

**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): October 28, 2016**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Dan and Ashley Dustin, 2016-01025; Wetland 1, Form 1 of 1.**

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

State: NY County/parish/borough: Erica City: West Seneca  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.820166°, Long. -78.795588°  
Universal Transverse Mercator:

Name of nearest waterbody: Smoke Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 041201030401

- 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: [Click here to enter a date.](#)
- Field Determination. Date(s): August 17, 2016 September 22, 2016

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

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

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

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

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

**a. Indicate presence of waters of U.S. in review area (check all that apply):<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: # linear feet: # width (ft) and/or # acres.

Wetlands: 2.65 acres.

**c. Limits (boundaries) of jurisdiction based on:** 1987 Delineation Manual and NC/NE Regional Supplement to the Corps of Engineers

Wetland Delineation Manual

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 :

<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:

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: # square miles

Drainage area 0.042: # square miles

Average annual rainfall: 37.9 inches

Average annual snowfall: 17.4 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 1 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 2-5 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>: Wetlands on site drain under an access road to an abandoned railroad spur line through a pvc pipe and empty into a to channel running parallel to the abandoned railroad line for approximately 1,265 linear feet where the waters then drain into Smoke Creek. Smoke Creek drains directly into Lake Erie approximately 4.7 river miles distant.

Tributary stream order, if known:

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

**Tributary is:**  Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: The drainage from Wetland 1 shows on aerial maps as being a natural feature. The drainage flows to the east toward other wetlands on the site. The natural

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

<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.

drainage flow appears to have been interrupted by the construction of a railroad that is located on the parcel of land immediately to the east of the project site. The drainage flow from the wetland on the project site has been directed into a pipe that has been placed beneath a roadway and outlets to a dug channel that runs parallel to the railroad bed

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

Average width: 1 feet  
Average depth: 0.5 feet  
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

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

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

Presence of run/riffle/pool complexes. No Explain : The channel draining Wetland 1 is a man-aletrd drainage measuring approximately 150 feet in length. It is draining a wetland and the flow is of insufficient length and duration to create run/riffle pool complexes.

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): #%

(c) Flow:

Tributary provides for: Seasonal Flow

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: The channel collects runoff from Fisher Road, the wetlands to the west of the channel (Wetland 1) as well as runoff from abutting fields, lawns, and naturally vegetated areas.

Other information on duration and volume:

Surface flow is: Discrete and Confined Characteristics:

Subsurface flow: *Choose an item.* Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- Bed and banks
- OHWM<sup>6</sup> (check all indicators that apply):
- |  |   |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris          |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> destruction of terrestrial vegetation      |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> the presence of wrack line                 |
| <input type="checkbox"/> vegetation matted down, bent, or absent   | <input type="checkbox"/> sediment sorting                           |
| <input type="checkbox"/> leaf litter disturbed or washed away      | <input type="checkbox"/> scour                                      |
| <input type="checkbox"/> sediment deposition                       | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining                            | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):                             |   |
- Discontinuous OHWM.<sup>7</sup> Explain: The drainage channel has been piped which eliminated any natural evidence of bed and banks or other indicators. Water was flowing on the days of the site visits. Aerial photographs of the area prior to the piping provide evidence of standing water and water staining.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input 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                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

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

Explain: Water was clear on the September 22, 2016 site visit.

Identify specific pollutants, if known:

<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.

**(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: There were numerous deer seen in the area on the days of the site visits.

**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: 2.65 acres

Wetland type. Explain: emergent marsh and hardwood swamp complex

Wetland quality. Explain: Wetland 1 (2.65 acres in size) occurs within the boundary of the parcel and extends offsite for an undetermined acreage amount. Through the seasonal RPW channel that drains this wetland it is considered to be part of a wetland that extends offsite for an approximate 10 to 12 acres in size. Wetland 1 provides cover and food for wildlife indigenous to the area. Multiple deer were observed during the site visits in Wetland 1 as well as the continued wetland to which the seasonal RPW is adjacent that is located to the east of the abandoned railroad bed. This wetland has been relatively undisturbed for decades and provides food sources and habitat for species of wildlife tolerant to human activity and due to the saturation and evidence of ponding on the wetland areas on both sides of the railroad bed the area provides good amphibian habitat during the spring. The presence of invasive plant species is low.

Project wetlands cross or serve as state boundaries. Explain:

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

Flow is: Intermittent Flow Explain: The drainage from Wetland 1 was flowing slowly but continuously through the pipe into the channel during the September 22 site visit; however the bottom of the channel running parallel to the railroad bed into which the pipe outlets is not smooth and water collects and ponds in depressional areas. The channel side slopes are steep and the bed shows evidence that water collects in the channel and this would be a vehicle establishing a hydrologic connection beneath the abandoned railroad bed to the wetland on the eastern side of the railroad bed.

Surface flow is: *Choose an item.*

Characteristics:

Subsurface flow: *Choose an item.* 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: The piped channel draining Wetland 1 flows under a roadway and into a ditch constructed to run parallel to a railroad bed. A large wetland that shows on both USGS topographic maps as well as NWI maps as well as observed in the field, is located to the east of the railroad bed. The wetland on the east side of the railroad bed drains directly into Smoke Creek which is a perennial RPW.

