eighteenmile: 732 **square miles**
Drainage area: ~14 **square miles**
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.

Project waters are **15-20** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **15-20** aerial (straight) miles from TNW.

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

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[5]: Tributary 7 (seasonal RPW) originates off-site and flows east along the north side of a rail road embankment. The tributary flows northeast onsite for about 380 lineal feet until its confluence with Tributary 1 (perennial RPW). Tributary 1 then flows north for about 2,800 lineal feet before its confluence with Pond Brook (perennial RPW). Pond Brook meanders north for about 15 river miles before it empties into the Buffalo River (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: A portion of Tributary 7 is manipulated, as it has been straightened and confined to travel along the toe of a railroad embankment. The remainder of Tributary 7 is natural in character as it flows within the boundaries of two wetland areas.

Tributary properties with respect to top of bank (estimate):
Average width: 4-5 feet
Average depth: 1-3 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.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: The tributary's width and depth suggest that it carries flow on at least a seasonal basis. A reviw of aerial imagery indicates that there is surface water within the channel for a portion of the growing season. The channel has well defined bed and banks.
Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: The channel is confined to well defined bed and banks that have been shaped as a result of periodic high flow events.

Subsurface flow: **Yes**. Explain findings: The channel passes under an unimproved grassy road through a 2 ft. diameter culvert.
☐ Dye (or other) test performed: .

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
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

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

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

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

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The tributary flows through a suburban watershed and passes by an industrial development. This type of watershed likely contributes excess sediments, salts, oils, and man-made chemicals to the channel.

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

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

☐ Riparian corridor. Characteristics (type, average width): .

☒ Wetland fringe. Characteristics: Tributary 7 flows through two wetlands: Wetland 9 and Wetland 8.

☐ Habitat for:
- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland 8: 1.29 acres; Wetland 9: 0.04 acres

Wetland type. Explain: Both wetlands are characterized as Palustrine scrub/shrub.

Wetland quality. Explain: Both wetlands are of medium quality due to their small size and landscape position.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Flow between the wetlands and the tributary occurs on a seasonal basis and following storm events.

Surface flow is**: Overland sheetflow**

Characteristics: Both wetlands directly abut and are continuous with Tributary 7.

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: .
- ☐ Ecological connection. Explain: .
- ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetlands are located in a suburban watershed and are adjacent to an industrial development. This type of watershed likely contributes excess sediments, salts, oils, and man-made chemicals to the wetlands.

Identify specific pollutants, if known: .

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

☒ Riparian buffer. Characteristics (type, average width): The wetlands are located on either side of Tributary 7.

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**
All wetland(s) being considered in the cumulative analysis: **2**
Approximately (1.33) 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 8 (Y)	1.29		
Wetland 9 (Y)	0.04		

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 function well to moderate downstream flows and likely have the capacitly 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 to high.

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Tributary 1 measures about 14 feet in width from bank to bank and has well defined bed and banks. The tributary is readily visible on numerous aerial images and these images also show surface water within the channel. The bed load consists of silt, gravel, cobble, and vegetation.
   ☒ 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: Tributary 7 measures about 4 feet in width and has bed and banks that have been shaped from bank-full flow events. The bed load consists of mud and silt.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☒ Tributary waters: **Tributary 1: 2,256; Tributary 7: 594** 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: **.**

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: **Wetland 1 directly abuts and is continuous with Tributary 1; Wetland 2 is hydrologically connected to Wetland 1. Wetland 2 directly abuts and is continuous with Tributary 1; Wetland 6 directly abuts and is continuous with Tributary 1. This tributary flows through each of these wetland areas.**

   ☒ 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: **Wetland 8 (1.29 acres) directly abuts and is continuous with Tributary 1**; **Wetland 9 (0.04 acre) directly abuts and is continuous with Tributary 7**.

   Provide acreage estimates for jurisdictional wetlands in the review area: **3.12** acres.

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

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

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

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

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[8]See Footnote # 3.

7. **Impoundments of jurisdictional waters.**[9]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

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

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): **Drainage 3 (117 linear feet) and Drainage 6 (372 linear feet)** .
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: Wetland 7: 1.86 acres; Wetland 14: 0.67 acre; Wetland 15: 0.60 acre; Wetland 16: 0.18 acre. For a total of 3.31 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): 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: Earth Dimensions, Inc (September 2012).
☒ 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.

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[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.***

☐ 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 Orchard Park 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/animals/38801.html.
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Bing Maps Oblique aerial imagery .
or ☒ Other (Name & Date): Ground-level photograps in delineation report.
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Wetland 7, 14, 15, 16 and Drainages 3 and 6 are outside Department of the Army jurisdiction as they do not meet the criteria for jurisdictional waters 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;.

