

**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): 6/2/2014**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Auburn Field Office; Shaw, James; 1993-04103**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: This approved jurisdictional determination concerns a 2.5-acre parcel (Number 88.20-1-22.3 – a/k/a the Bowman Property), located between Chestnut Ridge Road and State Route 3, in Sackets Harbor, Town of Hounsfield, Jefferson County, New York.**

State: **New York** County: **Jefferson** City: **Sackets Harbor**

Center coordinates of site (lat/long in degree decimal format): **Lat. 43.90550° N, Long. -76.12095° W.**  
Universal Transverse Mercator: **Zone 18; Y: 4861987.74; X: 409986.40**

Name of nearest waterbody: **Lake Ontario**

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

Name of watershed or Hydrologic Unit Code (HUC): **HUC 12-041501020402 – Muskellunge Creek-Frontal Lake Ontario**

**Watershed**

- 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. **Two other properties located immediately on the other side of Chestnut Ridge Road, and partially owned by Mr. Shaw have received a separate approved jurisdictional determination on April 2, 2014.**

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

- Office (Desk) Determination. Date: **4/7/2014**
- Field Determination. Date(s): **6/29/2012, 5/31/2013**

**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.

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs (**Wetland 2**)
- 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:**

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

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

Non-wetland waters  
Wetlands: **Wetland 2: 1.26 acres, PFO.**

c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual** and **NE/NC Regional Supplement**  
Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**<sup>3</sup>  
 Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: .

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

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**
  - (i) **General Area Conditions:**  
Watershed size: **40 square miles**  
Drainage area: **40 square miles**  
Average annual rainfall: **42.7 inches**

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

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

Average annual snowfall: **119.9 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 **1 (or less)** river miles from TNW.  
Project waters are **1 (or less)** river miles from RPW.  
Project waters are **1 (or less)** 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: .

Identify flow route to TNW<sup>5</sup>: **The RPW begins just west of a road culvert (Culvert 1, approx. 36 in. diameter) as it collects drainage from a hill. Observations from the road side indicate that the channel widens and enters Culvert 1 where flow is carried east under Route 3. Once the channel exits the culvert on the other side of Route 3, it continues east, away from the road, before curving north and west. Finally, the channel enters a culvert (Culvert 2) under Route 3 before outfalling into Bedford Creek, which, at this location, is part of Lake Ontario, a TNW. Characteristics of this stream channel are not described because access to the private properties through which the stream flows could not be obtained. However, it is noted that the channel is of sufficient size to require a bridge for driveway access to a home.**

Tributary stream order, if known: **First order.**

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: .  
 **Manipulated (man-altered). Explain: It appears that the seasonal RPW was modified through development of residential parcels and by NYSDOT during construction and maintenance of Route 3.**

**Tributary properties with respect to top of bank (estimate): Unknown. The tributary occurs on private property.**

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

Primary tributary substrate composition (check all that apply): **Unknown. The tributary occurs on private property.**

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

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Unknown. The tributary occurs on private property.**

Presence of run/riffle/pool complexes. Explain: **Unknown. The tributary occurs on private property.**

Tributary geometry: **Unknown. The tributary occurs on private property.**

Tributary gradient (approximate average slope): **Unknown. The tributary occurs on private property.**

(c) Flow:

Tributary provides for: **Seasonal flow**  
Estimate average number of flow events in review area/year: **Unknown**  
Describe flow regime: **Unknown**  
Other information on duration and volume: **Unknown**

Surface flow is: **Confined.** Characteristics: **Observations from the roadside where the channel begins indicate that flow is confined to the channel.**

Subsurface flow: **Unknown.** Explain findings: .  
 Dye (or other) test performed: .

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

Tributary has (check all that apply): **Limited observations from the road side.**

- Bed and banks**
- OHWM<sup>6</sup> (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.<sup>7</sup> Explain: .
- the presence of litter and debris
- destruction of terrestrial vegetation
- the presence of wrack line
- sediment sorting
- scour
- multiple observed or predicted flow events
- abrupt change in plant community

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):
- 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: **This tributary is outside of the review area; however, given its proximity to Route 3, it is likely that pollutants such as road salt, petroleum products, herbicides from the road maintenance and adjacent lawns, etc. enter the waterway.**

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

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: Aerial photographs clearly indicate that the lower portion of the RPW, located past Culvert 2, is surrounded by wetland vegetation from Campbell Marsh.**
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: **While the upper reach of the channel may not support fish/spawning areas, the lower portion of the channel, past Culvert 2, likely does given its proximity to Campbell Marsh, a known productive fish spawning and nursery area.**
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. **This channel flows through a forested area and likely provides breeding habitat for amphibian species (frogs, toads, salamanders) in the upper reach, migratory birds and mammal species typical to the area.**

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: **1.26 acres (on-site); approximately 1.86 acres total on-site and off-site.**

Wetland type. PFO Explain: **Wetland 2, within the subject parcel, is a forested wetland dominated by red maple and green ash. Understory vegetation is dominated by cinnamon fern and royal fern. Based on aerial views and observations from the road, the wetland extends off site to the north and changes to herbaceous cover type.**

Wetland quality. Explain: **Wetland 2, within the subject parcel, is an undeveloped, mostly undisturbed forested wetland that is dominated by desirable, native plant species. The only area that contains invasive species, such as common reed and reed canary grass, is the area located along State Route 3.**

Project wetlands cross or serve as state boundaries. **No.**

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

<sup>7</sup>Ibid.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: **on site observations indicate that flow from Wetland 2 is likely ephemeral. Observations include flow present during snow melt and storm events. In addition, the outflow channel located on the north side of the private lawn described above is vegetated and not scoured. Data collected during the delineation indicate that not all areas in the wetland had standing water; however, during storm events, this wetland receives water from State Route 3 and adjacent areas as evidenced by a drainage channel located south of the wetland and directing flow toward the wetland and a culvert located under State Route 3 and also carrying water to the wetland. It is likely that water received from these two locations flows toward the Non-TNW through the pathway described in Section III B. 1. (ii)(a).**

Surface flow is: **unknown**

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. .

Ecological connection.

Separated by berm/barrier.

**Explain: Drainage from Wetland 2 is contained within the off-site wetland that continues north on a private property containing a home and lawn area. Access to that private property was not possible at the time of the site visit. Observations from the road indicate that the obvious wetland boundary stops where the lawn is located due to the change in observable vegetation from the roadside. It appears that some time in the past, flow from this wetland was disturbed by the placement of fill for the creation of the lawn area associated with the home. However, there is evidence that overland flow still occurs over the lawn as evidenced by saturated patches in the lawn and the presence of common reed and reed canary grass in the wet patches. Several aerial views show a swale within the lawn area. It is unknown the extent to which the wetland would extend within the lawn area if vegetation were not mowed and soils could be examined. Flow likely continues through the swale and discharges into a vegetated channel that begins just north of the lawn area, west of Culvert 1 (see attached, labeled, aerial views) and represents the beginning of the Non-TNW. Based on aerial views, it appears that the distance between the end of the wetland and the channel that begins west of Culvert 1 is approximately 130-150 feet. Wetland 2 likely provides excellent habitat for woodland salamanders and a variety of frog species, as well as a variety of song birds. It is likely that some of these species use the Non-TNW as well.**

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

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

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Wetland 2 is located within the Muskellunge Creek-Frontal Lake Ontario watershed (HUC 12-041501020402), which is approximately 40 square miles. Much of the land in the area is undeveloped forest, open field and agricultural land. However, State Route 3, which runs along Lake Ontario at that location, has generated the development of cottages, campgrounds, permanent residences, a golf course and boating facilities in the watershed. Wetland 2 collects water from State Route 3 and its surrounding area, likely intercepting road salt, petroleum products, herbicides from the road maintenance and adjacent lawn, etc. This is evidenced by the lower quality vegetation (common reed and reed canary grass) found in the portion of the Wetland that is located along Route 3. The remaining on site wetland area is a mostly undisturbed forested wetland that is dominated by desirable, native plant species such as red maple, green ash, cinnamon fern and royal fern.**

Identify specific pollutants, if known: **See above.**

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

Riparian buffer. Characteristics (type, average width): .

- Vegetation type/percent cover. Explain: **is a forested wetland dominated by red maple and green ash. Understory vegetation is dominated by cinnamon fern and royal fern.**
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: **Most of the properties surrounding Wetland 2 have been developed with cottages and permanent residences whereas this wooded parcel has remained undeveloped and mostly undisturbed. There is also a 7.28-acre forested wetland nested within the dunes and which abuts Lake Ontario, immediately west of Wetland 2. Given its proximity to Lake Ontario, the large forested wetland that abuts Lake Ontario, and Campbell Marsh to the north, Wetland 2 is part of a wetland complex that provides excellent habitat for woodland salamanders, frogs as well as many types of birds, both for breeding and as important stopover habitat for migrating birds. In addition, this PFO wetland likely provides refugia and food sources for typical mammal species including white tail deer, porcupine, raccoon, skunk, opossum, rabbit, bats, etc.**

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

All wetland(s) being considered in the cumulative analysis: 2

Approximately 76.26 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>
Wetland 2      N	approximately 1.86 acres (on site and off site) PFO/EM
Campbell Marsh   Y	approximately 75 acres      PFO/EM

Summarize overall biological, chemical and physical functions being performed:

**Biological:** Given their proximity to Lake Ontario, these wetlands provide important habitat for birds, both for breeding and as important stopover habitat for migrating birds. The wetlands also provide life cycle habitat for woodland salamanders, frogs, toad, snakes, turtles, as well as many types of typical mammal species including white tail deer, porcupine, raccoon, skunk, opossum, rabbit, bats, etc.

Campbell Marsh has been designated as one of New York State’s Significant Coastal Fish and Wildlife Habitat due to its unusual diversity of plant communities, which provides valuable habitats for a variety of fish such as brown bullhead, white sucker, yellow perch, largemouth bass, northern pike, rock bass, pumpkinseed and a small run of steelhead.

**Chemical:** These wetlands are located within a fairly small watershed that is characterized by farmland, permanent and seasonal residences, a golf course and boating facilities. Due to their proximity to State Route 3, both likely receive runoff that contains road salt, petroleum products, herbicides, etc. Wetland 2 likely filtrates some of the runoff that is collected from Route 3 before discharging water into the Non-TWN. It is also likely that the Non-TNW itself collects some of the road runoff and discharges it into Campbell Marsh.

**Physical:** Wetland 2 is a 1.26 acre portion of a larger wetland that continues north and with ephemeral overland flow (through the lawn area) to the Non-TNW which then flows into Campbell Marsh/Butler Creek, which is a Section 10 tributary to Lake Ontario.

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: **Wetland 2 is 1.86 acre in size (off site and on site). The wetland receives water from the surrounding areas, including from one culvert located under State Route 3 and from a drainage channel located south of the property. Wetland 2 likely serves as a trap and filter for pollutants such as road salt, petroleum products, herbicides from the road maintenance and adjacent lawn, etc. before the water moves downstream and ultimately discharges into Lake Ontario (a TNW). The wetland improves water quality and serves to store flood waters. Wetland 2 and the other adjacent wetland (Campbell Marsh) serve together to provide for the functions referenced in the other sections above (water quality, flood storage, wildlife habitat, food source) to Lake Ontario. The tributary flows through a forested landscape and, along with its adjacent wetlands, it has the capacity to transfer nutrients and organic carbon that supports Lake Ontario's food web. Furthermore, Wetland 2 contributes water through the RPW into Campbell Marsh which is listed as a significant coastal fish and wildlife habitat due to its unusual plant diversity and its significant contribution to local recreational fishing, tourism and scientific research.**

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

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

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

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

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: **Wetland 2 - 1.26 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.<sup>9</sup>**

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

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

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

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

**Identify water body and summarize rationale supporting determination:**            .

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

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

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

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:

**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: .
- Other: (explain, if not covered above): .

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

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

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

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

**SECTION IV: DATA SOURCES.**

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Sandra Bonanno.**
- 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, Sackets Harbor (2013) Quadrangle. The maps depicts the review area as green space. No wetlands or streams are depicted within the review area. While the quadrangles do not depict the RPW discussed in this JD, the topographic lines on the other side of Route 3 suggest flow would be directed toward Bedford Creek/Campbell Marsh. The topographic map also shows that the location where the RPW enters the Marsh is within the same elevation as Lake Ontario.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at <http://websoilsurvey.nrcs.usda.gov/> (accessed 1/3/2014). The map depicts two soils map units within the review area: Minoa fine sandy loam (Mv) and Windsor loamy fine sand, 0 to 8 percent slopes (WoB). Mv is classified as predominantly non hydric and WoB is classified as non hydric.**
- National wetlands inventory map(s). Cite name: **obtained on USFWS Website, FWS Wetlands Mapper, at <http://107.20.228.18/Wetlands/WetlandsMapper.html>, on 3/13/2013. The NWI map does not depict any wetlands in the review area. The map depicts a large PEM/PFO wetland complex starting at approximately 0.2 miles from Wetland 2, corresponding to Campbell Marsh, an approximate 75-acre wetland that has developed around Bedford Creek where it empties into**

**Henderson Bay (Lake Ontario).** This is the wetland/stream complex which is believed to receive water from Wetland 2. The map also depicts a small palustrine emergent wetland near Lake Ontario.

State/Local wetland inventory map(s): **Environmental Resource Mapper.** There are no state-regulated wetlands in the review area. The closest state-regulated wetland (Wetland S-10) is located approximately 0.2 miles north of the review area and corresponds to Campbell Marsh.

FEMA/FIRM maps: **FIRM Map, Town of Hounsfield, New York, Jefferson County, Panel 30 of 35.**

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date): **1994-99, 2003, 2006 and 2011 orthoimagery obtained on Google Earth Pro.** The aeriels show the site is wooded and is undeveloped. The imagery dated 3/31/2006 provides the better view. The 2006 aerial view shows the drainage channel south of the review area that carries flow from State Route 3 into Wetland 2. The lighter vegetation immediately north of the review area represents the off-site wetland that continues until it is interrupted by the lawn area. The tree cover on the eastern side prevents the RPW from being seen; however, the channel clearly appears once it traverses Culvert 2 before entering Campbell Marsh. Another large wetland is shown west of Chestnut Ridge Road.

or  Other (Name & Date): **Photos provided with the delineation report.**

**Photos dated 7/4/2013 and 3/31/2014 provided by Mr. and Ms. Shaw to document the**

**flow pathway from Wetland B to Campbell Marsh.**

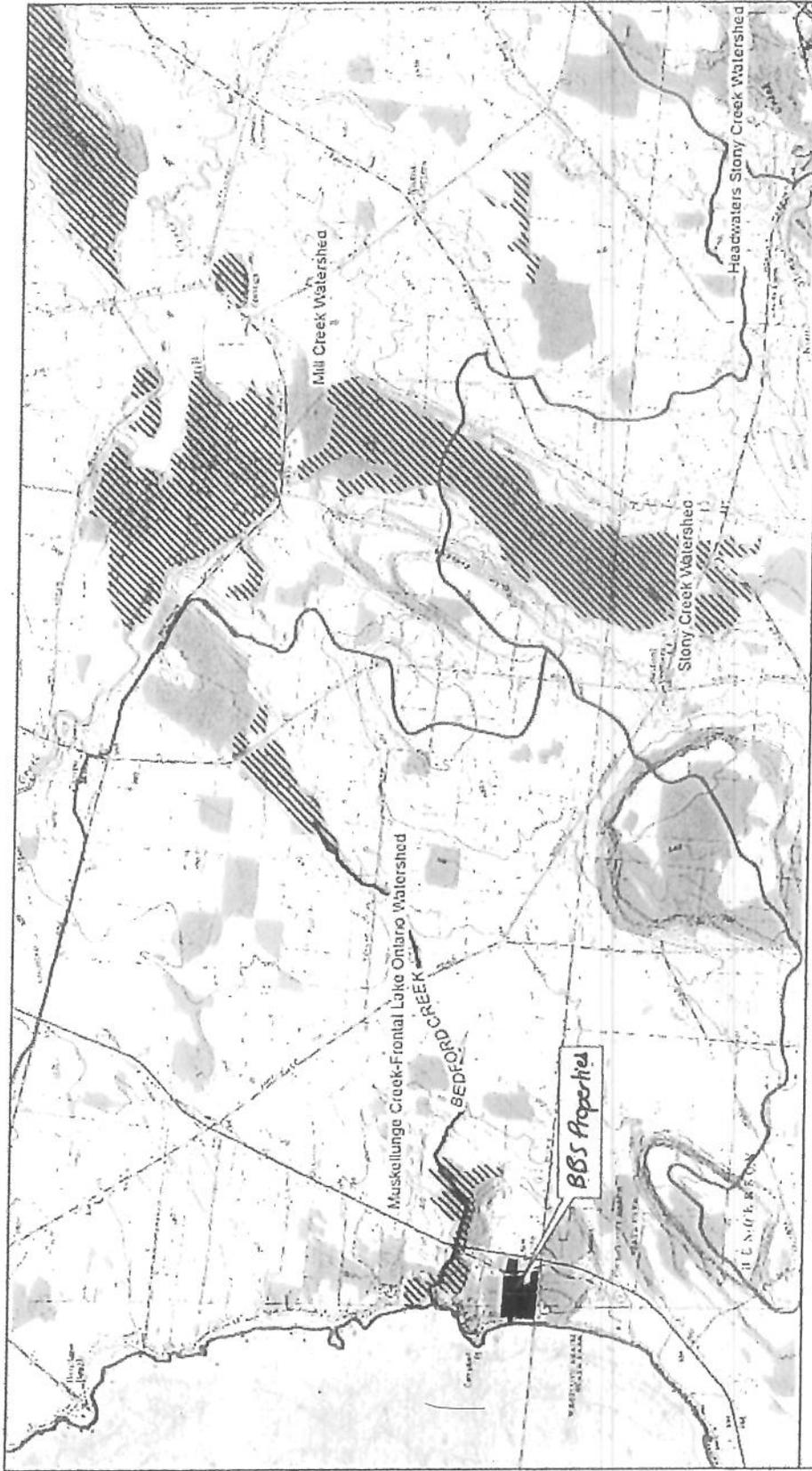
Previous determination(s). File no. and date of response letter: **This file number contains one other approved jurisdictional determination dated 4/2/2014 for two adjacent parcels (parcel number 88.20-1-22.1, a/k/a Butler Property, abutting Westcott Beach State Park and west of Chestnut Ridge Road and parcel number 88.20-1-22.2, a/k/a Snyder Property, abutting Lake Ontario, in Sackets Harbor, Town of Hounsfield, Jefferson County, New York).**

Applicable/supporting case law: .

Applicable/supporting scientific literature: .

Other information (please specify): - **Site visits dated June 29, 2012 and May 31, 2013 – see site visit notes in the record.**  
- **New York State Department of State Coastal Fish and Wildlife Habitat Rating Form for Campbell Marsh – available in the record.**  
- **Bush, W.-D.N., Osborn, R.G. and G.T. Auble. 1990. The Effects of Water Levels on Two Lake Ontario Wetlands. U.S. Fish and Wildlife Service. NERC. 0114:92-96.**

**B. ADDITIONAL COMMENTS TO SUPPORT JD: The RPW included in the above analysis is located outside of the review area; therefore, it has not been included in the Determination of Jurisdictional Findings.**



Data sources: NYS GIS Clearinghouse,  
Jefferson County Image Mate Online, USFWS, USGS



1:45,000

0 0.5 1 Miles

**Property name**

BUTLER BOWMAN SNYDER (BBS)

**Map title**

DEC-regulated wetlands

**Property Location**

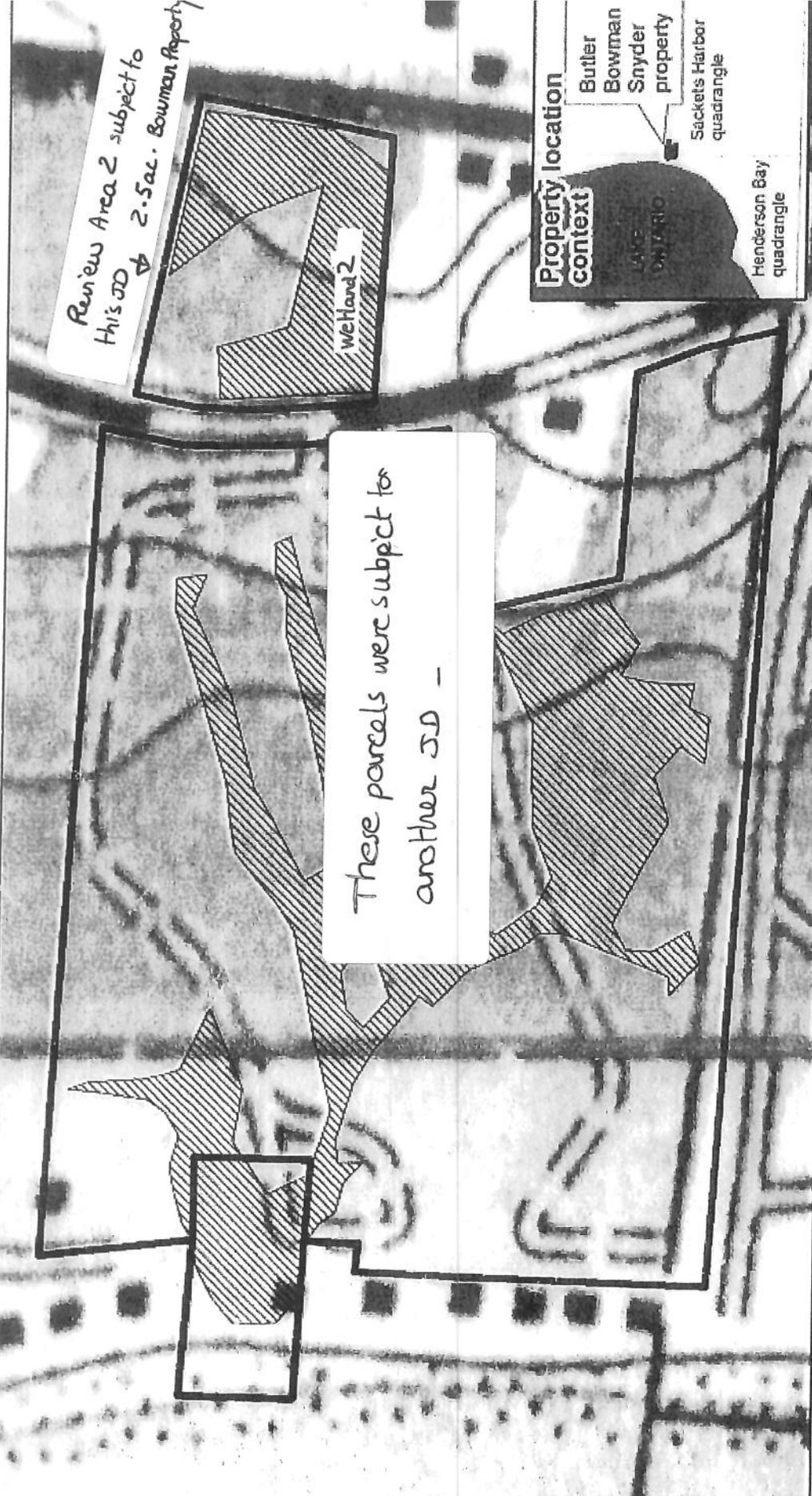
Town of Hounsfield  
Jefferson County, NY

**BBS**

- Shaw property boundary (24.53 acres, total)
- Watershed boundaries (HUC12)
- /// DEC-regulated wetlands

Shaw, James  
D/A Processing No. 1993-04103  
Jefferson County, New York  
Sackets Harbor and Henderson Bay, NY  
Sheet 1 of 2





1:2,400



Data sources: NYS GIS Clearinghouse,  
Jefferson County Image Mate Online, USGS

**Property name**

BUTLER BOWMAN SNYDER

**Map title**

Verified Wetland Boundaries  
USGS topographic map, Sackets Harbor and  
Henderson Bay quadrangles

Butler Bowman Snyder property (24.53 acres)

Wetland 2 (1-26 acres, total)  
within Review Area 2

**Property Location**

Town of Hounsfield  
Jefferson County, NY

*This Approved SD is limited to Review Area 2,  
The Bowman property, 2.5 acres*

Shaw, James

D/A Processing No. 1993-04103

Jefferson County, New York

Sackets Harbor and Henderson Bay, NY

Sheet 2 of 2



**Property location context**

Butler  
Bowman  
Snyder  
property

Sackets Harbor  
quadrangle

Henderson Bay  
quadrangle