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

Project wetlands are 2-5 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 a minimal flood hazard area and is labeled as Zone X on the FEMA floodplain maps. The wetlands located immediately to the east of the abandoned railway are in the 100 year floodplain (Zone AE).

**(ii) Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water was clear on the day of the September 22, 2016 site visit.

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: The entire wetland is well vegetated – the outer fringes are covered with emergent/shrub vegetation while the interior is characterized as palustrine forest.

Habitat for:

Federally Listed species. Explain findings:

- Fish/spawn areas. Explain findings:
- Other environmentally-sensitive species. Explain findings:
- Aquatic/wildlife diversity. Explain findings: Numerous deer were observed in and around the wetland.

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

All wetland(s) being considered in the cumulative analysis: *Choose an item.*  
 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>
Wetland 1		2.65 acres – directly abuts the seasonal RPW		

The wetland to the east of the railroad bed is between 10 and 13 acres in size and it directly abuts Smoke Creek.

Summarize overall biological, chemical and physical functions being performed: The wetland on site (Wetland 1) and the channel draining Wetland 1 are considered to be a part of a larger offsite wetland located to the east of the railroad bed separated only by the man-constructed railroad bed. Wetland signatures for the offsite wetland are found as far back as the 1948 USGS topographic map. Both Wetland 1 and the offsite wetland receive runoff from roadways. Wetland 1 also receives runoff from lawns. Wetland 1 is considered to be a part of the offsite wetland as it appears that the railroad bed is a man-made barrier that separates the two wetlands. Without the presence of these man-made barriers, the area would be a contiguous wetland. Given the relatively flat topographic relief in the area, the runoff moves slowly through the wetlands which allows time for the biogeochemical alteration of toxic pollutants to occur before the wetlands drain into Smoke Creek. The wetlands, especially the offsite wetland, also serve as flood storage. The offsite wetland is located in the 100 year flood plain (Zone AE) on the FEMA maps and serves to retain floodwaters during high flow events. The offsite wetland directly abuts and drains directly into Smoke Creek (an RPW).

**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:

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?

The significant nexus determination is from the outlet of the channel draining Wetland 1 to the confluence of the offsite wetland with a perennial RPW (Smoke Creek) which is a tributary to Lake Erie. The Wetland 1 drainage channel measures approximately 150 linear feet and standing water is visible in aerial photographs. The railroad bed is approximately 50 feet wide at base level. The channel collects runoff from Wetland 1 as well as runoff from adjacent lawns and dirt roadway. Shallow subsurface connection under the railroad would carry the runoff through the larger wetland to a perennial RPW (Smoke Creek) that is approximately 5 miles from Lake Erie (a TNW). The RPW and adjacent wetlands have been determined to not only have the capacity to reduce the amount of pollutants

and flood waters entering Lake Erie but that they also actually do reduce the amount of pollutants and flood waters to Lake Erie based on proximity, flow, and drainage area. The large wetland to the east of the railroad bed is in FEMA Flood Zone AE.

Ability to provide habitat and lifecycle support functions for fish and other species and capacity to transfer nutrients and organic carbon to support downstream food webs:

The channel and abutting wetlands flow into a perennial RPW located less than 5 miles from Lake Erie. Given the flow regime and close proximity to the Lake, the channel and its wetlands have the ability to store, process, and transport food and nutrients and their capacity to treat storm water runoff plan an important cumulative role in improving water quality and providing habitat and lifecycle support functions for fish and other species present in the area. Additionally riparian trees and shrubs provide a large resource of organic carbon to support downstream food webs. The storage and collection of organic matter and nutrients is important since it transforms raw organic matter into food for aquatic organisms. The system also functions to retain and process excel nutrients such as nitrogen and phosphorus from the farm field and residential lawns transforming them into biologically useful forms that are slowly released to downstream waters.

For the reasons stated above it is my determination that the seasonal RPW and the abutting/adjacent wetlands have a clear significant nexus with the downstream TNW (Lake Erie) as the functions and services provided by the channel and wetlands provide more than a speculative effect on the physical, chemical, or biological integrity of the TNW (Lake Erie).

**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: Water was flowing in the drainage channel on the day of the September and October site visits. Aerial photographs indicate wet signatures and/or standing water in other seasons of the year.

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

- Tributary waters: 150 linear feet 1 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: # 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. The wetland to the east of the seasonal RPW is not on the project site. A barrier in the form of a railroad bed has been placed between the wetland and the seasonal RPW.

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

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

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

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

**7. Impoundments of jurisdictional waters.<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).

<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.

**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:**

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:
- 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:
- 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:

<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.

- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: NY Buffalo SE
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: Wetland Mapper on-line
- State/Local wetland inventory map(s):
- FEMA/FIRM maps : 3602620003B Effective on 9/30/1992
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date):
- or  Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Historical topographic maps dated 1901 and 1948

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

Lesta Ammons

Lesta M. Ammons

November 21, 2016

Date