

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): September 14, 2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Auburn Field Office; Smart Systems Tech;
File No. 2012-00136**

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **New York** County: **Ontario** Town: **Canandaigua**
Center coordinates of site (lat/long in degree decimal format): **Lat. 42.92301°N Long. -77.31266°W**
Universal Transverse Mercator: **Y= 4754859.77873986 X= 311259.87692422**
Name of nearest waterbody: **Unnamed Tributary to Padelford Brook**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Erie Canal**
Name of watershed or Hydrologic Unit Code (HUC): **4140201 – Southeastern Lake Ontario, Oswego, Seneca, NY**

- 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 APPLIES):

- Office (Desk) Determination. Date:
 Field Determination. Date(s): **May 22, 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** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

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

Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: **Wetland D: 0.52 acre PEM**

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

Elevation of established OHWM (if known):

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).

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:

Wetland C is a 0.59 acre PSS depressional wetland surrounded by upland area. There is no evidence of a hydrologic connection to downstream waters and, further, the wetland is approximately 1,860 feet from the nearest conveyance, which is the ephemeral swale that terminates in a culvert conveying flow from Wetland D (described elsewhere in this form). Note that the ephemeral conveyance is not within the project boundary. (Reference Map Sheet 3 of 5).

Wetland C is outside Department of the Army jurisdiction and does not meet the criteria for jurisdictional waters of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. does not/has not supported interstate or foreign commerce;
2. is not an interstate water/wetland;
3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) which are used or could be used for industrial purpose by industries in interstate commerce
4. is not an impoundment of water otherwise defined as WOUS under the definition;
5. is not a tributary of waters identified in paragraphs (a)(1)-(4) of this section;
6. is not a territorial sea;
7. is not wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section;
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

³ Supporting documentation is presented in Section III.F.

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

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

Note that the ephemeral swale is on the Smart Systems Tech property so evaluation was possible; however, it is outside of the project boundary. A jurisdictional determination has not been requested for the swale. The information pertaining to the swale below is for evaluation for the adjacency jurisdiction for Wetland D.

(i) General Area Conditions:

Watershed size: **3437 square miles**
Drainage area: **approximately 93 acres**
Average annual rainfall: **33.46 inches**
Average annual snowfall: **99 inches**

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **3 tributaries** before entering TNW.
- Project waters are **25-30 river** miles from TNW.
- Project waters are **10-15 aerial** miles from TNW
- Project waters are **less than 1 river** miles from RPW.
- Project waters are **less than 1 aerial** (straight) miles from RPW
- Project waters cross or serve as state boundaries. Explain: **N/A**
- Tributary stream order, if known: **First**

Identify flow route to TNW⁵: **The ephemeral swale carries flow downslope from Wetland D, along a man-made ditch along Campus Drive, the facility's entrance road, is culverted under Campus Drive and directed towards the roadside ditch along Route 332 to its confluence with an unnamed tributary associated with Wetland A, part of which occurs within the project boundary. The perennial tributary is culverted under Route 332 and flows to Padelford Brook, which flows to the Canandaigua Outlet, which flows to the Erie Canal in Lyons, New York. The Erie Canal is a Section 10 TNW.**

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

Tributary is: **Natural in the downslope areas from Wetland D**
 Artificial (man-made). Explain: **Flows to the Campus Drive roadside ditch from the natural downslope area.**
 Manipulated (man-altered). Explain:

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

Average width: **3-4 feet**
Average depth: **6-12 inches**
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

- | | | |
|---|--|-----------------------------------|
| <input checked="" 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 checked="" type="checkbox"/> Vegetation. Type/% cover: Herbaceous species have established all along the | |

downslope swale appearing as a continuation of Wetland D with established vegetation and small shrubs along the roadside portion.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **As the swale gets closer to the slope bottom, bed and bank have established and continue to widen and deepen at the roadside ditch.**

Presence of run/riffle/pool complexes. Explain: **None**

Tributary geometry: **Relatively Straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Ephemeral Flow**

Estimate average number of flow events in review area/year: **After storm events and during spring snow melt – the number of which is not known.**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Discrete and Confined**

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

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.

- Tributary has (check all that apply):
- Bed and banks
 - OHWM⁶ (check all indicators that apply):
 - clear, natural line impressed on the bank
 - changes in the character of soil
 - shelving
 - vegetation matted down, bent, or absent
 - leaf litter disturbed or washed away
 - sediment deposition
 - water staining
 - other (list):
 - Discontinuous OHWM.⁷ Explain:
- | |
|---|
| <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> sediment sorting |
| <input checked="" type="checkbox"/> scour |
| <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> abrupt change in plant community |

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: <ul style="list-style-type: none"><input type="checkbox"/> oil or scum line along shore objects<input type="checkbox"/> fine shell or debris deposits (foreshore)<input type="checkbox"/> physical markings/characteristics<input type="checkbox"/> tidal gauges<input type="checkbox"/> other (list): | <input type="checkbox"/> Mean High Water Mark indicated by: <ul style="list-style-type: none"><input type="checkbox"/> survey to available datum;<input type="checkbox"/> physical markings;<input type="checkbox"/> 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: **There was no flow at the time of the site visit. The channel bottom was saturated. The Smart Systems Tech facility is adjacent to the Centre Point Golf Course. The Route 332 corridor is subject to current development, but there are still substantially undeveloped portions along the corridor. The unnamed perennial tributary associated with Wetland A is culverted under Route 332 and it is likely that pollutants such as road salt, herbicides/pesticides from the golf course, and petroleum products enter the waterway and are subsequently carried downstream. The subject ephemeral swale collects and sustains stormwater from the facility's internal roads and parking lots with the potential of lessening pollutants entering the off-site perennial tributary.**

(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:

The ephemeral swale may serve as an aquatic resource for amphibian species and macroinvertebrates in early spring when there is sustained hydrology from snowmelt within its broader swale downslope from Wetland D and in the deeper portions of the roadside ditch. However, this service is very limited. The main function of the ditched area is to capture stormwater and direct it towards the culverted perennial tributary at Route 332.

