

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 23, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District; Auburn Field Office; Timothy Properties, LLC;
File No. 2014-00921

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Timothy Lane
State: New York **County:** Wayne **City:** Ontario

Center coordinates of site (lat/long in degree decimal format): **Lat. 43.22733 Long. -77.36328**
Universal Transverse Mercator: **Y= 4788771.72985252 X=308081.401227668**
Name of nearest waterbody: **Four Mile Creek**

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

Name of watershed or Hydrologic Unit Code (HUC): **04140101**

- 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. **The aquatic resources shown in Review Area 2 (Pond C, Pond E, Ditch A,) are processed as a Preliminary JD and are not subject to review under this Approved JD.**

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

- Office (Desk) Determination. **Date: November 2, 2015**
- Field Determination. **Date: June 12, 2015**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

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

- Waters subject to the ebb and flow of the tide.
 - Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
- Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **ARE NO** “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

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

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

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

Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: acres.

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

Elevation of established OHWM (if known):

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:

Wetlands A and B, and Ditch B are outside Department of the Army jurisdiction as they do not meet the criteria for a jurisdictional water of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. do 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;

Review Area 1

Wetland A – 0.13 acre (PEM) - Isolated: This wetland formed in an excavated depression with mounded soil on the east side. The area has been used as a dumping ground for asphalt, concrete, and other material; and as a result, trapped precipitation formed a wetland. This feature is within soil mapped as Appleton loam, which has a hydric soil rating of 10. The western edge of the wetland is approximately 50 feet from Ditch A, however, the elevation is higher on the west and it is not likely that the volume of water captured in this wetland would raise high enough to reach Ditch A. The wetland is approximately 300 feet from Ditch B on the east, but topography indicates that surface flow would be to the north.

The northern edge of the wetland is approximately 650 feet from Ponds C and E. There is no evidence that overland flow from the wetland would reach either Pond. Topography indicates that surface flow would travel over Ontario gravelly loam and Hilton gravelly loam, both of which have a hydric rating of 0. Therefore, due to the well-drained soil characteristics, surface water would readily percolate into the ground. Since no surface water connection to downstream waters was identified, and due to topography and distances to possible downstream conveyances, the presence of a shallow subsurface flow connection to Ditch A, Ditch B, or Ponds C or E is very unlikely. Therefore, Wetland A is determined to be isolated.

Wetland B – 0.11 acre (PEM) - Isolated: This wetland formed in a shallow, excavated depression with precipitation as its only hydrologic source. This feature is within soil mapped as Appleton loam, which has a hydric soil rating of 10. The western edge of the wetland is approximately 150 feet from Ditch A, however, the elevation is higher on the west, and it is not likely that the volume of water captured in this wetland would raise high enough to reach the Ditch. The wetland is approximately 250 feet from Ditch B on the east, but topography indicates that surface flow would be to the north.

The northern edge of the wetland is approximately 415 feet from Ponds C and E. There is no evidence that overland flow from the Wetland would reach these Ponds. Topography indicates that surface flow would travel over Ontario gravelly loam and Hilton gravelly loam, both of which have a hydric rating of zero (0). Therefore, due to the well-drained soil characteristics, surface water would readily percolate into the ground. Since no surface water connection to downstream waters was identified and due to topography and distances to possible downstream conveyances, the presence of a shallow subsurface flow connection to Ditch A, Ditch B, or Ponds C and E is very unlikely. Therefore, Wetland B is determined to be isolated.

Ditch B – 927 linear feet (ephemeral flow): This ditch was excavated in Lockport and Brockport silty clay loam, which has an eight (8) percent hydric soil rating and extends to Pond C (iron-ore mining pit) through land identified as ‘cut and fill’ with a 15-percent hydric soil rating. The ditch is entirely within the old field and does not receive any upstream waters. Several on-site observations by the consultant suggest that flow only occurs after rain events. Although the ditch has been excavated to a depth of approximately 3-4 feet, it does not appear to intersect groundwater. Therefore, this ditch is determined to be an upland conveyance and not jurisdictional under the Clean Water Act.

Note that the aquatic resources identified in Review Area 2 (Pond C, Pond E, Ditch A) as shown on the delineation map have been processed by a Preliminary JD and are not subject to review under this Approved JD.

³ 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:
Summarize rationale supporting determination:
2. **Wetland adjacent to TNW**
Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW
- Project waters are **Pick List** river miles from TNW
- Project waters are **Pick List** river miles from RPW
- Project waters are **Pick List** aerial (straight) miles from TNW
- Project waters are **Pick List** aerial (straight) miles from RPW
- Project waters cross or serve as state boundaries. Explain:
Identify flow route to TNW⁵:
Tributary stream order, if known:

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

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

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

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

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

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

Primary tributary substrate composition (check all that apply):

- | | | |
|----------------------------------|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |

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

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

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

- Dye (or other) test performed:
 Tributary has (check all that apply):
- | | | |
|--|---|---|
| <input type="checkbox"/> Bed and banks | <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> sediment deposition | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> water staining | <input type="checkbox"/> other (list): | <input type="checkbox"/> scour |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | | <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 checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |

(iii) **Chemical Characteristics:**

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

Identify specific pollutants, if known:

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

- Riparian corridor. Characteristics (type, average width):
 Wetland fringe. Characteristics:
 Habitat for:
 Federally Listed species. Explain findings:
 Fish/spawn areas. Explain findings:
 Other environmentally-sensitive species. Explain findings:
 Aquatic/wildlife diversity. Explain findings:

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

⁷Ibid.

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:
 Wetland size: acres
 Wetland type. Explain:
 Wetland quality. Explain:
 Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:
 Surface flow is: **Pick List**
 Characteristics:
 Subsurface flow: **Pick List**. Explain findings:
 Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting
 Not directly abutting
 Discrete wetland hydrologic connection. Explain:
 Ecological connection. Explain:
 Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.
 Project waters are **Pick List** aerial (straight) miles from TNW.
 Flow is from: **Pick List**.
 Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
 Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width):
 Vegetation type/percent cover. Explain:
 Habitat for:
 Federally Listed species. Explain findings:
 Fish/spawn areas. Explain findings:
 Other environmentally-sensitive species. Explain findings:
 Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **Pick List**
 Approximately () acres in total are being considered in the cumulative analysis.
 For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
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Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

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

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

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

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

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

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:
Provide estimates for jurisdictional waters in the review area (check all that apply):
 Tributary waters: linear feet width (ft).
3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**
 Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide estimates for jurisdictional waters within the review area (check all that apply):
 Tributary waters: linear feet width (ft).
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
 Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
 Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
Provide acreage estimates for jurisdictional wetlands in the review area: acres.

⁸See Footnote # 3.

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

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

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

7. Impoundments of jurisdictional waters.⁹

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

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

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

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

Identify water body and summarize rationale supporting determination:

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

- 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: .

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: Ditch B – ephemeral – 927 linear feet
 Wetlands:
Wetland A: PEM 0.13 acre
Wetland B: PEM 0.11 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: acres.

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

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

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: **BME Associates**
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. **Office concurs with the revised delineation report dated November, 2015. The delineation reports submitted September 12, 2014 and June 29, 2015, have been removed from the file and replaced with the revised November, 2015 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: **Scale: 24000; Ontario, NY Quad. This map clearly shows the excavated iron ore pits and their connection to downstream waters to the north. The topographic contours show that there is only a 4-foot difference in elevation from south to north across the site.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Websoilsurvey**
Soils on this site were very interesting. Regardless of the mapped soil type, the soils were bright red due to the concentration of iron on the site– exhibiting the red parent material indicator. Soils identified on the site included:

	<u>Hydric Soil Rating</u>
(Ap) Appleton loam, 0 to 5 percent slopes	10%
(CFL) Cut and Fill land	15%
(HoA) Hilton gravelly loam, bedrock substratum, 0 to 3 percent slopes	0%
(LoA) Lockport and Brockport silty clay loams, 0 to 3 percent slopes	8%
(OnB) Ontario gravelly loam, 3 to 8 percent slopes	0%
- National wetlands inventory map(s). Cite name: **Ontario, NY Quad. The NWI map does not depict any wetlands within the project boundary. The excavated iron ore pits were identified as open water.**
- State/Local wetland inventory map(s): **Ontario, NY Quad. The NYS FWW Map does not depict any state regulated wetlands within the project boundary.**
- FEMA/FIRM maps: **Community Panel Number 360895-0005B;**
Effective Date: June 1, 1978. The site is not within a mapped floodplain or floodway
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:
 - Aerial (Name & Date): **googleearth.com and bingmaps.com – Aerial photos show Ditches A and B, a series of excavated iron ore pits, and evidence of the hydrologic footprint for Wetland B. Wetland A is not readily visible due to canopy cover. Also, evidence of debris piles can be seen.**
 - Other (Name & Date): **Submitted with the delineation report. These photos show the various aspects of the flat landscape of the parcel as well as upland and wetland data point areas.**
- 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: