

**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): December 18, 2015**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Buffalo District, File no. 2015-01133

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: New York County/parish/borough: Onondaga Town of Otisco  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.88579 °, Long. -76.29698 °  
Universal Transverse Mercator: Zone 18

Name of nearest waterbody: Otisco Lake

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

Name of watershed or Hydrologic Unit Code (HUC): 04140201

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

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

- Office (Desk) Determination. Date: December 2, 2015
- Field Determination. Date(s): 22T, 22T

**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: 22T

**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):<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
- 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: 22T linear feet: 22T width (ft) and/or 22T acres.

Wetlands: 22T acres.

**c. Limits (boundaries) of jurisdiction based on: 27T**

Elevation of established OHWM (if known): 22T

**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: 27T

<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).

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

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

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

##### 1. TNW

Identify TNW: Otisco Lake

Summarize rationale supporting determination:

1. The physical characteristics, including its depth and size, indicate that the waterbody has the capacity to be navigated by watercraft.
  - i. Otisco Lake is approximately 5.4 miles long, maximum width of .75 miles, and maximum depth of 76 feet. Has an area of 2,200 acres. A causeway is located at the southern end of the lake which is more shallow area and is more turbid than the rest of the lake; the causeway has an opening for recreational traffic to navigate through.
2. The waterbody is currently used for activities involving navigation and interstate commerce, such as recreational commercial navigation.
  - i. NYSDEC stocks Otisco Lake annually with about 3,500 brown trout, 45,000 walleye and 7,500 tiger musky. There is an annual fishing derby held on the lake which attract local and out-of-state anglers.
  - ii. There are 3 public boat launch sites, 2 commercial and 1 maintained by the NYSDEC.
  - iii. Otisco Lake Marina is located at 1697 Otisco Valley Rd. in the village of Marietta.
  - iv. Otisco Lake Park is an Onondaga County park located on the lake.
  - v. The lake serves as a water supply for much of Metropolitan Syracuse (supplier is the Onondaga County Water Authority (OCWA)).
  - vi. In 1869 construction of a dam on the northern end of the lake at Nine Mile Creek raised the water level by 9 feet in order to store water for use by the Erie Canal. In 1908, water levels were raised another 4 feet for use as water supply for the City of Syracuse and surrounding neighborhoods.

Conclusion: Collectively, the above discussed factors demonstrate that Otisco Lake is navigable-in-fact, resulting in its designation as a TNW for purposes of CWA jurisdictional determinations and currently used in interstate or foreign commerce associated with commercial recreational navigation activities. This determination establishes Corps jurisdiction over this water body as a TNW under Section 404 of the Clean Water Act, pursuant to 33 C.F.R. Part 328.3(a)(1).

##### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 22T

#### 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: 22T 22T

Drainage area: 22T 22T

Average annual rainfall: 22T inches

Average annual snowfall: 22T inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

- Tributary flows directly into TNW.

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

Tributary flows through 22T tributaries before entering TNW.

Project waters are 22T river miles from TNW.

Project waters are 22T river miles from RPW.

Project waters are 22T aerial (straight) miles from TNW.

Project waters are 22T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 22T

Identify flow route to TNW<sup>5</sup>: 22T

Tributary stream order, if known: 22T

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

**Tributary is:**  Natural

Artificial (man-made). Explain: 22T

Manipulated (man-altered). Explain: 22T

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

Average width: 22T feet

Average depth: 22T feet

Average side slopes: 22T

**Primary tributary substrate composition (check all that apply):**

Silts  Sands  Concrete

Cobbles  Gravel  Muck

Bedrock  Vegetation. Type/% cover: 22T

Other. Explain: 22T

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 22T

Presence of run/riffle/pool complexes. Explain: 22T

Tributary geometry: 22T

Tributary gradient (approximate average slope): 22T%

(c) Flow:

Tributary provides for: 22T

Estimate average number of flow events in review area/year: 22T

Describe flow regime: 22T

Other information on duration and volume: 22T

Surface flow is: 22T Characteristics: 22T

Subsurface flow: 22T Explain findings: 22T

Dye (or other) test performed: 22T

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (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 22T

other (list): 22T

Discontinuous OHWM.<sup>7</sup> Explain: 22T

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

<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.

<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.

other (list): 22T

**(iii) Chemical Characteristics:**

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

Explain: 22T

Identify specific pollutants, if known: 22T

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

Riparian corridor. Characteristics (type, average width): 22T

Wetland fringe. Characteristics: 22T

Habitat for:

Federally Listed species. Explain findings: 22T

Fish/spawn areas. Explain findings: 22T

Other environmentally-sensitive species. Explain findings: 22T

Aquatic/wildlife diversity. Explain findings: 22T

**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: 22T acres

Wetland type. Explain: 22T

Wetland quality. Explain: 22T

Project wetlands cross or serve as state boundaries. Explain: 22T

**(b) General Flow Relationship with Non-TNW:**

Flow is: 22T Explain: 22T

Surface flow is: 22T

Characteristics: 22T

Subsurface flow: 22T Explain findings: 22T

Dye (or other) test performed: 22T

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: 22T

Ecological connection. Explain: 22T

Separated by berm/barrier. Explain: 22T

**(d) Proximity (Relationship) to TNW**

Project wetlands are 22T river miles from TNW.

Project waters are 22T aerial (straight) miles from TNW.

Flow is from: 22T

Estimate approximate location of wetland as within the 22T 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: 22T

Identify specific pollutants, if known: 22T

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

Riparian buffer. Characteristics (type, average width): 22T

Vegetation type/percent cover. Explain: 22T

Habitat for:

Federally Listed species. Explain findings: 22T

Fish/spawn areas. Explain findings: 22T

Other environmentally-sensitive species. Explain findings: 22T

Aquatic/wildlife diversity. Explain findings: 22T

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

All wetland(s) being considered in the cumulative analysis: 22T

Approximately (22T) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)  
22T

Size (in acres)  
22T

Directly abuts? (Y/N)  
22T

Size (in acres)  
22T

22T	22T	22T	22T
22T	22T	22T	22T
22T	22T	22T	22T

Summarize overall biological, chemical and physical functions being performed: 22T

### 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: 22T
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: 22T
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: 22T

### 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: 60 linear feet 22T width (ft), Or, 22T acres.
  - Wetlands adjacent to TNWs: 22T 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: 22T.
  - 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: 22T.

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

  - Tributary waters: 27T linear feet 27T width (ft).
  - Other non-wetland waters: 27T acres.

Identify type(s) of waters: 27T
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: 27T linear feet 27T width (ft).
  - Other non-wetland waters: 27T acres.

Identify type(s) of waters: 27T
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
  - Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

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

- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: 22T
- 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: 27T

Provide acreage estimates for jurisdictional wetlands in the review area: 27T 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: 22T 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: 27T 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: 22T
- Other factors. Explain: 22T

**Identify water body and summarize rationale supporting determination: 22T**

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

- Tributary waters: 27T linear feet 27T width (ft).
- Other non-wetland waters: 27T acres.  
Identify type(s) of waters: 27T
- Wetlands: 27T acres.

<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.

**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: 27T
- Other: (explain, if not covered above): 27T

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): 27T linear feet 27T width (ft).
- Lakes/ponds: 27T acres.
- Other non-wetland waters: 27T acres. List type of aquatic resource: 27T.
- Wetlands: 27T 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): 27T linear feet 27T width (ft).
- Lakes/ponds: 27T acres.
- Other non-wetland waters: 27T acres. List type of aquatic resource: 27T.
- Wetlands: 27T 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: 22T
- 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: 22T
- Corps navigable waters' study: 22T
- U.S. Geological Survey Hydrologic Atlas: 22T
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Marcellus Quad. Project is located on Otisco Lake, the eastern most Finger Lake.
- USDA Natural Resources Conservation Service Soil Survey. Citation: 22T
- National wetlands inventory map(s). Cite name: 22T
- State/Local wetland inventory map(s): 22T
- FEMA/FIRM maps: 22T
- 100-year Floodplain Elevation is: 22T (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): 22T  
or  Other (Name & Date): 22T
- Previous determination(s). File no. and date of response letter: 22T
- Applicable/supporting case law: 22T
- Applicable/supporting scientific literature: 22T
- Other information (please specify):
  - <http://www.dec.ny.gov/outdoor/36552.html>
  - <http://nyfalls.com/lakes/otisco.html>
  - [http://www.ourlake.org/html/otisco\\_lake1.html](http://www.ourlake.org/html/otisco_lake1.html)

**B. ADDITIONAL COMMENTS TO SUPPORT JD: 22T**