

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): 11/28/2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Auburn Field Office; Dexter Acres Subdivision, 2012-00890

C. PROJECT LOCATION AND BACKGROUND INFORMATION: a 51-acre parcel of land located north of Cemetery Road, south of Route 12E, and east of Route 180, Village of Dexter, Jefferson County, New York.

State: **New York**

County: **Jefferson**

Village: **Dexter**

Center coordinates of site (lat/long in degree decimal format): Lat. **44.01867° N**, Long. **-76.0366° W**.

Universal Transverse Mercator: **Zone 18; Y: 4874468.551; X: 416920.598**

Name of nearest waterbody: **Unnamed tributary to the Black River**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**

Name of watershed or Hydrologic Unit Code (HUC): **4150102**

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: **11/6/2012**

Field Determination. Date(s): **10/5/2012**

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 no** "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: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

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

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

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **One area (5.09 acres in size) that meets the definition of wetland was found on the site; however, this wetland (referred to as Wetland A) is outside Department of the Army jurisdiction as it does not meet the criteria for a jurisdictional water of the United States according to 33 CFR Part 328.3(a)(1-8) as follows:**

- (1) **does not/has not supported interstate or foreign commerce; Wetland A does not provide any ecological interconnect to downstream waters and is not confined by a berm, dam, or obstruction other than topography.**

A site visit was conducted on October 5, 2012 to determine if Wetland A were in fact isolated as suggested in the delineation report submitted by edr Companies (“edr”). In support of its isolation call, edr provided a copy of an approved jurisdictional determination prepared by Corps staff on September 25, 2007 (File Number 2007-00034[0]), which found that the linear wetland, which is the downstream continuation of the newly delineated Wetland A, was considered isolated, non-navigable, intrastate water and was therefore not regulated under Section 404 of the Clean Water Act. A review of that JD revealed that the project manager went out to the site on May 9, 2007, walked the entire perimeter of the wetland and found that the wetland drained into a limestone rock fissure, with no evidence of outlet or surface water connection to waters of the U.S.

During my site visit, I walked the entire perimeter of Wetland A and found that water drained solely into the upstream portion of that same wetland that had been found to not be jurisdictional (water flows from west to east and then south through that linear wetland). The conditions downstream had changed since the 2007 JD. The linear wetland had been filled to accommodate a subdivision and a new drainage channel had just been excavated to redirect the water flowing from Wetland A [See attached Sheet 3 of 4 and aerial photo]. The new channel was still under construction and started as a fairly wide channel, holding about one foot of water but then it narrowed quickly into a small channel which dried up as we continued downstream. The channel then turned into a small swale, with no wetland vegetation and no wetland soils (Note: bedrock was found to be very close to the surface). The swale continues at a 90-degree angle toward the west, going through the housing development and collecting water from the basement of these houses through pipes placed under the lawns and directed toward the swale. The swale continues through a culvert located under the development access road, outlets on the other side and then ends into a detention basin that is currently under construction. Note: the delineator pointed out that the outlet of the culvert is where the old limestone fissure was found to occur during the 2007 site visit. We noted that bedrock is right at the surface and despite a large storm on the morning of my site visit, that area contained very little water. The detention basin did not contain any water. The basin will be equipped with a 100-year-storm outlet structure that is expected to allow water to outflow only during large storm events. In the event water outflows during these large storm events, it will flow overland downhill toward Cemetery Road.

A review of the Jefferson County Soil Survey book, dated September 1989, shows that this linear wetland was mapped as an intermittent stream starting at the northern boundary of the delineated property and flowing south to the Black River. Other mapped resources (i.e. NYS Environmental Resource Mapper, historic USGS [Clayton 1903, reprinted in 1941], USGS Dexter Quadrangle dated 1958 and photorevised in 1982) do not show a mapped stream at that location. There was also no evidence of underground piping during my site visit. It is possible that in the past, this linear wetland may have been an intermittent stream that had surface connection to the Black River; however, that surface connection no longer exists. Wetland A is approximately 0.63 miles from the Black River and the detention basin is about 0.31 miles from the Black River. Therefore, due to the lack of surface water connection and the distance between Wetland A and the closest downstream waters of the U.S., no ecological connection exists between Wetland A and downstream waters of the U.S.

- (2) **is not an interstate water/wetland; Wetland A does not cross state boundaries;**
- (3) **the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:**
- (i) **which is or could be used by interstate or foreign travelers for recreational or other purposes; or**
 - (ii) **from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or**
 - (iii) **which is used or could be used for industrial purpose by industries in interstate commerce**

Wetland A cannot be used by interstate or foreign travelers for recreational or other purposes, fish or shellfish; cannot be taken and sold in interstate or foreign commerce; and could not be used for industrial purposes by industries in interstate commerce;

- (4) **is not an impoundment of water otherwise defined as WOUS under the definition;**
- (5) **is not a tributary of waters identified in paragraphs (a)(1)-(4) of this section; Wetland A does not have a surface water connection to a downstream water; see paragraph (1) above for further discussion.**
- (6) **is not a territorial sea;**
- (7) **is not wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section; see paragraph (1) above.**

Wetland A is located approximately 0.63 miles from the Black River. No surface water connection was found between Wetland A and the Black River or any other streams; see paragraph (1) above for further discussion.

(8) is not prior converted cropland.

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.

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

Project waters are **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:

(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):

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

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

⁷Ibid.

(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:

(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: _____ acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

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

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

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** 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:

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:

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

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

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

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

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

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

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

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

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

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.

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: 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):

⁸See Footnote # 3.

⁹To 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.

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

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
 - Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
Wetland A is approximately 0.63 miles from the Black River, the nearest downstream RPW and no surface water connection was found between Wetland A and the Black River. Water from Wetland A flows through a drainage channel that was recently excavated, then the channel turns into an upland swale that passes through a recent housing development and any water that may flow through the swale is directed toward a water detention basin that is currently under construction. That basin will have a 100-year storm outflow structure and in the event water outflows through that structure, it will have to flow overland for another 0.3 miles before reaching the Black River. Therefore, no ecological connection exists between Wetland A and downstream waters of the U.S.
See Section B, paragraph 2 for further explanation.
- 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: **5.09 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: **5.09 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: **edr Companies.**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **1:24,000 – Dexter, NY; historic USGS (Clayton 1903, reprinted in 1941).**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Jefferson County Soil Survey (NRCS, September 1989). Based on the map, a large portion of the site is underlain by soils mapped as Guffin Clay, a hydric soil. The second most abundant soils found in the project site is Kingsbury silty clay, which is also a hydric soil. The soil survey map also depicts an intermittent stream starting at the northern boundary of the delineated property and flowing south to the Black River.**
- National wetlands inventory map(s). Cite name: **Dexter, NY. This map does not depict any wetlands on the project site.**
- State/Local wetland inventory map(s): **NYS Environmental Resource Mapper. This map does not depict any state-regulated wetlands or any mapped streams on the project site.**
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **NYS Orthos Online 1994-99, 2003, 2006 and 2011. The aerial photos show that the drainage feature disappears at the location where the 2007 JD indicates the water goes underground. This supports the findings**

that the surface water channel was interrupted north of Cemetery Road and therefore, there was no continuous surface water connection between Wetland A and the Black River. No aerial photos show the current conditions (i.e. where the downstream section of the linear wetland has been filled to accommodate the subdivision and instead, a new channel has been excavated to go around the new subdivision and then the channel turns into an upland swale that leads to a detention basin, see Section B, paragraph 2 for more information).

or Other (Name & Date): **Photos provided with the delineation report and photos taken during the 10/5/2012 site visit (available upon request).**

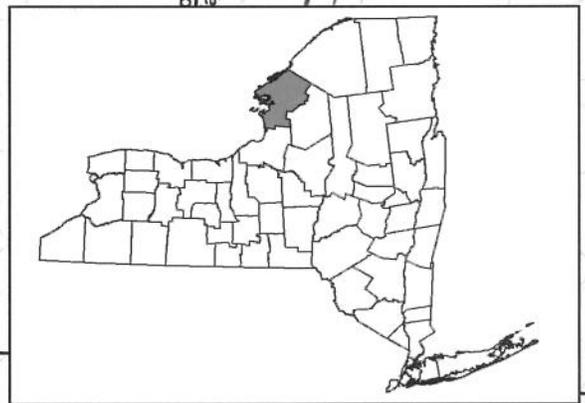
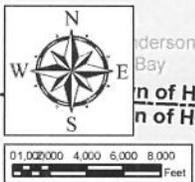
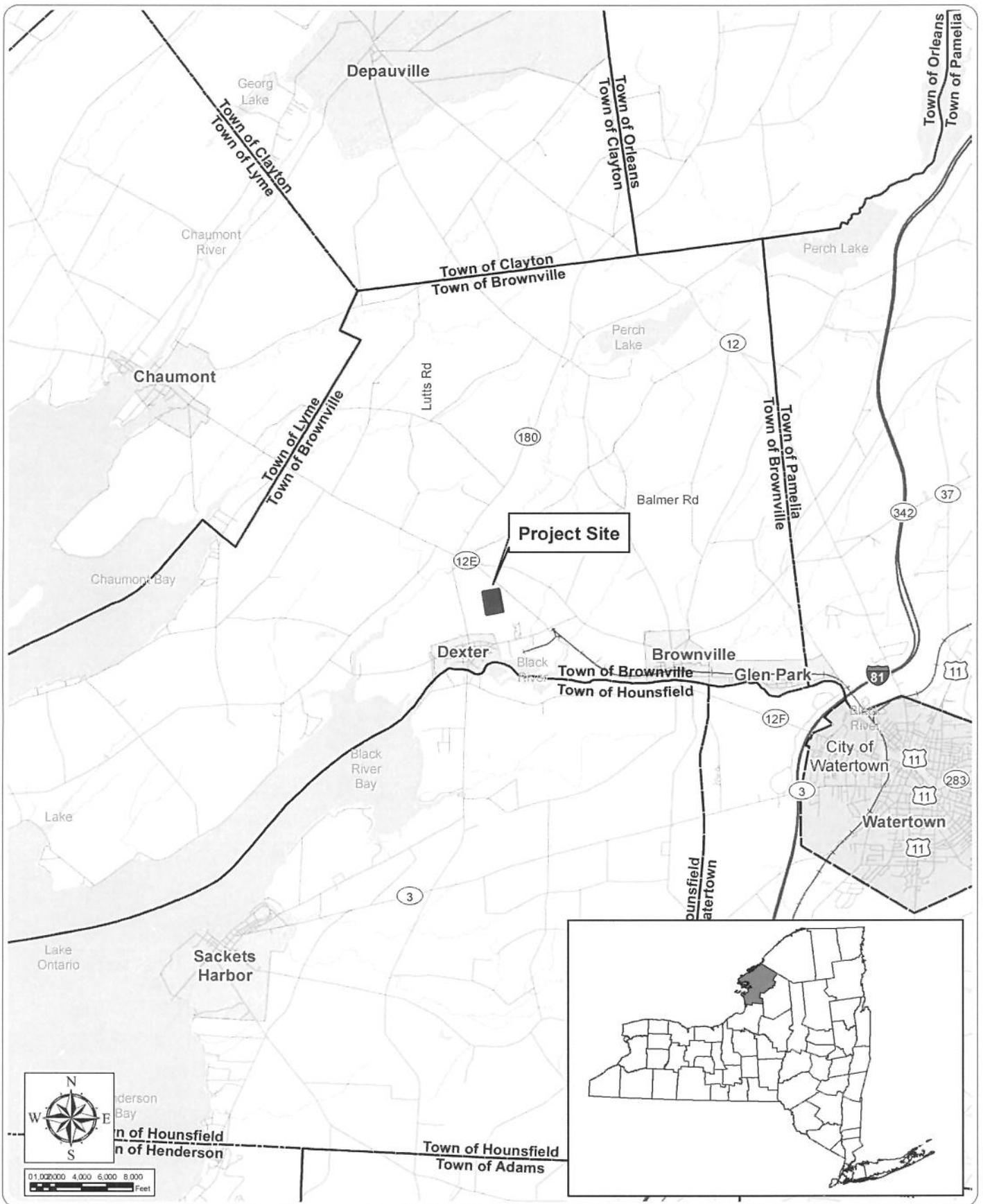
Previous determination(s). File no. and date of response letter: **2007-00034, 4D Developers, LLC. Response letter prepared by Aaron Smith and dated 9/25/2007.**