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: **0.52 acre**

Wetland type. Explain: **PEM**

Wetland quality. Explain: **The wetland occurs in an elevated area of the property that is undeveloped.**

Dominant vegetation is cattail and reed canary grass. The quality of this wetland in terms of vegetation diversity and potential as wildlife habitat is low. Water quality is likely good because of the existing upland buffer surrounding the area.

Project wetlands cross or serve as state boundaries. Explain: **N/A**

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral**. Explain: **The conveyance of Wetland D to downstream waters is an ephemeral swale.**

Therefore, it is determined that flow from Wetland D would be ephemeral.

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.

Surface flow is: **Discrete and Confined**

Characteristics:

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

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **25-30 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: **The wetland was saturated at the time of the site visit with no standing water. No oil film or other substances were observed. The Smart Systems Tech facility is adjacent to the Centre Point Golf Course. The Route 332 corridor is subject to current development, but there are still substantially undeveloped portions along the corridor.**

Identify specific pollutants, if known: **The wetland is at a higher elevation than the golf course and there are no surrounding roads or other development at the same or higher elevation. Therefore, it is likely that any pollutants carried in surface water runoff would not reach this wetland.**

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. **Dominant vegetation is approximately 30% cattail and 50% reed canary grass**

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: **Wetland D is buffered by substantial expanses of upland**

buffer and likely serves as a limited aquatic resource for amphibian species and macroinvertebrates in early spring when there is sustained hydrology from snowmelt. It is likely that the wetland is utilized by common mammal species such as opossum, skunk, rabbits and other rodents, deer, etc. Its proximity to the large state-regulated freshwater wetland may also serve as desirable habitat for migratory birds, especially red-winged blackbirds.

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

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

Approximately **0.52 acre** in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Y

Size (in acres)

0.52

Summarize overall biological, chemical and physical functions being performed:

Physical: The wetland occurs in an elevated area of the property that is undeveloped. Dominant vegetation is cattail and reed canary grass. The quality of this wetland in terms of vegetation diversity and potential as wildlife habitat is low. Water quality is likely good because of the existing upland buffer surrounding the area.

Biological: Dominant vegetation for Wetland D is approximately 30% cattail and 50% reed canary grass. The wetland is buffered by substantial expanses of upland buffer and likely serves as a limited aquatic resource for amphibian species and macroinvertebrates in early spring when there is sustained hydrology from snowmelt. It is likely that the wetland is utilized by common mammal species such as opossum, skunk, rabbits and other rodents, deer, etc. Its proximity to the large state-regulated freshwater wetland may also serve as desirable habitat for migratory birds, especially red-winged blackbirds.

Chemical: The wetland was saturated at the time of the site visit with no standing water. No oil film or other substances were observed. The Smart Systems Tech facility is adjacent to the Centre Point Golf Course. The Route 332 corridor is subject to current development, but there are still substantially undeveloped portions along the corridor. The wetland is at a higher elevation than the golf course and there are no surrounding roads or other development at the same or higher elevation. Therefore, it is likely that any pollutants carried in surface water runoff would not reach this wetland.

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:

The ephemeral swale, in combination with its adjacent wetlands (Wetland D) does have the capacity to carry pollutants and storm waters to the Erie Canal, a Section 10 TNW. However, the ephemeral nature of the swale and relatively flat slope of the flow path has the capacity to sustain stormwater flow to facilitate filtration and dissipate energy within the swale channel, effectively reducing the amount of pollutants stormwater ultimately reaching the Erie Canal.

The ephemeral swale, in combination with its adjacent wetlands (Wetland D) does have the capacity to transfer nutrients and organic carbon supporting downstream foodwebs. Wetland D is located at a higher elevation than the swale and is buffered by expanses of upland areas. There are no developed areas or roads near the wetland so it is likely that the conveyance of surface flow from the wetland via the ephemeral swale is free from pollutants and represents an input of good water quality that may “dilute” any pollutants received by the swale from the Smart System Tech parking lots.

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): **The off-site non-RPW was described above as a reference conveyance for Wetland D.**
 - 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:

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: **0.52 acre**

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:

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.**

Identify water body and summarize rationale supporting determination:

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

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

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

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: **Wetland C is outside Department of the Army jurisdiction and does not meet the criteria for jurisdictional waters of the United States according to 33 CFR Part 328.3(a)(1-7) as described in II.B.2 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: **0.59 acre**

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: **0.59 acre**

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: **TES**
- 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: **24000 scale; Canandaigua, NY Quad.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Soil Survey for Ontario County, NY**
- National wetlands inventory map(s). Cite name: **Canandaigua, NY Quad.**
- State/Local wetland inventory map(s): **Canandaigua, NY Quad.**
- FEMA/FIRM maps: Panel No. **360598 0005 C (March 3, 1997)**
- 100-year Floodplain Elevation is: **No base flood elevation determined** (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date): **Submitted with Application**
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: