

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 5, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo Office, Hemmingson, Crystal, 2015-00231, JD Form 1 of 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Clarence
Center coordinates of site (lat/long in degree decimal format): Lat. 43.04° N, Long. -78.66° W.
Universal Transverse Mercator: 17

Name of nearest waterbody: Wetland 1

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

Name of watershed or Hydrologic Unit Code (HUC): Eastern Lake Erie

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

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

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

Office (Desk) Determination. Date: December 2, 2015

Field Determination. Date(s): April 24, 2015 and October 15, 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: .

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 waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

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

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

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

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

Wetlands: Wetland 1 (1.16 acres) Wetland 2 (0.55 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

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

Explain: .

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

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

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

1. TNW

Identify TNW: .

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 waterbody⁴ 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: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

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

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

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

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

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

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

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

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

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: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: Pick List. Characteristics: .

Subsurface flow: Pick List. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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.
 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: .

Identify specific pollutants, if known: .

⁶A 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.

⁷Ibid.

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

- Riparian corridor. Characteristics (type, average width):
- 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 1 (1.16), Wetland 2 (0.55) acres

Wetland type. Explain: Wetland 1 (scrub-shrub wetland), Wetland 2 (open water/emergent wetland).

Wetland quality. Explain: Wetland 1 and Wetland 2 are of good quality.

Project wetlands cross or serve as state boundaries. Explain: Wetland 1 and Wetland 2 don't cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: Wetland 2 directly abuts and is continuous with the non-jurisdictional drainage ditch that is at the eastern boundary of Wetland 2. Flow between Wetland 1 and Wetland 2 and the drainage ditch occurs on at least a seasonal basis.

Surface flow is: **Pick List**

Characteristics:

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

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting (Wetland 2)
- Not directly abutting (Wetland 1)
 - Discrete wetland hydrologic connection. Explain:
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain: Wetland 2 is partially located on the project site and continues offsite.

Wetland 2 is directly abutting the non-jurisdictional drainage conveyance ditch located at the eastern boundary of Wetland 2. Wetland 1 is separated by a man-made berm from Wetland 2. The berm was constructed when Wetland 2 was created (Wetland 2 is a mitigation wetland constructed approximately 15 years ago in an upland area). There is no direct surface connection between Wetland 1 and Wetland 2. Historical aeriels and the Erie County soil survey indicate that these wetlands appear to part of the larger wetland complex within the area and currently, within the relevant reach for this site there is a large NWI wetland mapped immediately to the east of Wetland 1 and Wetland 2 and a second NWI wetland north of the site within the relevant reach. Wetland 1 and Wetland 2 flow into the non-jurisdictional drainage ditch which flows into Black Creek which is located offsite and downstream approximately 1 mile north of the project site.

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** 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: No oily film or residue was observed in Wetland 1 and Wetland 2.

Identify specific pollutants, if known:

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: On the day of the site visit on April 24, 2015, there was saturation within the wetlands and these wetlands are potential breeding habitat for amphibians. Throughout the subject parcel, there is potential to support bird and small mammal species.

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

All wetland(s) being considered in the cumulative analysis: **4**

Approximately (55) 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 1 (N)	1.16		
Wetland 2 (Y)	0.55		
NWI Wetland (N)	46.63 (offsite)		
NWI Wetlands (N)	6.94 (offsite)		

Summarize overall biological, chemical and physical functions being performed: There are 4 wetlands that are considered within the cumulative analysis. Wetland 1 (1.16 acres), Wetland 2 (0.55 acres) which are onsite and two NWI mapped Wetlands offsite. The first mapped NWI wetland (46.63 acres) is directly adjacent to Wetland 1 and Wetland 2. The second mapped NWI wetland (6.94 acres) is located north of the project site and close to Black Creek. All of these wetlands perform the following functions with respect to the downstream TNW (Ransom Creek) A) habitat diversity B) water quality improvements C) and nutrient cycling.

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

RELEVANT REACH:

The relevant reach for this significant nexus determination is from Wetland 1 and Wetland 2 that are within the project boundaries and two mapped NWI wetlands (offsite) to the confluence with Black Creek (offsite), a perennial RPW, which flows into Ransom Creek, a TNW. Wetland 1 which is now 1.16 acres in size was originally delineated as 0.046 acres in size and part of the larger wetland that connected to the large NWI wetland (46.63 acres) to the east. Wetland 1 likely grew due to increased drainage from surrounding development. Wetland 2 is a mitigation wetland constructed approximately 15 years ago in an upland area.

Flow:

A drainage ditch that serves as a non-jurisdictional conveyance directly abuts Wetland 2 at the eastern boundary of Wetland 2. Flow from the drainage ditch is also conveyed from Wetland 1 through Wetland 2. Therefore, Wetland 1 and Wetland 2 are connected to

the drainage ditch. The drainage ditch continues offsite and flows north along a partially forested and open field area for approximately 0.2 miles until it intersects with Lapp Road. It then continues west along Lapp Road for approximately 600 linear feet and then flows north through a culvert underneath Lapp Road. The drainage ditch then continues north along forested and open field areas for approximately 1 mile and empties directly into Black Creek, a perennial stream. Black Creek is mapped on the USGS topographical maps as a blue line stream. It is perennial and has year round flow and therefore is an RPW. Black Creek continues to flow west for approximately 3 miles and empties into Ransom Creek, a TNW, which flows north for approximately 3 miles and empties into the Erie Canal, a Section 10 navigable waterway.

Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?

Yes, Black Creek and its adjacent wetlands in this relevant reach were found to have the capacity to carry pollutants or flood waters to Ransom Creek based on proximity, flow, drainage area, and adjacent wetland characteristics. Flood attenuation/runoff storage, pollutant trapping/water quality, removal of suspended solids, dissolved solids, toxins and retention/treatment of nitrogen and phosphorus, functions are considered to be moderate for the subject wetlands in the relevant reach.

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?

Moderate appreciable lifecycle support functions, with respect to the Ransom Creek (TNW), are performed by Black Creek. Black Creek is large enough to support fish passage or spawning. There is habitat in the wetlands to support some fish species and other aquatic species (amphibians, wading birds) present in Ransom Creek. The wetlands in this relevant reach provide habitat for local communities of insects, birds, some amphibians and small mammals and avian species. The avian species which likely use these adjacent wetlands for food and cover most likely use 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?

Yes, Black Creek serves as a primary collector and processor of organic matter and nutrients for downstream waters. The storage and transformation of organic matter is important to these types of systems because it prevents downstream water quality degradation as a result of excess organic matter. Black Creek and its adjacent wetlands also transform unusable organic matter (inorganic carbon) into food for aquatic organisms (organic carbon) that supports downstream foodwebs.

CONCLUSION

Black Creek and its adjacent wetlands within the relevant reach were found to influence the chemical, physical, and biological integrity of downstream waters. Based upon the evaluation presented herein, there is a significant nexus between Wetland 1, Wetland 2 and Black Creek (RPW) and the downstream TNW, Ransom Creek. Therefore, Wetland 1 and Wetland 2 are jurisdictional waters of the U.S.

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: .

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

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

Identify type(s) of waters: .

3. **Non-RPWs⁸ 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.

⁸See Footnote # 3.

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

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

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

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

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

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: **Wetland 1 (1.16 acres) Wetland 2 (0.55 acres)** acres.

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

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

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

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

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.

- 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):

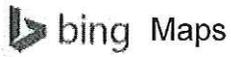
- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

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: Wetland Delineation Report submitted by Wilson Environmental Technologies.
- 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: Eastern Lake Erie.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:: 1:24,000, Clarence Center.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Erie County Websoil Survey.
- National wetlands inventory map(s). Cite name: USFWS-NWI maps-Two NWI wetlands mapped within the relevant reach.
- State/Local wetland inventory map(s): NYSDEC Wetlands-One NYSDEC wetland mapped near the project site-CC-48
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Review of Bing and Google orthoimagery.
 - or Other (Name & Date): Review of photographs within Wetland Delineation Report.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

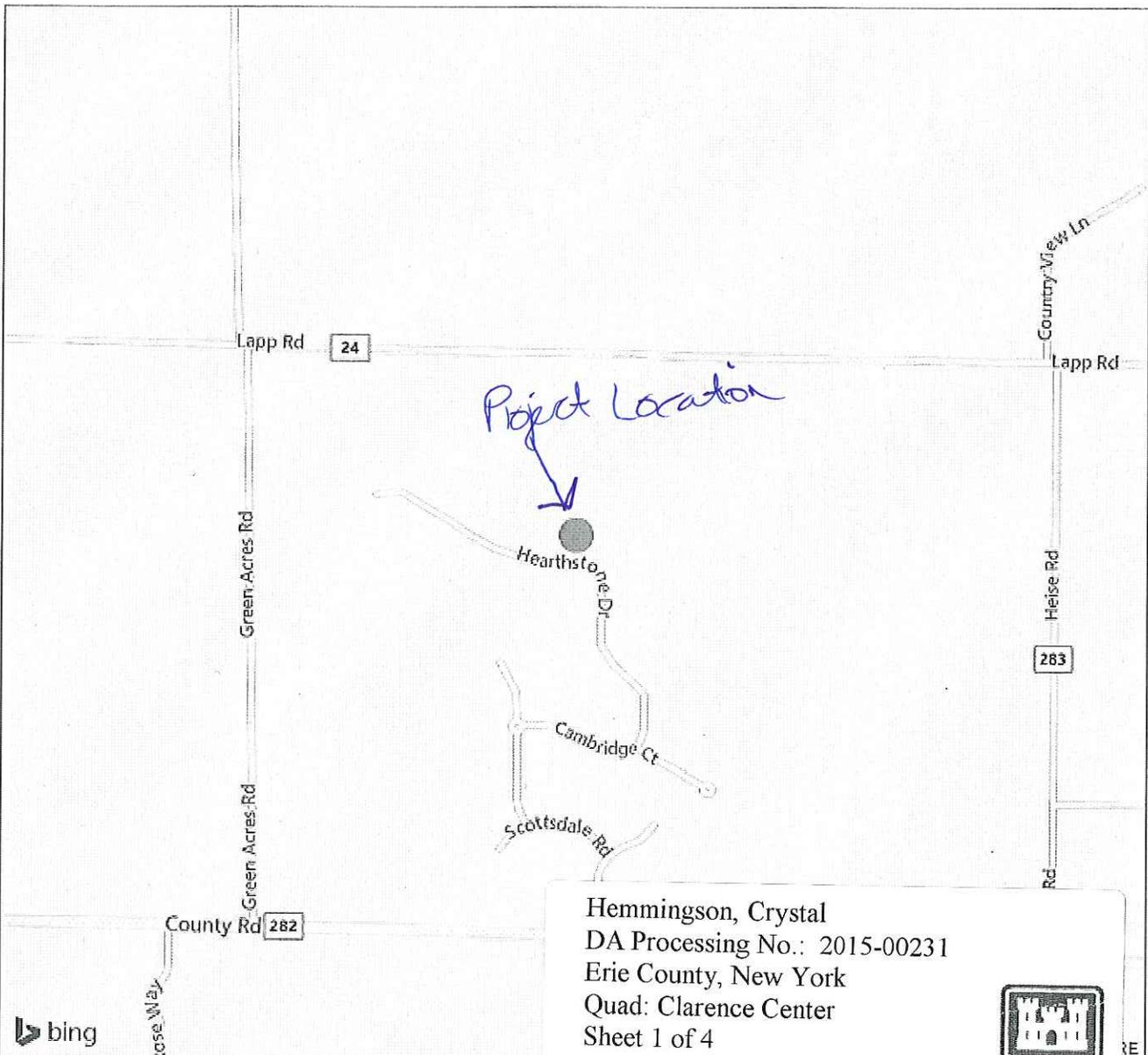
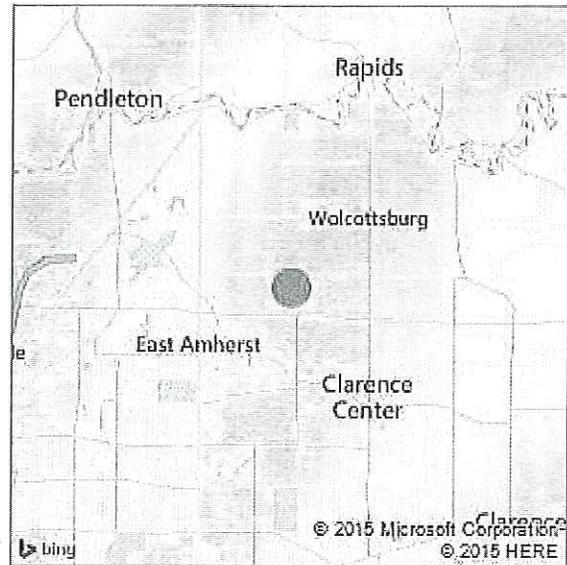
B. ADDITIONAL COMMENTS TO SUPPORT JD: Based on a site visit conducted on April 24th, 2015 and October 15th, 2015, and review of in-house resources including topographical maps, soil maps, wetland maps and aerial imagery, Wetland 1 and Wetland 2 are jurisdictional waters of the U.S. These wetlands have a verified hydrological connection to Black Creek (RPW) and the ecological services being performed by Wetland 1 and Wetland 2 have a significant effect on the physical, chemical, and biological integrity of downstream waters, including Ransom Creek (a TNW). The regulation of these wetlands and those similar to it is vital to the goals and purpose of the Clean Water Act (CWA).



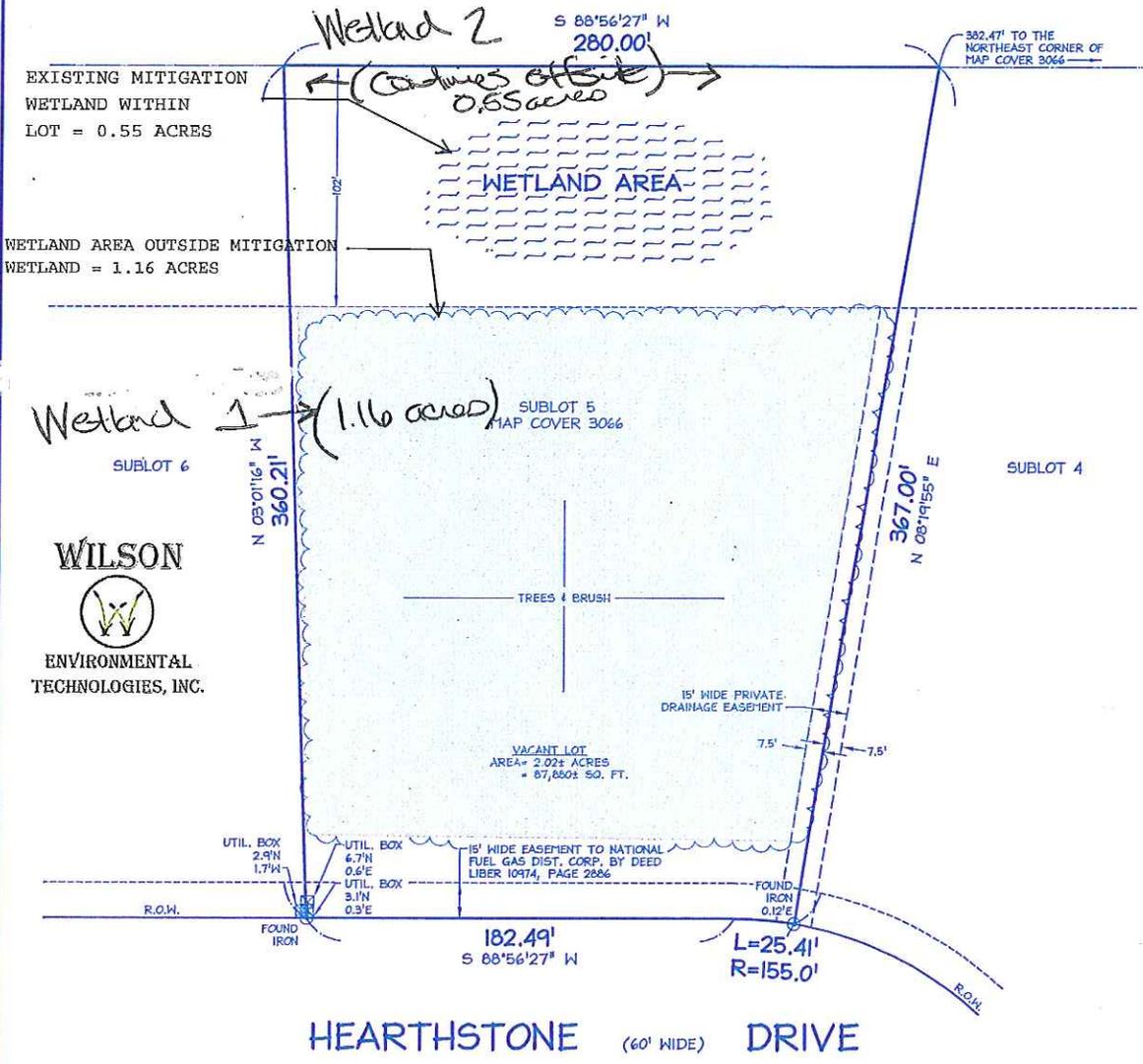
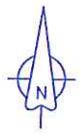
8784 Hearthstone Dr, Clarence, NY 14051

