

**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): October 30, 2015**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District; Harris Hill Acres, LLC; 2014-01300; Form 1 of 1**

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

State: New York County/parish/borough: Erie City: Lancaster  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.94691 ° N, Long. -78.68022 ° W  
Universal Transverse Mercator: 17

Name of nearest waterbody: Ellicott 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: October 30, 2015
- Field Determination. Date(s): May 28, 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):<sup>1</sup>**

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

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

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

Wetlands: 1.76 acres.

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

Elevation of established OHWM (if known): [Click here to enter text.](#)

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

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: Wetland 1 (0.46 acres), Wetland 2 (0.21 acres), Wetland 3 (0.14 acres), and Wetland 5 (0.24 acres) were found to be isolated waters with no substantial nexus to WOUS, with no potential to affect interstate commerce under 328.3(a)(3)(i-iii).

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

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

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

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

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

##### (i) General Area Conditions:

Watershed size: # 786 square miles

Drainage area: # 76.8 acres

Average annual rainfall: 40.55 inches

Average annual snowfall: 96.3 inches

##### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 3 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 10-15 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: [Click here to enter text.](#)

Identify flow route to TNW<sup>5</sup>: Unnamed tributary to Ellicott Creek to Erie Canal to Niagara River

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: Sections of the unnamed tributary have been straightened to avoid local businesses and infrastructure.

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

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

**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):

- |  |  |                                   |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts   | <input type="checkbox"/> Sands   | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles   | <input type="checkbox"/> Gravel  | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock   | <input type="checkbox"/> Vegetation. Type/% cover: <a href="#">Click here to enter text.</a> |                                   |
| <input type="checkbox"/> Other. Explain: <a href="#">Click here to enter text.</a> |  |                                   |

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: Relatively Straight

Tributary gradient (approximate average slope): #%

(c) **Flow:**

Tributary provides for: Intermittent but not Seasonal Flow

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

Describe flow regime: The flow is estimated to occur after significant rainfall and during snow melt times.

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<sup>6</sup> (check all indicators that apply):
- |  |   |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank               | <input type="checkbox"/> the presence of litter and debris  |
| <input type="checkbox"/> changes in the character of soil                        | <input type="checkbox"/> destruction of terrestrial vegetation                                      |
| <input type="checkbox"/> shelving  | <input type="checkbox"/> the presence of wrack line   |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent      | <input type="checkbox"/> sediment sorting   |
| <input type="checkbox"/> leaf litter disturbed or washed away                    | <input type="checkbox"/> scour  |
| <input type="checkbox"/> sediment deposition                                     | <input type="checkbox"/> multiple observed or predicted flow events                                 |
| <input type="checkbox"/> water staining  | <input type="checkbox"/> abrupt change in plant community <a href="#">Click here to enter text.</a> |
| <input type="checkbox"/> other (list): <a href="#">Click here to enter text.</a> |   |
- Discontinuous OHWM.<sup>7</sup> 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):

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

**(iii) Chemical Characteristics:**

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

Explain: On the day of site visit (May 28, 2015) the water was clear

Identify specific pollutants, if known: [Click here to enter text.](#)

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

<sup>7</sup>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: 1.76 acres

Wetland type. Explain: Palustrine Forested

Wetland quality. Explain: The wetland is characterized as a seasonally saturated palustrine forested wetland. Species of wildlife tolerant to human activity are expected to utilize this relatively undisturbed suburban site. Wetland 4 (1.76 acres) was 25-40 percent inundated during the May 28, 2015 site visit and provides good amphibian, mammalian, and avian habitat. It was also noted that the presence of invasive species was relatively low.

Project wetlands cross or serve as state boundaries. Explain: [Click here to enter text.](#)

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

Flow is: Intermittent Flow Explain: Wetland 4 directly abuts an unnamed tributary to Ellicott Creek (RPW)

Surface flow is: Overland Sheetflow

Characteristics: [Click here to enter text.](#)

Subsurface flow: No Explain findings: Surface connection was observed at the site.