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): **Site visit dated 10/5/2012. A site visit was conducted to determine if Wetland A is in fact isolated as suggested in the delineation report submitted by edr. During my site visit, I walked the entire perimeter of Wetland A and found that water drained solely into the linear wetland that has been found to not be jurisdictional per the 9/25/2007 JD referenced above (water flows from west to east and then south through that linear wetland). The conditions downstream have changed since the 2007 JD. The linear wetland found to not be jurisdictional has recently been filled to accommodate a subdivision and a new drainage channel has just been excavated to redirect the water flowing from Wetland A [See attached Sheet 3 of 4 and aerial photo]. The new channel is still under construction and starts as a fairly wide channel, holding about one foot of water but then it narrows quickly into a small channel which dries up as it continues downstream. The channel then turns into a small swale, with no wetland vegetation and no wetland soils (Note: bedrock was found to be very close to the surface). The swale continues at a 90-degree angle toward the west, going through the housing development and collecting water from the basement of these houses through pipes placed under the lawns and directed toward the swale. The swale continues through a culvert located under the development access road, outlets on the other side and then ends into a detention basin that is currently under construction. Note: the delineator pointed out that the outlet of the culvert is where the old limestone fissure was found to occur during the 2007 site visit. We noted that bedrock is right at the surface and despite a large storm on the morning of my site visit, that area contained very little water. The detention basin did not contain any water. The basin will be equipped with a 100-year-storm outlet structure that is expected to allow water to outflow only during large storm events. In the event water outflows during these large storm events, it will flow overland downhill toward Cemetery Road. In summary, the site visit confirms the lack of surface water connection between Wetland A and a downstream water of the U.S.**

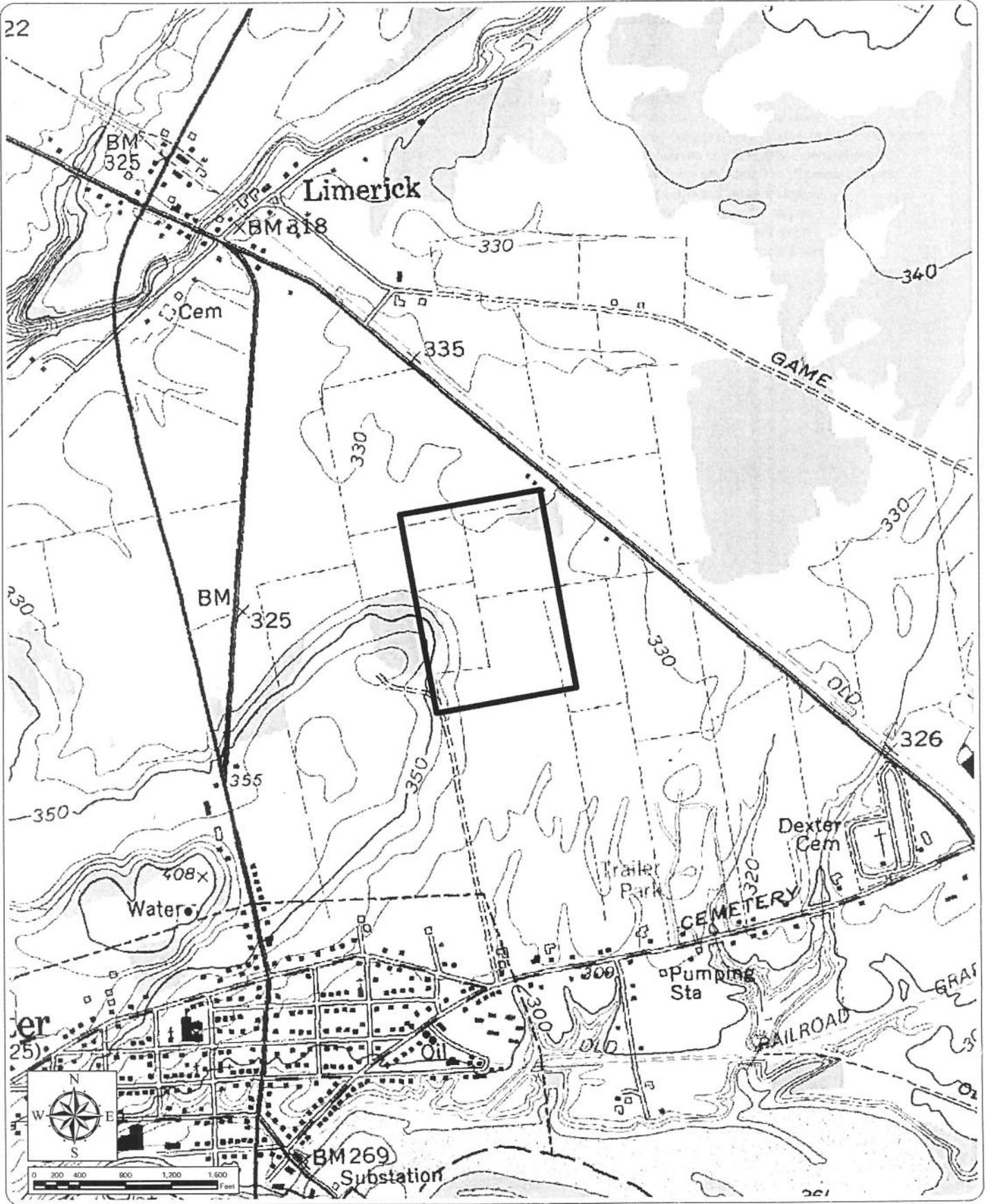
B. ADDITIONAL COMMENTS TO SUPPORT JD:



Dexter Acres Phase II
 Wetland Delineation
 Village of Dexter, Jefferson County
Figure 1: Regional Site Location
 June 2012
 Notes: Base Map: ESRI StreetMap North America, 2008.

Dexter Acre Subdivision
 D/A Processing No. 2012-00890
 Jefferson County, New York
 Quad: Dexter, NY



