

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 22, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB 1991-98611 Modern Landfill, Inc - Ditches 1,2,3,4,5,9,10_Stream 1_Wetlands W1,W2,W3,W4,W5,W6,W7,W8,W9,W11,W12,W13,W14,W15,W16,W17,W18,W19/20,W21,W22,W23,W24,W25, Pond 1 and 2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Niagara City: Model City
Center coordinates of site (lat/long in degree decimal format): Lat. 43.2107° N, Long. -78.9645° W
Universal Transverse Mercator:

Name of nearest waterbody: Stream 1

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

Name of watershed or Hydrologic Unit Code (HUC):

- 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: February 8, 2016
 Field Determination. Date(s): October 23, 2015

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: [Click here to enter text.](#)

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent 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: Stream 1(Twelve Mile Creek) - 2487 linear feet: 3-5 width (ft) and/or # acres.

Wetlands: W1 (0.26 acres), W3 (0.13 acres), W6 (0.52 acres), W7 (0.03 acres), W13 (0.11 acres), W15 (0.04 acres), W17 (0.02 acres), W18 (0.01 acres) and W25 (0.32 acres)

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

Elevation of established OHWM (if known): Unknown

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: A site visit was conducted on October 23, 2015 at the Modern Landfill, Inc – Porter Center Road area, 100-acre parcel located on north and south side of Porter Center Road in the Town of Lewiston, Niagara County, NY. In addition, a review of in-house resources

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.

including, topographical maps, aerial photography and soils maps were looked at. The boundaries of Wetlands W2 (2.47 acres), W4 (0.16 acres), W5 (0.77 acres), W8 (0.07 acres), W9 (0.10 acres), W11 (0.67 acres), W12 (0.08 acres), W14 (0.06 acres), W16 (0.06 acres), W19/20 (0.22 acres), W21 (0.05 acres), W22 (0.07 acres), W23 (0.12 acres), W24 (0.22 acres), Pond 1 (0.18 acres) and Pond 2 (1.69 acres) were walked and no surface flows or culverts were observed going away from the wetlands.

Wetland W2 (2.47-acres PEM Wetland) is located North of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 2 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 2 is approximately 150-300 linear feet away from Ditch 5.

Wetland W4 (0.16-acres PFO Wetland) is located North of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 4 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 4 is approximately 50-100 linear feet away from Ditch 4.

Wetland W5 (0.77-acres PSS Wetland) is located North of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 5 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 5 is approximately 100-150 linear feet away from Ditch 4.

Wetland W8 (0.07-acres PFO Wetland) is located North of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 8 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 8 is approximately 250 linear feet away from Ditch 4.

Wetland W9 (0.10-acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 9 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 9 is approximately 50-100 linear feet away from Ditch 7.

Wetland W11 (0.67-acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 11 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 11 is approximately 50-100 linear feet away from Ditch 7.

Wetland W12 (0.08-acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 12 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 12 is approximately 400-450 linear feet away from Ditch 7 and 600 linear feet away from Ditch 6.

Wetland W14 (0.06 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 14 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 14 is approximately 100-150 linear feet away from Ditch 6.

Wetland W19/20 (0.22 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 19/20 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 19/20 is approximately 75-100 linear feet away from Ditch 6.

Wetland W21 (0.05 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 21 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 21 is approximately 100-150 linear feet away from Ditch 6 and 75-100 linear feet away from Twelvemile Creek.

Wetland W22 (0.07 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 22 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 22 is approximately 100 from Twelvemile Creek and is 100 linear feet away from Ditch 9.

Wetland W23 (0.12 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 23 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 23 is approximately 100 from Twelvemile Creek and is 200 linear feet away from Ditch 9.

Wetland W24 (0.22 acres PFO Wetland) is located South of Porter Center Road. The wetland boundary was walked and based on the on-site walkover and review of in-house resources it was determined Wetland 24 is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 24 is approximately 100 from Twelvemile Creek and is 350-400 linear feet away from Ditch 9.

Pond 1 (0.18 acres Farm Pond) is located South of Porter Center Road. The pond boundary was walked and based on the on-site walkover and review of in-house resources it was determined Pond 1 is an open water system with no outlet/inlet drainage structure, was not abutting

or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Pond 1 is approximately 250 linear feet from Ditch 3 and is 500-550 linear feet away from Twelvemile Creek.

Pond 2 (1.69 acres Fire Pond) is located North of Porter Center Road. The pond boundary was walked and based on the on-site walkover and review of in-house resources it was determined Pond 2 is an open water system with no outlet/inlet drainage structure, was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Pond 2 is approximately 150 linear feet from Ditch 3 and is 50-100 linear feet away from Twelvemile Creek. Pond 2 is utilized by Modern Landfill as a Fire pond to provide water for fire suppression.

No ecological nexus to any drainageways were seen in the vicinity of the wetlands. During the site visit, hydrology was not present within the wetlands. However, there was no evidence of drainage or flow from the wetlands into the ditches, Twelvemile Creek nor appeared to flow directly into ditches or a TNW. Due to the distance to the nearest ditches and on-site soil conditions, it is unlikely that any shallow subsurface connection exists between the wetlands and the nearest ditches. The wetlands are physically and geographically isolated in a depression on the landscape and water would not make it to a TNW.

Ditches 2 (849 linear feet), 3 (3239 linear feet), 4 (1780 linear feet) and 5 (2144 linear feet) were determined during the October 23, 2015 site visit to be non-jurisdictional ditches. After reviewing the Niagara County Soil Survey, NRCS/Web Soil Survey and the Delineation Report it was determined the ditches were constructed within upland, non-hydric soils and are roadside drainage ditches. Ditches 2 and 3 were constructed along Porter Center Road to convey stormwater during storm events and don't provide any significant habitat for aquatic species nor any ecological value. The ditches are maintained throughout the year by Niagara County to maintain the flow of water and to prevent flooding along Porter Center Road and surrounding property. Ditches 4 and 5 were constructed along an access road within the Modern Landfill property to convey stormwater during storm events and don't provide any significant habitat for aquatic species nor any ecological value. The ditches are maintained throughout the year by Modern Landfill to maintain the flow of water and to prevent flooding along the access road and surrounding property.

Ditches 1 (202 LF), 9 (500 LF) and 10 (550 LF) were determined during the October 23, 2015 site visit to be non-jurisdictional drainageways. After reviewing the Niagara County Soil Survey, NRCS/Web Soil Survey and the Delineation Report it was determined the ditches were constructed within upland, non-hydric soils and are old remnant drainage features associated with the abandon railroad bed. The drainage features were constructed along the railroad line to convey stormwater and prevent flooding. The drainage features didn't exhibit any established bed or banks, nor an OHW line. The drainageways don't provide any significant habitat for aquatic species nor any ecological value. The drainageways or swales are non-regulated conveyances carrying water away from the associated wetlands to Stream 1 (Twelve Mile Creek).

*Please note, there is no Ditch 8.

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 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

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

(i) **General Area Conditions:**

Watershed size: Less than 100 acres
Drainage area: Less than 100 acres
Average annual rainfall: 35 inches
Average annual snowfall: 62 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through 2 tributaries before entering TNW.

Project waters are 10-15 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: No

Identify flow route to TNW⁵: Stream 1 (Twelve Mile Creek) flows in a north direction through the middle portion of the review area. Stream 1 (Twelve Mile Creek) continues offsite in a north/northeast direction and empties into Lake Ontario, a TNW.

Tributary stream order, if known:

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

- Tributary is:** Natural
 Artificial (man-made). Explain: [Click here to enter text.](#)
 Manipulated (man-altered). Explain: Stream 1 has multiple culverted portions and appears to have been manipulated by landfill operations, roadway construction and historical railways.

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

Average width: 3-5 feet
Average depth: 1-2 feet
Average side slopes: 3:1

Primary tributary substrate composition (check all that apply):

- Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: 20% Grassy Vegetation
 Other. Explain: Detritus

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Some areas of the stream were fairly eroded.
Presence of run/riffle/pool complexes. Explain: None observed.
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): Less than 5 %

(c) Flow:

Tributary provides for: Seasonal Flow
Estimate average number of flow events in review area/year: 11-20

Describe flow regime: Stream 1 flows most of the year with the exception of dry periods. Stream 1 has flow at least 3 months out of the year. Flow was observed during the October 23, 2015 site visit. The delineation report indicates flow was in the channel in July 2015. USGS quadrangles identify the stream as a blue-line stream.

Other information on duration and volume: NA

Surface flow is: Confined Characteristics: Flow is confined to the stream channel.

Subsurface flow: Unknown 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
 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

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.

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.

- water staining
- abrupt change in plant community [Click here to enter text.](#)
- other (list): [Click here to enter text.](#)
- Discontinuous OHWM.⁷ Explain: [Click here to enter text.](#)

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

- High Tide Line indicated by:
 - oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gauges
 - other (list): [Click here to enter text.](#)
- 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: Water color was clear. Site is within an operational landfill, historic rail and farm setting.

Identify specific pollutants, if known: The site has a County roadway in the middle and many bare dirt access roads throughout which contribute road salt and sediment.

(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: [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: Stream 1 provides habitat for aquatic flora and fauna.

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: W1 (0.26 acres), W3 (0.13 acres), W6 (0.52 acres), W7 (0.03 acres), W13 (0.11 acres), W15 (0.04 acres), W17 (0.02 acres), W18 (0.01 acres) and W25 (0.32 acres)

Wetland type. Explain: W1 (PFO), W3 (PFO), W6 (PFO), W7 (PEM), W13 (PFO), W15 (PFO), W17 (PFO), W18 (PFO) and W25 (PFO)

Wetland quality. Explain: Wetlands are of low-medium quality, have contain some invasive plant species, and have experienced historical disturbance.

Project wetlands cross or serve as state boundaries. Explain: No

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent and Ephemeral Flow Explain: Water from the wetlands (W1,W3, W6,W7,W13, W15, W17, W18 and W25) are expected to flow ephemerally following major rainfall and snow melt events.

Surface flow is: Discrete and Confined

Characteristics:.

Subsurface flow: Unknown Explain findings: [Click here to enter text.](#)

- Dye (or other) test performed: [Click here to enter text.](#)

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting: Wetlands W1

- Not directly abutting: Wetlands W3, W6, W7, W13, W15, W17, W18 and W25

- Discrete wetland hydrologic connection. Explain: Water from Wetlands W3 (0.13 acres), W6 (0.52 acres) and W7 (0.03 acres) flow west through Ditch 4, non-jurisdictional drainageway, and empties into Twelve Mile Creek, (Seasonal RPW). Once emptying into the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

Water from wetland W25 flows east through Ditch 1, non-jurisdictional drainageway and empties into Twelve Mile Creek (Seasonal RPW). Once emptying in the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

Water from wetlands W17 &W18 flow west through Ditch 10, non-jurisdictional drainageway and empties into Twelve Mile Creek (Seasonal RPW). Once emptying in the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

⁷Ibid.

Water from wetlands W15 & W13 flow west through Ditch 10, non-jurisdictional drainageway and empties into Twelve Mile Creek (Seasonal RPW). Once emptying in the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

- Ecological connection. Explain:
- 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: No standing water was observed in the wetlands at the time of the site visit. No oily film was observed on the surface of the wetlands. Site is within an operational landfill, historic rail setting and adjacent to farming and County road.

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: Near 100% coverage for each: W1 (PFO), W3 (PFO), W6 (PFO), W7 (PEM), W13 (PFO), W15 (PFO), W17 (PFO), W18 (PFO) and W25 (PFO)
- 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: Wetlands provide habitat for aquatic flora and fauna

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

All wetland(s) being considered in the cumulative analysis: 8
Approximately (#) 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 W1	Y	0.26 acre	
Wetland W3	N	0.13 acre	
Wetland W6	N	0.52 acre	
Wetland W7	N	0.03 acre	
Wetland W13	N	0.11 acre	
Wetland W15	N	0.04 acre	
Wetland W17	N	0.02 acre	
Wetland W18	N	0.01 acre	
Wetland W25	N	0.32 acre	

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. **SIGNIFICANT NEXUS DETERMINATION**

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

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

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

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

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

Water enters Twelve Mile Creek by the following:

Wetlands W3, W6 and W7 flow west through Ditch 4, a non-jurisdictional drainageway and empties into Twelve Mile Creek (Perennial RPW).

Water from Wetlands W15 and W17 flow west through Ditch 9, a non-jurisdictional drainageway and empties into Twelve Mile Creek.

Water from Wetlands W13 and W18 flow west through Ditch 10, a non-jurisdictional drainageway and empties into Twelve Mile Creek.

Water from Wetland W25 flows east through Ditch 1, a non-jurisdictional drainageway and empties into Twelve Mile Creek.

Once emptying into Twelve Mile Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW. The wetlands store runoff, filter pollutants, and settle sediments that would otherwise be transported to the downstream TNW. Sources of impairment within the Lake Ontario watershed include farming, land development, urbanization, suburbanization, urban runoff, and storm sewers. Since the wetlands are located in close proximity to farming, commercial/residential development and a landfill and receives a majority of its hydrology from precipitation and runoff associated with the adjacent developments, farming, roadway and landfill, they provide an important function of reducing the effects of runoff and stormwater impacts on the downstream TNW. The wetlands supply the downstream TNW with a cleaner source of water that will aid in reducing impairment.

Due to the physical, biological, and chemical connectivity of Wetlands W3, W6, W7, W13, W15, W17, W18 and W25 to the downstream TNW, it has been determined that Wetlands W3, W6, W7, W13, W15, W17, W18 and W25 have a significant nexus with the downstream TNW, Lake Ontario as the functions and services provided by Wetlands W3, W6, W7, W13, W15, W17, W18 and W25 provide more than a speculative effect on the physical integrity of Lake Ontario.