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: [Click here to enter text.](#)

Separated by berm/barrier. Explain: [Click here to enter text.](#)

**(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 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: Pools of clear water were observed on the May 28, 2015 site visit

Identify specific pollutants, if known: [Click here to enter text.](#)

**(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: Hardwood forest, 100%. The entire wetland area is well vegetated.
- 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: Wetland 4 has the potential to support wildlife typically found in suburban settings.

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

All wetland(s) being considered in the cumulative analysis: 1

Approximately (1.76) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 4	Yes	1.76	Y/N	#
	Y/N	#	Y/N	#
	Y/N	#	Y/N	#
	Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: The May 28 site visit showed the wetland in a 25-40 percent inundated condition, slowly releasing water to its one primary drainage to the west, off site. Flood attenuation/runoff storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and treatment of nitrogen and phosphorus, functions are expected. Wildlife habitat functions are considered to be moderate, due to the close proximity to developed property.

### C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: [Click here to enter text.](#)
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

The relevant reach for the significant nexus determination is from the headwaters of the unnamed tributary channel, which originates off-site at Wetland 4, to the confluence with Ellicott Creek. This unnamed tributary was manipulated to facilitate the drainage of waters from the subject parcel and adjacent properties after the construction of the railway.

Significant Factors: Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNW's, or to reduce the amount of pollutants or flood waters reaching a TNW? Yes. A direct hydrologic connection was found to exist between the drainage channel and its adjacent wetlands and Ellicott Creek, a Perennial RPW that flows directly into Erie Canal, a TNW. Flow is from Wetland 4, to the unnamed tributary to Ellicott Creek to Erie Canal, a TNW. The headwaters of Wetland 4 and the unnamed tributary were found to influence the capacity of downstream waters to carry pollutants or flood waters to Erie Canal. Based on proximity, flow, drainage area, and adjacent wetland characteristics.

Flow Characteristics: Intermittent (less than seasonal) flow exists between Unnamed Tributary and Ellicott Creek, the flow between Wetland 4 and Unnamed Tributary can be characterized as less than seasonal.

Drainage: Unnamed Tributary drains an area that can be characterized by a largely undeveloped forest, scrub-shrub ecosystem with some developed area such as mowed lawn (golf course south of tributary) and driveway. Unnamed Tributary drains Wetland 4 with flow from Wetland 4 traveling west. Unnamed Tributary runs east to west along the rail road tracks, has been manipulated to convey stormwater along the railroad, as well as to facilitate drainage of the parcel. Unnamed Tributary, along with the abutting wetland, serves to convey stormwater downstream, as well as to moderate these flows.

Wetlands: Wetland 4 directly abuts and is continuous with the headwaters of Unnamed Tributary. As discussed above, Unnamed Tributary flows directly into Ellicott Creek, an RPW that flows directly into Erie Canal, a TNW. Functioning as headwater wetlands, Wetland 4 serves as the primary collector and processor of organic matter for downstream waters. The storage of organic matter is important for downstream waters because it prevents the degradation of downstream waters due to excess organic material. The May 28, 2015 site visit revealed Wetland 4 to be in 25-40% inundated condition, slowly releasing water to Unnamed Tributary. The wetland was functioning to moderate downstream flows and recharge local groundwater. 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 for these wetlands.

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. Drainage from Unnamed Tributary and its abutting wetland, wetland 4, flows directly into Ellicott Creek, an RPW that flows directly into Erie Canal. Given the flow regime, Unnamed Tributary and its adjacent wetland are able to store, process, and transport food and nutrients, treat stormwater runoff, and play an important role in providing habitat and lifecycle support functions for fish and other aquatic life present in Lake Erie and Lake Ontario.

Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs? Yes. Functioning as headwater wetlands, forested Wetland 4 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 ecosystems because it prevents downstream water degradation as a result of excess organic matter. Functional wetlands, such as those characteristic of Wetland 4, are able to transform unusable organic matter (inorganic carbon) into food for aquatic organisms (organic carbon). The May 28, 2015 site visit showed Wetland 4 to be 25-40% inundated, slowly releasing waters into Unnamed Tributary, and preventing excess organic matter from flowing downstream. This system is also serving to retain and process excess nutrients such as nitrogen and phosphorous, and slowly releasing them to downstream waters.

CONCLUSION: Unnamed Tributary and its abutting wetland were found to influence the chemical, biological, and physical integrity of downstream waters. Based upon the evaluation presented herein, there is a significant nexus between the non-RPW Unnamed Tributary and its abutting wetland and Erie Canal, a TNW. Therefore, the entire reach of Wetland 4 occurring on the subject parcel is jurisdictional water of the US.

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: [Click here to enter text.](#)

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

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

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

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

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: [Click here to enter text.](#)  
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: [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.](#)

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

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

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

- Tributary waters: # linear feet # width (ft).  
 Other non-wetland waters: # acres.

Identify type(s) of waters: [Click here to enter text.](#)

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

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: [Click here to enter text.](#)  
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: [Click here to enter text.](#)

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

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

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. 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.**

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

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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

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

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

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: [Click here to enter text.](#)
- Other factors. Explain: [Click here to enter text.](#)

**Identify water body and summarize rationale supporting determination:** [Click here to enter text.](#)

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

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

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

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

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

- Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
- Lakes/ponds: # acres.
- Other non-wetland waters: # acres. List type of aquatic resource: [Click here to enter text.](#)
- Wetlands: 1.05 acres (Wetland 1 – 0.46 acres; Wetland 2 – 0.21 acres; Wetland 3 – 0.14 acres; Wetland 5 – 0.24 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: [Click here to enter text.](#)
- Wetlands: # acres.

**SECTION IV: DATA SOURCES.**

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: [Click here to enter text.](#)
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.

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

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

- 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: 24k:1, Lancaster
- USDA Natural Resources Conservation Service Soil Survey. Citation: [Click here to enter text.](#)
- National wetlands inventory map(s). Cite name: [Click here to enter text.](#)
- 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 Pro (2015), Bing Birds Eye (2015)
- or  Other (Name & Date): EDI (2014)
- 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:** The contents of this JD form represent the summary of field observations from a site visit conducted on May 28, 2015 and an office review of the data sources listed above. Based on review and site visit, Wetland 4 directly abuts and is continuous with the intermittent non-RPW unnamed tributary (that runs East to West off site), which has a significant nexus to a TNW, is therefore jurisdictional per USACE/USEPA guidelines. Functioning as headwater wetlands, Wetland 4 serves as the primary collector and processor of organic matter for downstream waters. Due to the diversity and maturity of the vegetation within these wetlands, wildlife functions are considered to be moderate for this wetland. The 1.76 acre Wetland 4 is characterized as a seasonally saturated palustrine forested wetland. Wetland 4 directly abuts Unnamed Tributary. Given the flow regime, Wetland 4 through its 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 species of wildlife present in Lake Erie.

The perimeter of the enire 0.46 acre Wetland 1, 0.21 acre Wetland 2, 0.14 acre Wetland 3, and 0.24 acre Wetland 5 were walked on the date of the site visit, it was determined that Wetlands 1, 2, 3, and 5 are depressional wetlands and lacked any connections to any waters, including no potential for shallow subsurface flow. Wetland 1 was measured to be 455 linear feet away from Wetland 4 and over 600 linear feet from the Unnamed Tributary. Wetland 2 was measured to be located 197 linear feet from Wetland 4 and over 400 feet from the Unnamed Tributary. Wetland 3 was measure to be located 206 linear feet away from Wetland 4 and over 400 feet from Unnamed Tributary. Wetland 5 was measured to be located 333 linear feet from Wetland 4 and over 600 feet from the Unnamed Tributary. Wetlands 1, 2, 3, and 5 were not inundated on the day of the site visit, and on close examination don not have the potential to support spawning of water dependant animals. Wetlands 1, 2, 3, and 5 are outside Department of the Army jurisdiction as they do not meet the criteria for a jurisdictional waters of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