My Notes

On the go? Use m.bing.com to find maps, directions, businesses, and more



8784 Hearthstone Dr. - Hemmingson property
 Clarence, NY 14051

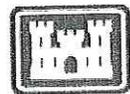


WILSON

 ENVIRONMENTAL
 TECHNOLOGIES, INC.

HEARTHSTONE (60' WIDE) DRIVE

Hemmingson, Crystal
 DA Processing No.: 2015-00231
 Erie County, New York
 Quad: Clarence Center
 Sheet 2 of 4



This survey was prepared without the benefit of an abstract of title and is subject to any state of facts that may be revealed by an examination of such. Unauthorized alterations or additions to any survey, drawing, design, specification, plan or report is a violation of section 7204, provision 2 of the New York State Education Department.

John F. Clark

NO IRONS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREON.

PART OF LOT 4		SECTION 12	TOWNSHIP 12	RANGE 6	HOLLAND LAND COMPANY'S SURVEY
LOCATION: TOWN OF CLARENCE		COUNTY OF ERIE		STATE OF NEW YORK	
 Nussbaumer & Clarke, Inc. Engineers and Surveyors 84 Sweeney Street, Suite C-13 North Tonawanda, NY 14120 (716) 692-0800		KIND SURVEY	DATE 10/10/13	REQUESTED BY HARRIS BEACH PLLC	JOB NO. 13J4-0424
SCALE: 1" = 50'					



U.S. Fish and Wildlife Service

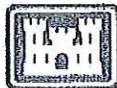
National Wetlands Inventory



User Remarks:

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or completeness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Hemmingson, Crystal
DA Processing No.: 2015-00231
Erie County, New York
Quad: Clarence Center
Sheet 3 of 4



No operational layers
selected or no legend
available

Dec 2, 2015