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: Stream 1 (Twelve Mile Creek) flows most of the year with the exception of dry periods. Stream 1 has flow at least 3 months out of the year. Flow was observed during the October 2015 site visit. The delineation report indicates flow was in the channel in July 2015. USGS quadrangles identify the stream as a blue-line stream.

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

Tributary waters: 2487 linear feet 3-5width (ft).

Other non-wetland waters: # acres.

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

- 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.

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:

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

⁸See Footnote # 3.

wetland is directly abutting an RPW: Wetland W1 (0.26 acres) continues offsite to the North and is part of a 55-acre NYSDEC regulated wetland identified as RV-1. Outside the delineated boundaries, Twelve Mile Creek (Seasonal RPW) flows through NYSDEC RV-1 and continues North/Northeast emptying into Lake Ontario, a TNW.

Provide acreage estimates for jurisdictional wetlands in the review area: W1 (0.26 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: W3 (0.13 acres), W6 (0.52 acres), W7 (0.03 acres), W13 (0.11 acres), W15 (0.04 acres), W17 (0.02 acres), W18 (0.01 acres) and W25 (0.32 acres)

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

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

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

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

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

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

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

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

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

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

- Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
- Lakes/ponds: # acres.
- Other non-wetland waters: # acres. List type of aquatic resource: [Click here to enter text.](#)
- Wetlands: 6.99 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).

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.

- 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 or plots submitted by or on behalf of the applicant/consultant: Delineation report submitted by Earth Dimensions, Inc on July 29, 2015.
- 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: [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: Ransomville USGS Quad, delineated parcel located
- USDA Natural Resources Conservation Service Soil Survey: USDA-NRCS Web Soil Survey – Potentially Hydric soils are found within the delineated boundary.
- National wetlands inventory map(s). Cite name: USFWS Wetland Mapper – Mapped Federal wetlands are found within the delineated boundary.
- State/Local wetland inventory map(s): NYSDEC Environmental Resource Mapper – Mapped State regulated wetland is located within the vicinity of the delineated parcel
- FEMA/FIRM maps: [Click here to enter text.](#)
- 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, Bing Maps
 - or Other (Name & Date): Photos included with the delineation report
- Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- Applicable/supporting case law: [Click here to enter text.](#)
- Applicable/supporting scientific literature: [Click here to enter text.](#)
- Other information (please specify): [Click here to enter text.](#)

B. ADDITIONAL COMMENTS TO SUPPORT JD: Isolated wetlands W2 (2.47 acres), W4 (0.16 acres), W5 (0.77 acres), W8 (0.07 acres), W9 (0.10 acres), W11 (0.67 acres), W12 (0.08 acres), W14 (0.06 acres), W16 (0.06 acres), W19/20 (0.22 acres), W21 (0.05 acres), W22 (0.07 acres), W23 (0.12 acres), W24 (0.22 acres), Pond 1 (0.18 acres) and Pond 2 (1.69 acres) were field verified by the Corps of Engineers on October 23, 2015. The perimeter of the wetlands were walked and no evidence of any connections to other waters were identified. There were no connections between the wetlands and any other waters on the Ransomville Quad or the USDA/NRCS Web Soil Survey. The Wetlands are isolated and outside the Department of the Army's jurisdiction. The determination is supported by the review of in-house resources and field verified. None of the 328.3(a)(3)(i-iii) factors are relevant in this case. The wetlands don't support recreational or other use by interstate travelers, nor provide habitat for amphibians or other aquatic species. The wetlands offer no use for industrial or commercial purposes. The wetlands were determined to be isolated and therefore non-jurisdictional.

Joseph M. Rowley
Project Manager

April 13, 2016

Date

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 22, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB 1991-98611 Modern Landfill, Inc – Ditch 7, Wetland W10

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Niagara City: Model City
Center coordinates of site (lat/long in degree decimal format): Lat. 43.2107° N, Long. -78.9645° W
Universal Transverse Mercator:

Name of nearest waterbody: Stream 1

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

Name of watershed or Hydrologic Unit Code (HUC):

- 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: February 8, 2016
- Field Determination. Date(s): October 23, 2015

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: [Click here to enter text.](#)

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent 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:

Wetlands: W10 (0.12 acres)

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

Elevation of established OHWM (if known): Unknown

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: A site visit was conducted on October 23, 2015 at the Modern Landfill, Inc – Porter Center Road area, 100-acre parcel located on north and south side of Porter Center Road in the Town of Lewiston, Niagara County, NY. In addition, a review of in-house resources including, topographical maps, aerial photography and soils maps were evaluated.

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.

Ditches 7 (359 linear feet) was determined during the October 23, 2015 site visit to be non-jurisdictional ditch. After reviewing the Niagara County Soil Survey, NRCS/Web Soil Survey and the Delineation Report it was determined the ditch was constructed within upland, non-hydric soils and is characteristic of a swale. Ditch 7 appears to be a remnant swale from past farming activities or to convey water along an abandon access road for the abandon rail line. The drainage feature didn't exhibit any established bed or banks, nor an OHW line. The drainageway didn't provide any significant habitat for aquatic species nor any ecological value. The draiangeway or swale is a non-regulated conveyances carrying water away from the associated wetland to Ditch 6 (Off-site).

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 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: acres

Drainage area: acres

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [Choose an item.](#) tributaries before entering TNW.

Project waters are [Choose an item.](#) river miles from TNW.

Project waters are [Choose an item.](#) river miles from RPW.

Project waters are [Choose an item.](#) aerial (straight) miles from TNW.

Project waters are [Choose an item.](#) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵:

Tributary stream order, if known:

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

Tributary is: Natural

Artificial (man-made). Explain: [Click here to enter text.](#)

Manipulated (man-altered). Explain: .

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

Average width: feet

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.

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: 20% Grassy Vegetation | |
| <input type="checkbox"/> Other. Explain: Detritus | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

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

Tributary geometry: *Choose an item.*

Tributary gradient (approximate average slope): Less than %

(c) **Flow:**

Tributary provides for: *Choose an item.*

Estimate average number of flow events in review area/year: *Choose an item.*

Describe flow regime: .

Other information on duration and volume: NA

Surface flow is: Confined Characteristics: .

Subsurface flow: Unknown 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
- OHWM⁶ (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 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 <i>Click here to enter text.</i> |
| <input type="checkbox"/> other (list): <i>Click here to enter text.</i> | |
- Discontinuous OHWM.⁷ Explain: *Click here to enter text.*

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

- | | |
|---|--|
| <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): <i>Click here to enter text.</i> | |

(iii) Chemical Characteristics:

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

Explain: Water color was clear. .

Identify specific pollutants, if known: .

(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: *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: .

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.

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: W10 (0.12 acres)

Wetland type. Explain: W10 (PFO)

Wetland quality. Explain: Wetland 10 is of low-medium quality, contain some invasive plant species, and have experienced historical disturbance.

Project wetlands cross or serve as state boundaries. Explain: No

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent and Ephemeral Flow Explain: Water from the wetlands W10 is expected to flow ephemerally following major rainfall and snow melt events.

Surface flow is: Discrete and Confined

Characteristics:.

Subsurface flow: Unknown Explain findings: Click here to enter text.

Dye (or other) test performed: Click here to enter text.

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting:

Not directly abutting: Wetland W10 (0.12 acres)

Discrete wetland hydrologic connection. Explain: Water from Wetland W10 flows south through Ditch 7, non-jurisdictional drainageway, and empties into Ditch 6 which is outside the delineated boundary. Ditch 6 flows south then west for 2958 linear feet then empties into Twelve Mile Creek, (Seasonal RPW; Sheet 2 of 2)). Once emptying into the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

Ecological connection. Explain:

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: No standing water was observed in the wetlands at the time of the site visit. No oily film was observed on the surface of the wetlands. Site is within an operational landfill, historic rail setting and adjacent to farming and County road.

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: Near 100% coverage for each: W10 (PFO)

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: Wetlands provide habitat for aquatic flora and fauna

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

All wetland(s) being considered in the cumulative analysis: 8

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

For each wetland, specify the following:

Directly abuts? (Y/N)

Wetland W10 N

Size (in acres)

0.12 acre

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: The wetlands provide the following functions and services: hydrologic flux and storage including floodwater and runoff attenuation and release; sediment and nutrient transport and retention; pollutant attenuation and release; biogeochemical cycling and storage; biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat.

C. SIGNIFICANT NEXUS DETERMINATION

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

adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

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

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

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

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

Water enters Twelve Mile Creek by the following:

Wetland 10 flows south through Ditch 7, a non-jurisdictional drainageway and continues off-site and empties into Ditch 6. Ditch 6 flows south then east 2,958 LF before emptying into Twelve Mile Creek (Seasonal RPW). Once emptying into the Creek, water continues to flow north/northeast then empties into Lake Ontario, a TNW.

Wetland 10 stores runoff, filter pollutants, and settle sediments that would otherwise be transported to the downstream TNW. Sources of impairment within the Lake Ontario watershed include farming, land development, urbanization, suburbanization, urban runoff, and storm sewers. Since the wetlands are located in close proximity to farming, commercial/residential development and a landfill and receives a majority of its hydrology from precipitation and runoff associated with the adjacent developments, farming, roadway and landfill, they provide an important function of reducing the effects of runoff and stormwater impacts on the downstream TNW. The wetlands supply the downstream TNW with a cleaner source of water that will aid in reducing impairment.

Due to the physical, biological, and chemical connectivity of Wetland 10 to the downstream TNW, it has been determined that Wetland 10 has a significant nexus with the downstream TNW, Lake Ontario as the functions and services provided by Wetland 10 provide more than a speculative effect on the physical integrity of Lake Ontario.

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: Sheet 2 of 2

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-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.

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.

⁸See Footnote # 3.

- 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: W1 (0.26 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: W10 (0.12)

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

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

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

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION IV: DATA SOURCES.

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

- Maps, plans or plots submitted by or on behalf of the applicant/consultant: Delineation report submitted by Earth Dimensions, Inc on July 29, 2015.
- 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: [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: Ransomville USGS Quad, delineated parcel located
- USDA Natural Resources Conservation Service Soil Survey: USDA-NRCS Web Soil Survey – Potentially Hydric soils are found within the delineated boundary.
- National wetlands inventory map(s). Cite name: USFWS Wetland Mapper – Mapped Federal wetlands are found within the delineated boundary.
- State/Local wetland inventory map(s): NYSDEC Environmental Resource Mapper – Mapped State regulated wetland is located within the vicinity of the delineated parcel
- FEMA/FIRM maps: [Click here to enter text.](#)
- 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, Bing Maps
- or Other (Name & Date): Photos included with the delineation report
- Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- Applicable/supporting case law: [Click here to enter text.](#)
- Applicable/supporting scientific literature: [Click here to enter text.](#)
- Other information (please specify): [Click here to enter text.](#)

B. ADDITIONAL COMMENTS TO SUPPORT JD: Ditch 6 wasn't followed or verified in the field during the site visit because it was off-site, outside the delineated boundary and located on property not owned by the landfill. The confluence of Ditch 7 and 6 was located and the consultant indicated on the submitted Figures which way Ditch 6 flows and empties into with Stream 1 (Twelve Mile Creek). Based on a site visit conducted and review of in-house resources including topographical maps, soil maps, wetland maps and aerial imagery, Wetland 10 is jurisdictional water of the U.S. This wetland has a hydrological connection to Stream 1 (Twelve Mile Creek, Seasonal RPW) and the ecological service being performed by Wetland 10 has a significant effect on the physical, chemical, and biological integrity of downstream waters, including Lake Ontario (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).