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): January 21, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB 2009-00916 - Steuben Foods. JD for Wetland 10, 11, 12, and 13. And for Tributary 5. Form 2 of 2.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Elma
Center coordinates of site (lat/long in degree decimal format): Lat. 42.8037 **N**, Long. -78.62814 **W**.
Universal Transverse Mercator: 17
Name of nearest waterbody: Tributary 5
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Buffalo River
Name of watershed or Hydrologic Unit Code (HUC): 04121013

- ☒ 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: January 21, 2015
- ☒ Field Determination. Date(s): May 12, 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):** [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 5 (Seasonal RPW): 259 linear feet: 5 width (ft).
   Wetlands: Wetland 10: 0.34 acre; Wetland 11: 0.32 acre; Wetland 12: 0.03 acre; Wetland 13: 1.12 acre; for a total of 1.81 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):**[3]

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[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.

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

.

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[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: Buffalo-Eighteenmile: 732 **square miles**
Drainage area: ~ 10 **square miles**
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.

Project waters are **15-20** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **15-20** 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: .

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

Identify flow route to TNW[5]: Tributary 5 (seasonal RPW on-site, becoming perennial RWP off-site) originates on-site and flows north for about 5,300 lineal feet before its confluence with Pond Brook. Pond Brook meanders north for about 15 river miles before it empties into the Buffalo River (TNW).
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Portions of Tributary 5 have been straightened and channelized.

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 due to low gradient and abundant vegetation.
Presence of run/riffle/pool complexes. Explain: none observed.
Tributary geometry: **Relatively straight**
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: The tributary's width and depth suggest that it carries flow on at least a seasonal basis. A reviw of aerial imagery indicates that there is surface water within the channel for a portion of the growing season. The channel has well defined bed and banks.
Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: The channel is confined to well defined bed and banks that have been shaped as a result of periodic high flow events.

Subsurface flow: **No**. Explain findings: .
☐ Dye (or other) test performed: .

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
☐ other (list):
☐ Discontinuous OHWM.[7] Explain: .

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.

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

☐ tidal gauges
☐ 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 flows through a suburban watershed and passes by an industrial development. This type of watershed likely contributes excess sediments, salts, oils, and man-made chemicals to the channel.

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 channel passes through a portion of Wetland 11 and also flows though upland scrub/shrub communities.

☐ Wetland fringe. Characteristics: .

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland 10: 0.34 acre; Wetland 11: 0.32 acre; Wetland 12: 0.03 acre; Wetland13: 1.12 acres

Wetland type. Explain: All four wetlands are characterized as palustrine scrub/shrub.

Wetland quality. Explain: medium to low quality due to small fragmented size and landscape position.

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: Wetland 11 occurs on both sides of Tributary 5, as the tributary flows through a portion of this wetland. Wetland 10, Wetland 12, and Wetland 13 are all hydrologically connected to Wetland 11; therefore, the four wetlands are considered to be one syetem, hydrologically.

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: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **15-20** aerial (straight) miles from TNW.

Flow is from: **Wetland to/from navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetlands are located in a suburban watershed and are adjacent to an industrial development. This type of watershed likely contributes excess sediments, salts, oils, and man-made chemicals to the wetlands.

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

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

☒ Riparian buffer. Characteristics (type, average width): A portion of Wetland 11 occurs on both sides of Tributary 5.

☐ Vegetation type/percent cover. Explain: .

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**
All wetland(s) being considered in the cumulative analysis: **4**
Approximately (1.81) 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 10 (Y)	0.34		
Wetland 11 (Y)	0.32		
Wetland 12 (Y)	0.03		
Wetland 13 (Y)	1.12		

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 function well to moderate downstream flows and likely have the capacitly 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 o 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: .

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: Tributary 5 measures about 5 feet in width from bank to bank. The channel has well defined bed and banks. The bed load consists of mud, silt, and hydrophytic vegetation.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☒ Tributary waters: **Tributary 5: 259** linear feet **4-5** width (ft).
   ☐ 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: **.**

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: Wetlands 10, 11, 12, and 13 are hydrologically connected; therefore, they are considered one wetland system. Tributary 5 flows through a portion of Wetland 11; therefore, the wetlands are directly abutting and continuous with Tributary 5.

   Provide acreage estimates for jurisdictional wetlands in the review area: **1.81** acres.

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

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

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

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

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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

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

Identify water body and summarize rationale supporting determination: .

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

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

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

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: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): 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: Earth Dimensions, Inc (September 2012).
☒ 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.

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[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.*

- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute USGS NY Orchard Park 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/animals/38801.html.
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Bing Maps Oblique Aerial Imagery (date unknown).
  or ☒ Other (Name & Date): Ground-level photographs in delineation report.
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

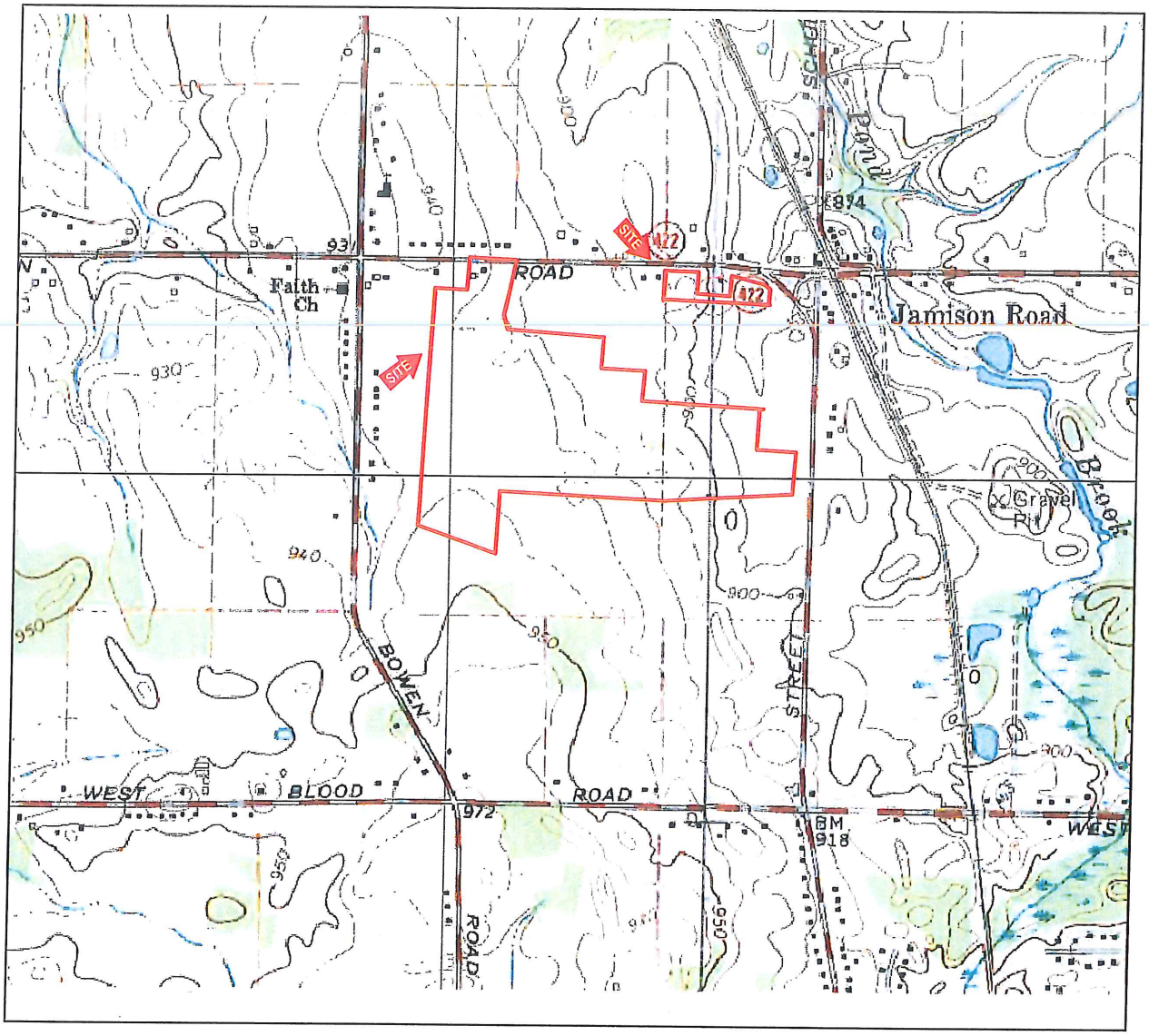

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Figure 1: USGS 7.5 Minute Topographical Map
Orchard Park & East Aurora Quadrangles/ 2002 DeLorme

Steuben Foods
Town of Elma, Erie County, New York

Steuben Foods
D/A Processing No. 2009-00916
Erie County, New York
Quad: Orchard Park
Sheet 1 of 2

Steuben Foods
D/A Processing No. 2009-00916
Erie County, New York
Quad: Orchard Park
Sheet 2 of 2

Figure 6 - Wetland Delineation Map

Town of Elma — Erie County, New York

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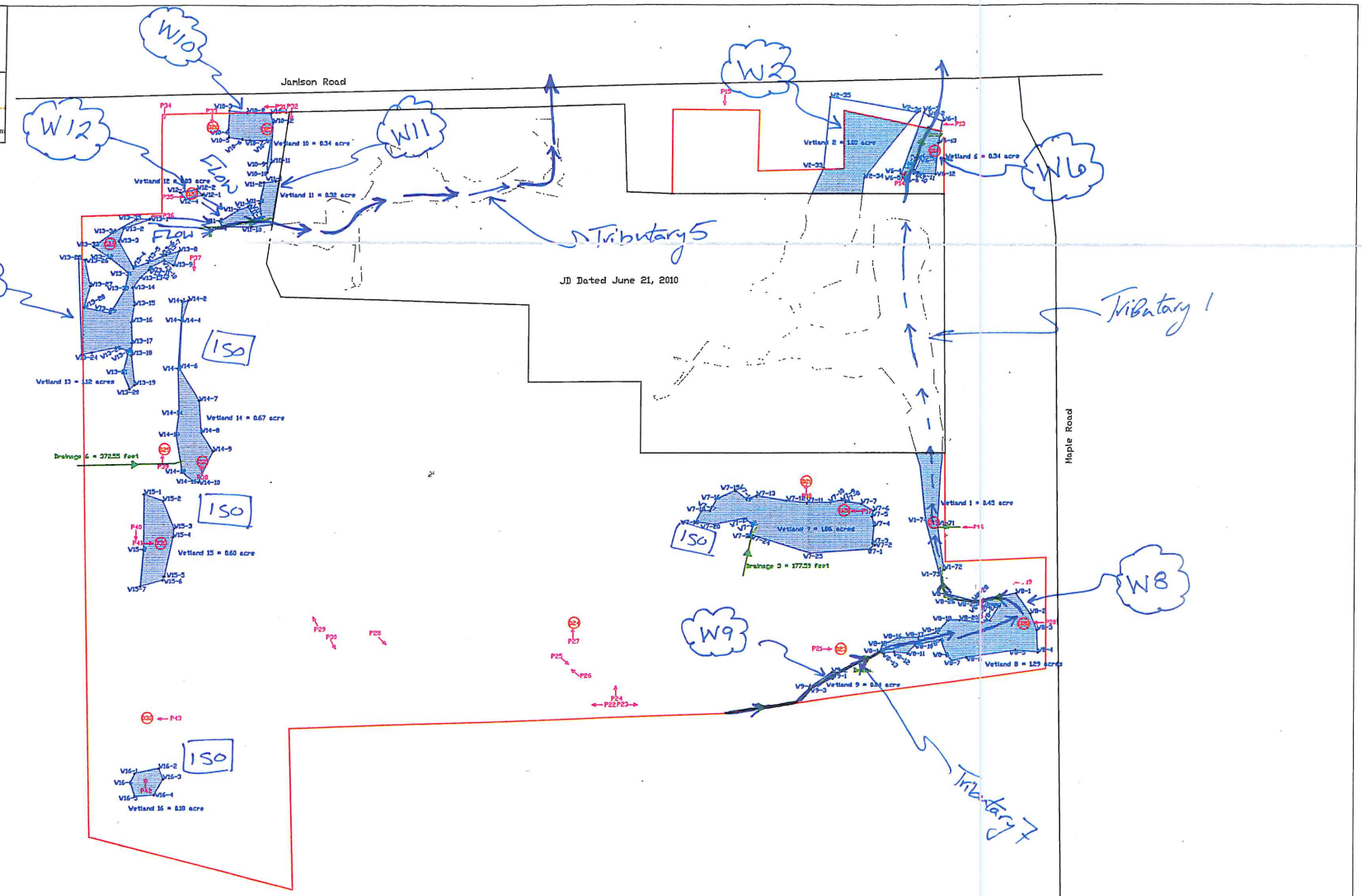

Steuben Foods
LEGEND

- Limits of Investigation
- Roads
- Wetland Boundary Flag
- Wetland Area
- Photo Location
- Data Point Location

Scale:
Map Date: September 13, 2012/ TJS for EDI Revised:
Base Map Provided By: GPSmap 62s
File Name: Delineation map.dwg
EDI Project Code: W1I83j