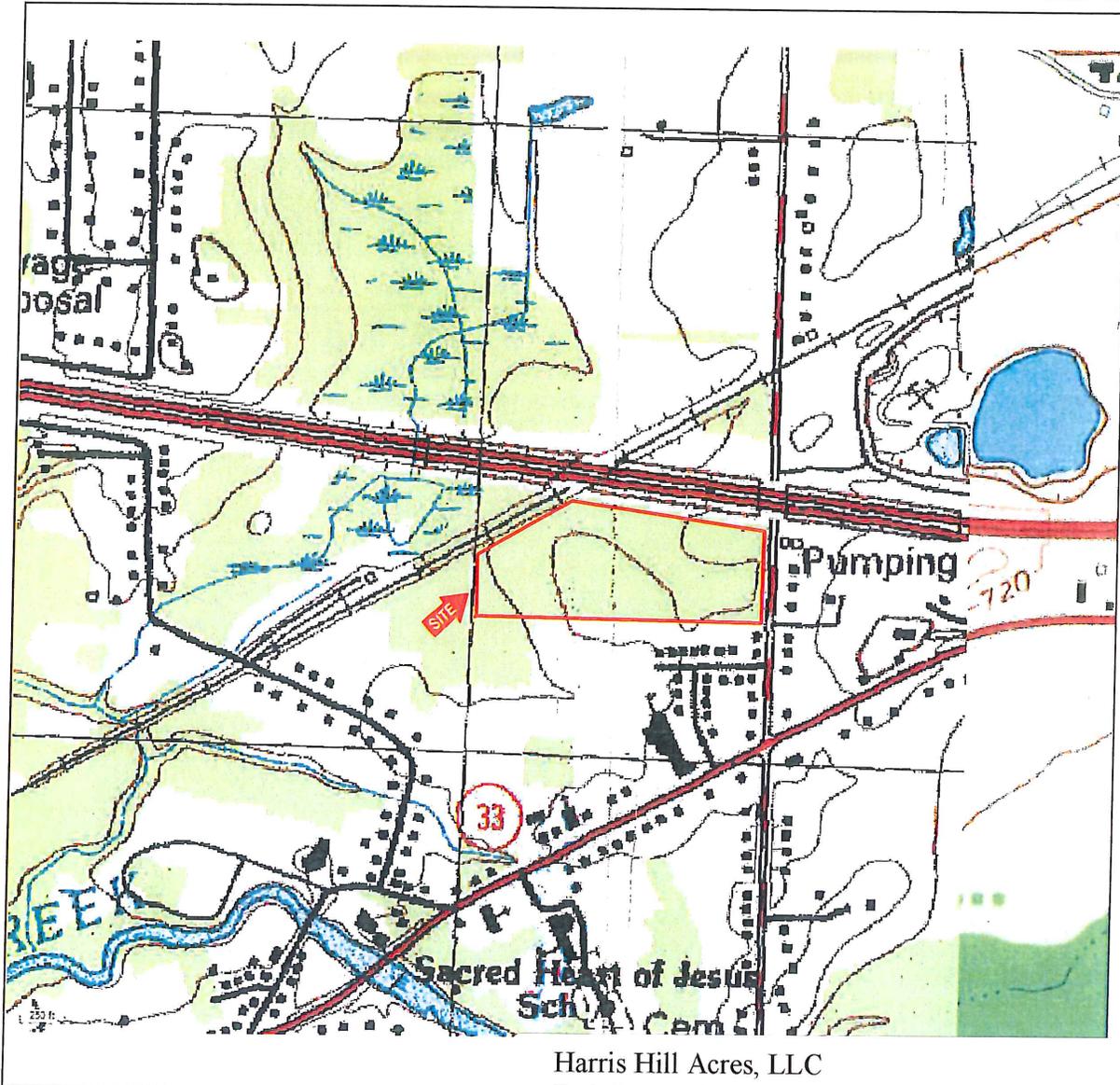
1. do not/have not supported interstate or foreign commerce;
2. are not interstate water/wetlands;
3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:
  - (i) which are or could be used by interstate or foreign travelers for recreational 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. are not impoundments of water otherwise defined as WOUS under the definition;
5. are not tributaries of waters identified in paragraphs (a)(1)-(4) of this section;
6. are not territorial seas;
7. are not wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section;

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Mikhail A. Boutsko  
Project Manager

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November 10, 2015  
Date



Harris Hill Acres, LLC  
D/A Processing No. 2014-01300  
Erie County, New York  
Quad: Lancaster  
Sheet 1 of 2



**EARTH DIMENSIONS, INC.**

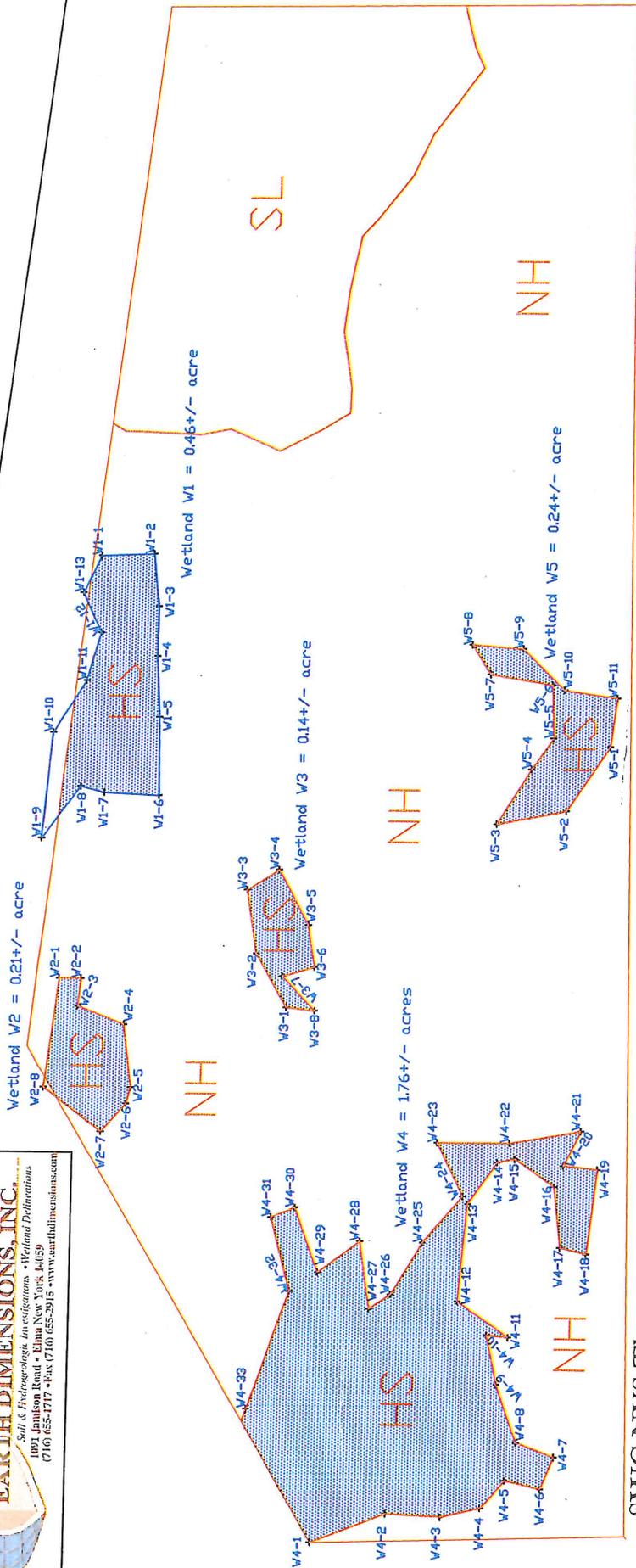
Figure 1: USGS 7.5 Minute Topographical Map  
Lancaster Quadrangle/ExpertGPS



SWC NYS Thruway & Harris Hill Road  
Town of Lancaster, Erie County, New York

Figure 5 - General Vegetation Map

Town of Lancaster Eric County, New York



SWC NYS Thruway  
& Harris Hill Road

Harris Hill Acres, LLC  
D/A Processing No. 2014-01300  
Eric County, New York  
Quad: Lancaster  
Sheet 2 of 2

	Limits of Investigation
	Community Boundary
	Wetland Boundary Flag
	Wetland Area
	Hardwood Swamp
	Successional Northern Hardwood
	Successional Shrubland



Scale:
Map Date: December 1, 2014/ TJS for EDI Revised:
Base Map Provided By: GPSMap 62s
File Name: Delineation map.dwg
EDI Project Code: W10H14a