Joseph M. Rowley
Project Manager

April 13, 2016
Date

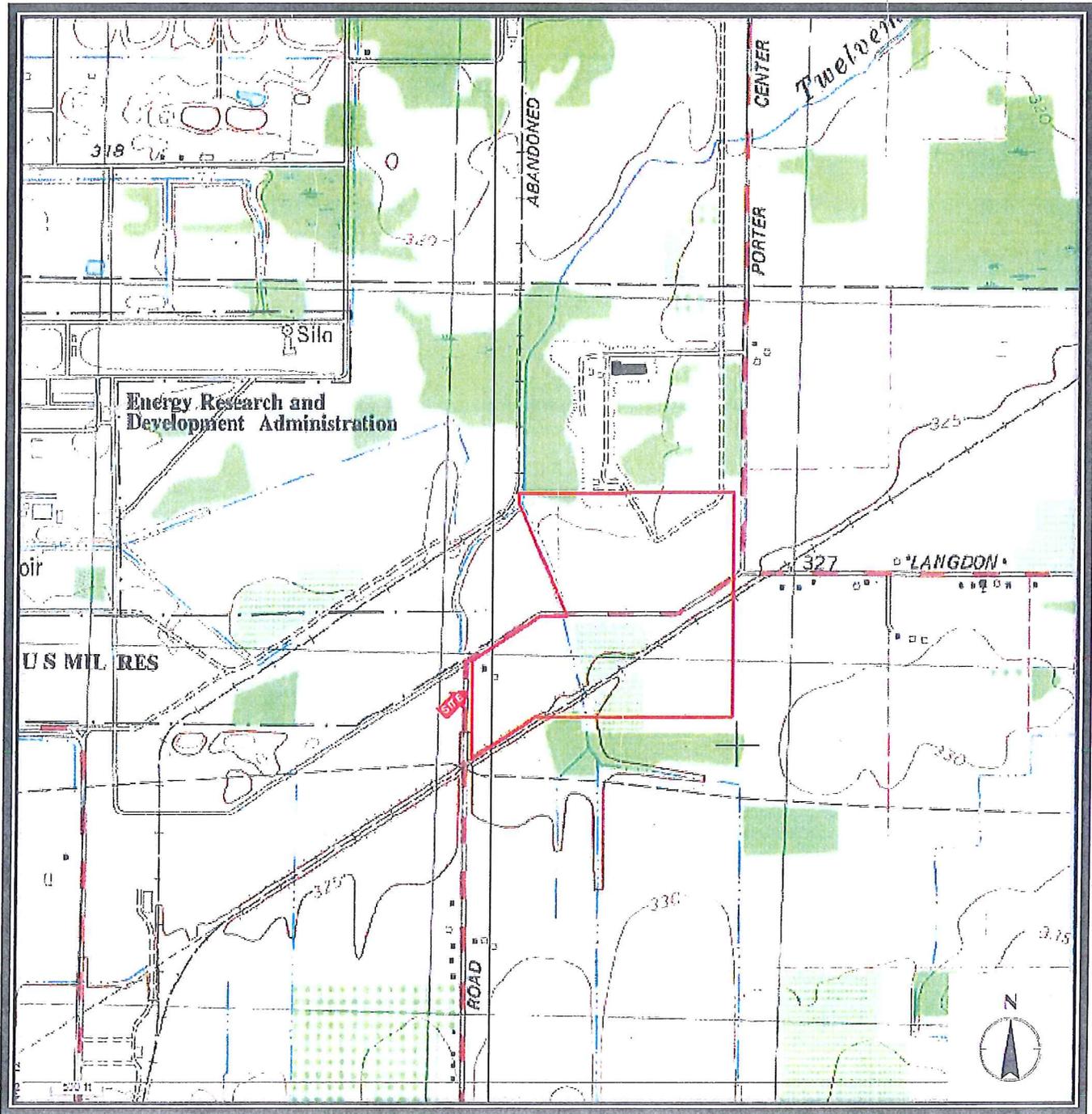


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Ransomville Quadrangle / 2002 DeLorme

Modern Landfill Twelvemile Creek Relocation

Town of Lewiston, Niagara County, New York

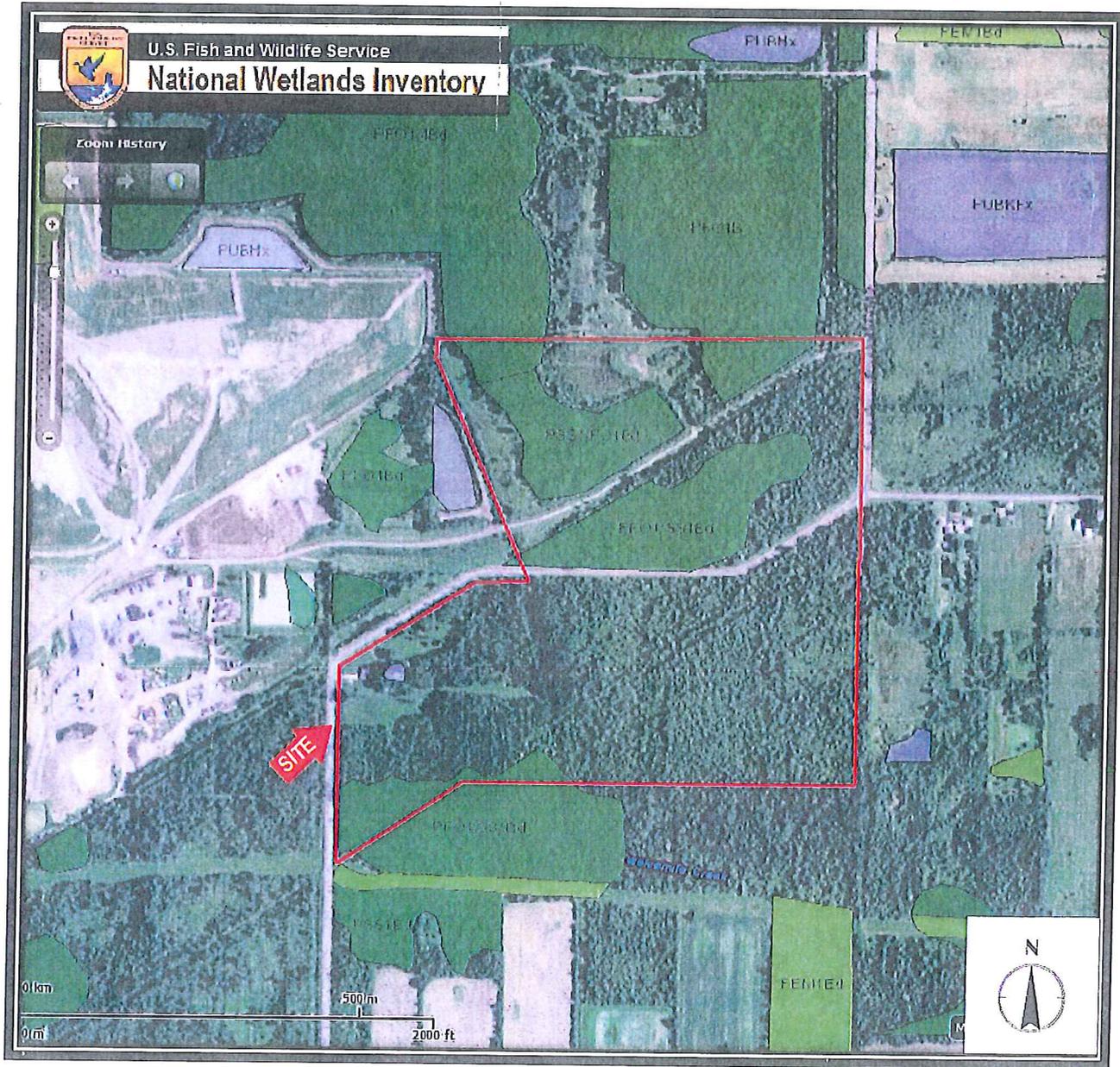


FIGURE 2: NATIONAL WETLANDS INVENTORY MAP

<http://www.fws.gov/wetlands/data/mapper.HTML> (Visited 6/23/15)

Modern Landfill Twelvemile Creek Relocation
Town of Lewiston, Niagara County, New York

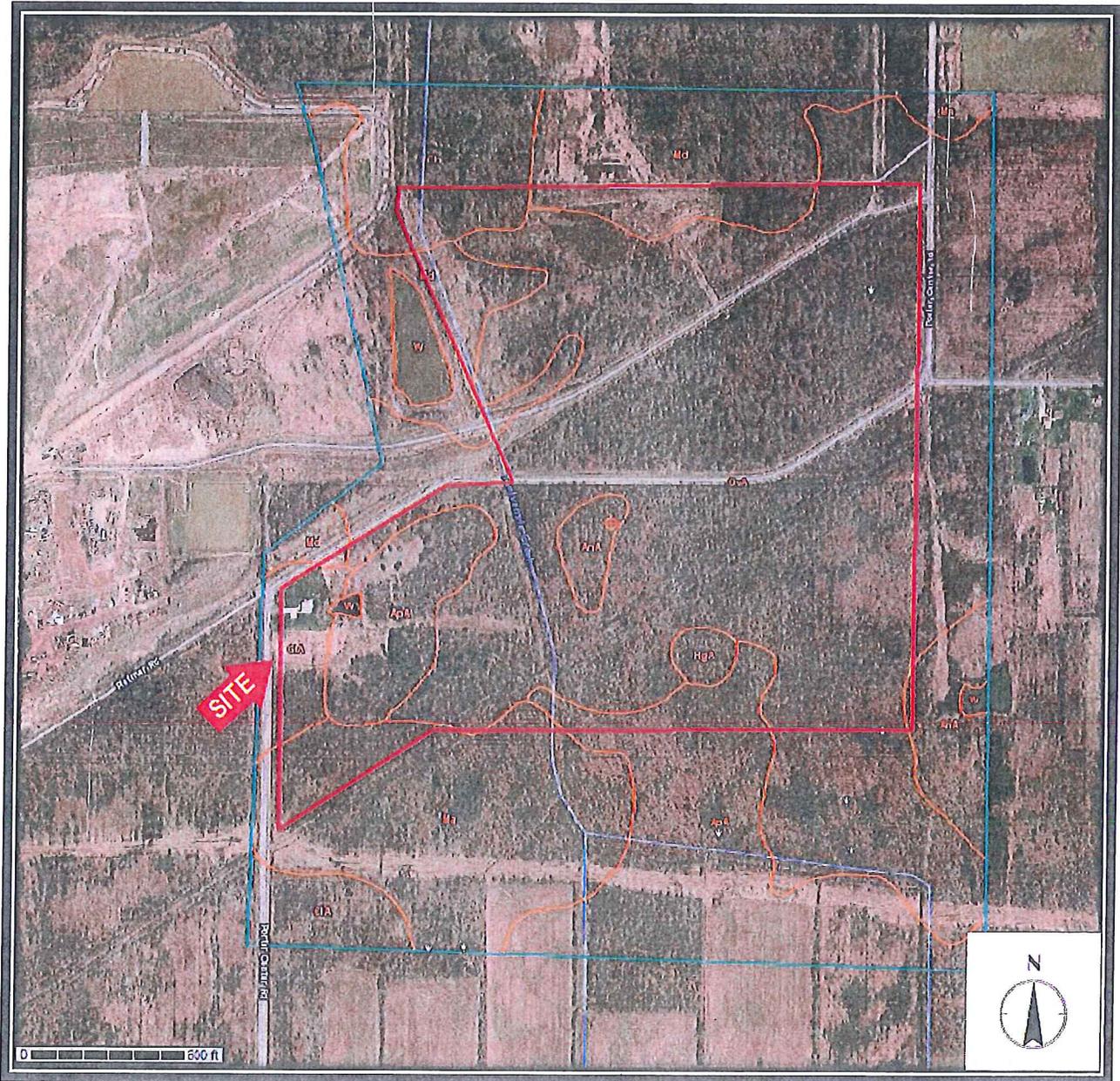


FIGURE 3: NRCS NIAGARA COUNTY SOIL SURVEY MAP

<http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (Visited 6/23/15)

Modern Landfill Twelvemile Creek Relocation
Town of Lewiston, Niagara County, New York

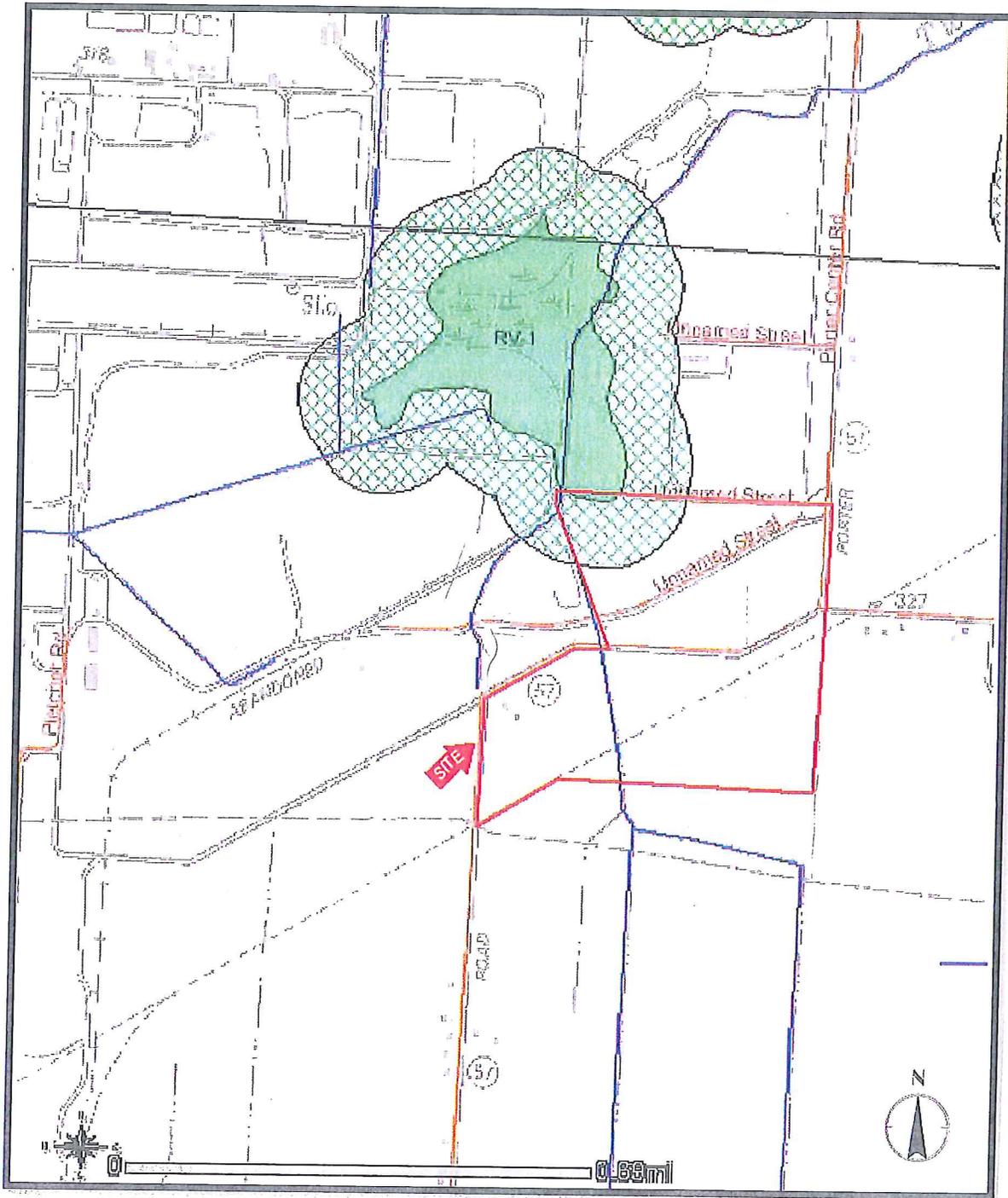


FIGURE 4: NYSDEC ENVIRONMENTAL RESOURCE MAPPER
<http://www.dec.ny.gov/imsmaps/ERM/viewer.htm> (Visited 6/23/15)

Modern Landfill Twelvemile Creek Relocation
 Town of Lewiston, Niagara County, New York

Modern Landfill, Inc.
 D/A Processing No. 1991-098611
 Niagara County, New York
 Quad: Ransomville
 Sheet 4 of 7



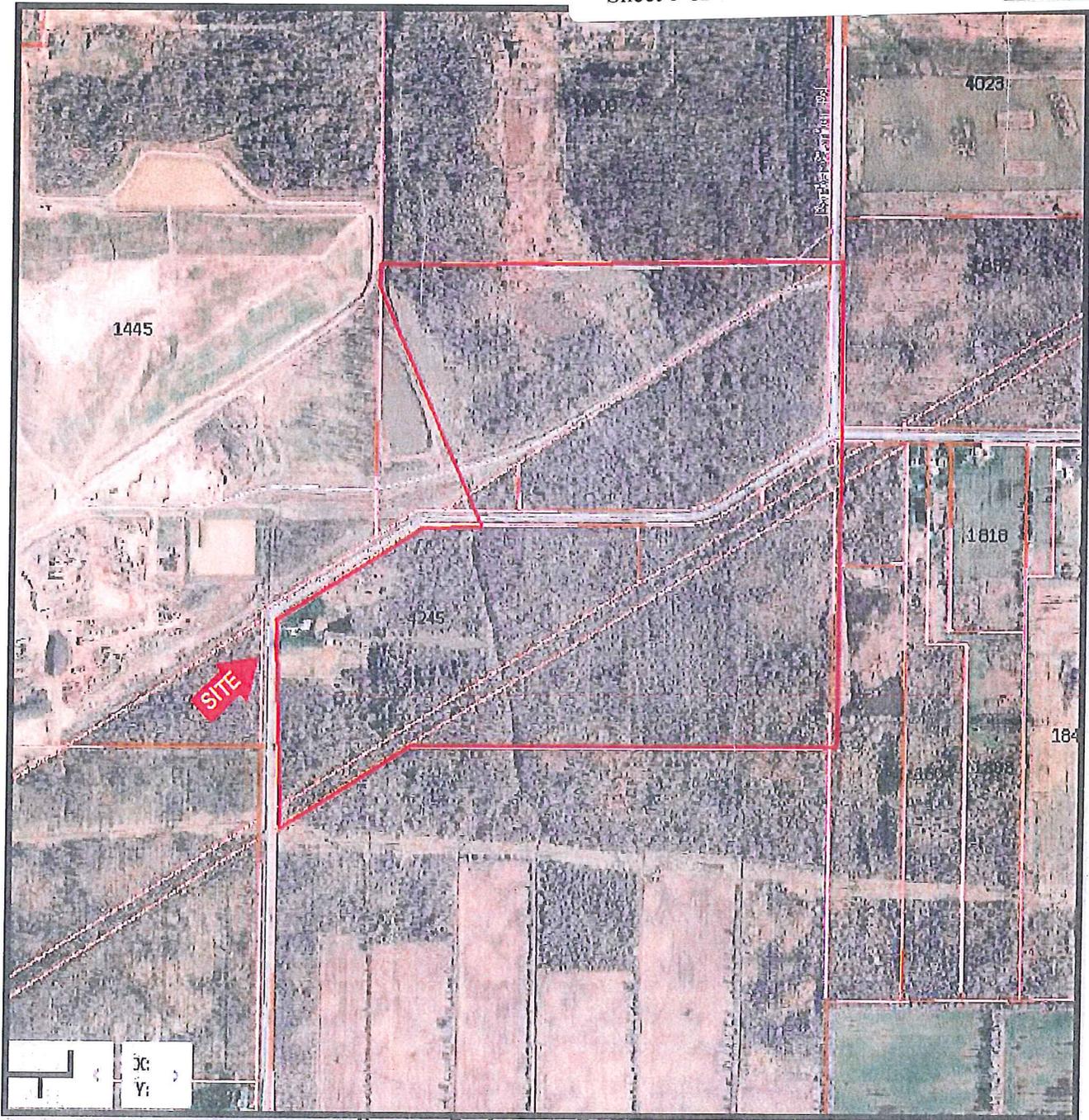


FIGURE 5: AERIAL PHOTOGRAPH

<http://gis2.niagara.gov/HTML5/NiagaraCountyNY.aspx> (Visited 6/23/15)

Modern Landfill Twelvemile Creek Relocation
Town of Lewiston, Niagara County, New York

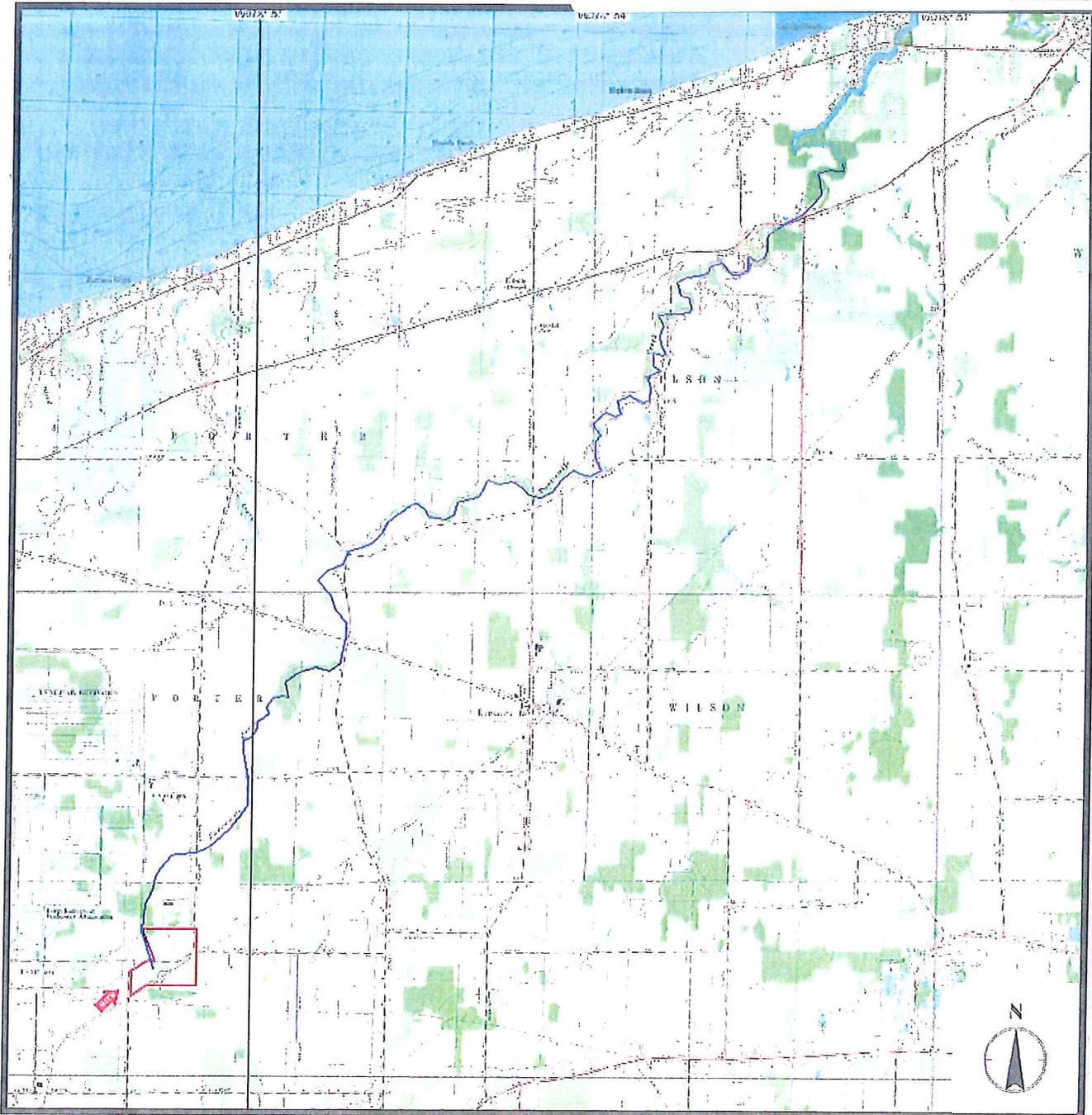
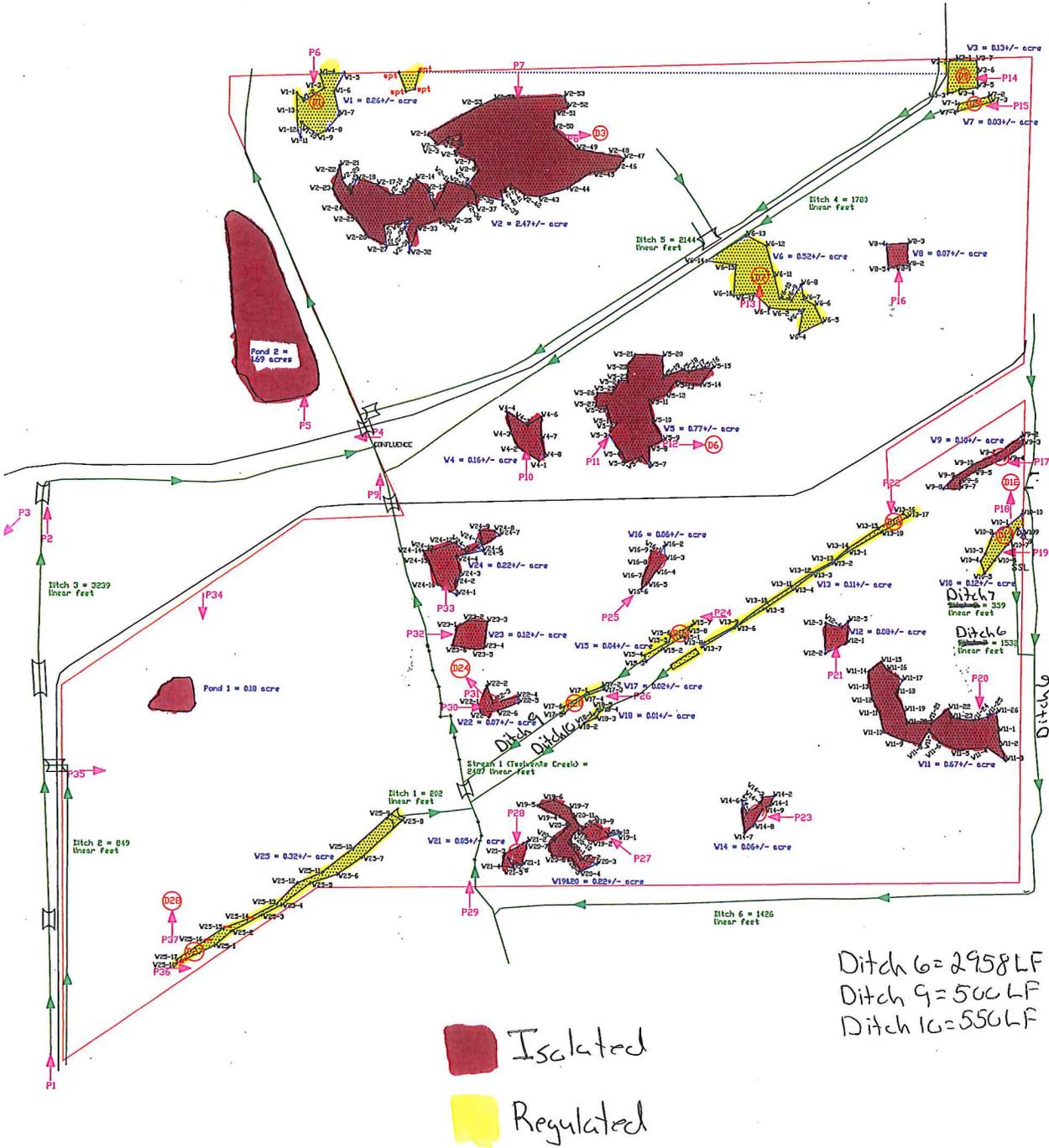
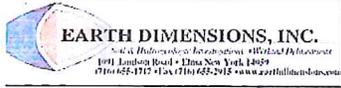


FIGURE 6: DRAINAGE MAP
Ransomville Quadrangle / 2002 DeLorme
Modern Landfill Twelvemile Creek Relocation
Town of Lewiston, Niagara County, New York



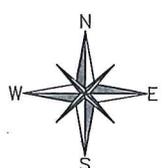
Figure 8: Wetland Delineation Map

Town of Lewiston Niagara County, New York



LEGEND

- Limits of Investigation
- Roads, Buildings
- Wetland Boundary Flag
- Wetland Area
- Drainages



Scale: 0 200' 400'
Map Date: July 17, 2015/ TJS for EDI
Revised:
Base Map Provided By: GPSMap 62s
File Name: Delineation map.dwg
EDI Project Code: W3C86ap