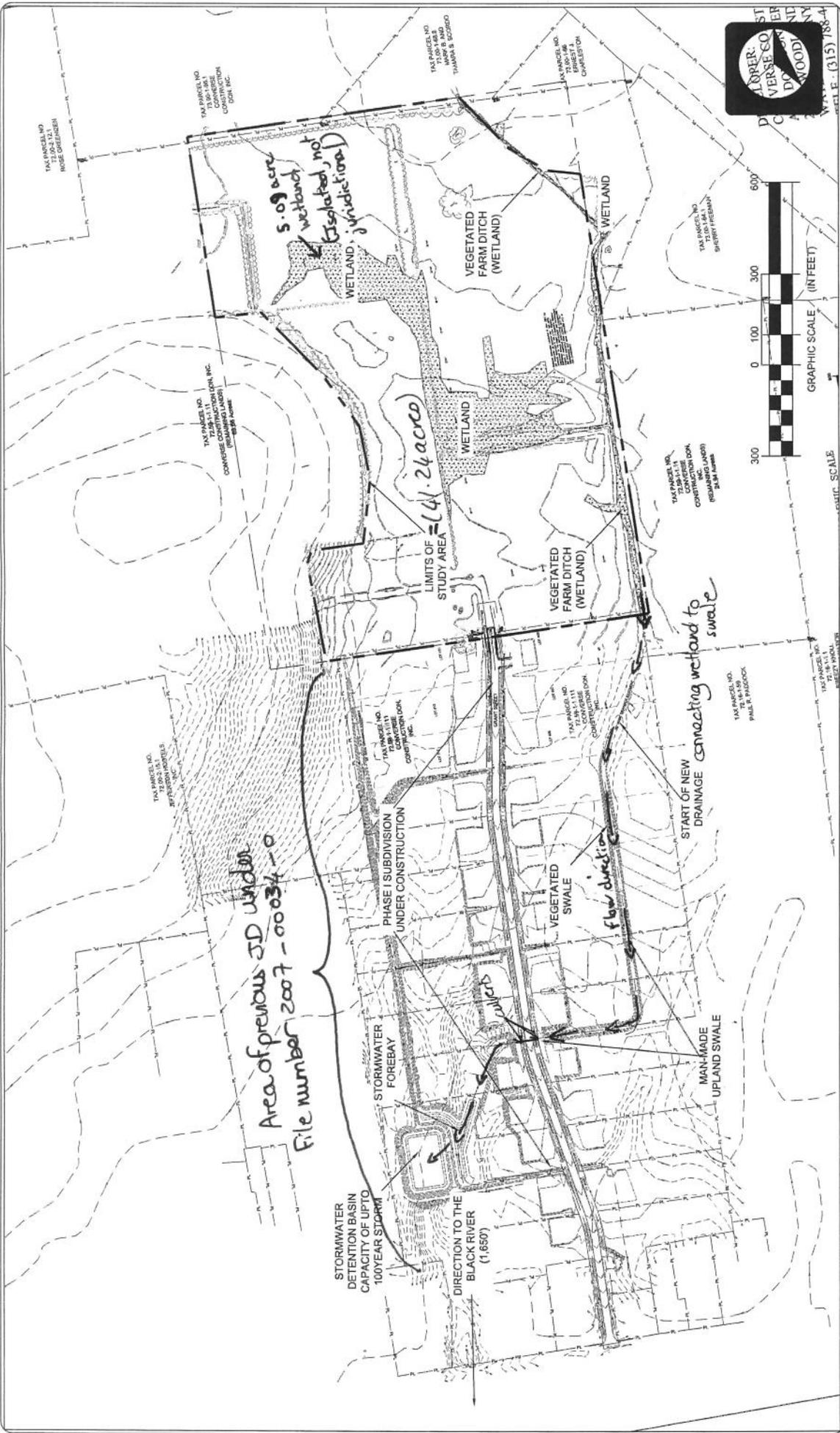


Dexter Acre Subdivision
 D/A Processing No. 2012-00890
 Jefferson County, New York
 Quad: Dexter, NY
 Sheet 2 of 4



 Project Site





PROJECT TITLE: DEXTER ACRES SUBDIVISION, PHASE 2	edr JOB NUMBER: 12045	DRAWN BY: EML	CHECKED BY: BS
DRAWING TITLE: JURISDICTIONAL DETERMINATION - OFF-SITE CONNECTIVITY MAPPING	SCALE: 1"=300'	DRAWING NUMBER: N/A	DATE: NOVEMBER 2012
Autumn Field Office Received NOV 06 2012 USACE			

edra
www.edracompass.com
Phone: 315.471.0588

DRY
WET

Dexter Acre Subdivision
 D/A Processing No. 2012-00890
 Jefferson County, New York
 Quad: Dexter, NY Sheet 3 of 4



Dexter Acre Subdivision
D/A Processing No. 2012-00890
Jefferson County, New York
Quad: Dexter, NY

Sheet 4 of 4



-  Delineated Wetland
-  Project Site

