

**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): April 18, 2018**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Buffalo District (LRB), Makuszak, Michael, LRB-2017-01100 & Jones, William, LRB-2017-01420

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

State: New York County: Oneida Town: Clayville

Center coordinates of site (lat/long in degree decimal format): Lat. 42.9680 ° N, Long. -75.2377 ° W

Universal Transverse Mercator: [Click here to enter text.](#)

Name of nearest waterbody: tributary to Sauquoit Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: [Click here to enter text.](#)

Name of watershed or Hydrologic Unit Code (HUC): HUC 12: 020200040308 Roberts Creek-Sauquoit Creek; HUC 10 0202000403 Ninemile Creek-Mohawk River

- 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: March 27, 2018
- Field Determination. Date(s): October 18, 2017, [Click here to enter a date.](#)

**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: [Click here to enter text.](#)

**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):<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: # acres.

**c. Limits (boundaries) of jurisdiction based on:** [Choose an item.](#)

Elevation of established OHWM (if known): [Click here to enter text.](#)

**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.

Two wetlands were identified on the subject parcels. Wetland A, 0.24 ac., extends onto both properties. While Wetland B, 0.18 ac., is located wholly on the Jones property but is connected via an upland swale to Wetland A. Both are located in depressional areas and were likely constructed originally as agricultural ponds. These wetland had no visible outlets to another waterbody. Aerial photographs show wet signatures in the approximate area of the delineated wetlands, but do not show any flow or drainage pattern/signature away from the wetlands. These wetlands have no potential to affect interstate commerce under 328.3(a)(3)(i-iii); therefore, the wetlands are considered to be intrastate, non-navigable, isolated waters.

Wetlands A and 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; These wetlands do not provide any ecological interconnect to downstream waters and are not confined by a berm, dam, or obstruction other than topography.
2. are not an interstate water/wetland; these wetlands do not cross state boundaries
3. the degradation or destruction of which would not affect interstate or foreign commerce and do 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

Wetlands A and B cannot be used by interstate or foreign travelers for recreational or other purposes, fish or shellfish cannot be taken and sold in interstate or foreign commerce, and the wetlands could not be used for industrial purposes by industries in interstate commerce

4. are not an impoundment of water otherwise defined as WOUS under the definition;
5. are not a tributary of waters identified in paragraphs (a)(1)-(4) of this section;
6. are not a territorial sea;
7. are not a wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section;

Wetlands A and B are located over 0.3 miles from an unnamed tributary to Sauquoit Creek. These wetlands do not provide any ecological/hydrologic interconnect to downstream waters and are not confined by a berm, dam, or obstruction other than topography.

8. are not prior converted croplands.

### **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: [Click here to enter text.](#)  
Summarize rationale supporting determination: [Click here to enter text.](#)

2. **Wetland adjacent to TNW**  
Summarize rationale supporting conclusion that wetland is “adjacent”: [Click here to enter text.](#)

#### **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,**

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

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: # Choose an item.  
Drainage area: # Choose an item.

Average annual rainfall: # inches  
Average annual snowfall: # inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through Choose an item. tributaries before entering TNW.

Project waters are Choose an item. river miles from TNW.  
Project waters are Choose an item. river miles from RPW.  
Project waters are Choose an item. aerial (straight) miles from TNW.  
Project waters are Choose an item. aerial (straight) miles from RPW.  
Project waters cross or serve as state boundaries. Explain: Click here to enter text.

Identify flow route to TNW<sup>5</sup>: Click here to enter text.  
Tributary stream order, if known: Click here to enter text.

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

- Tributary is:
- Natural
  - Artificial (man-made). Explain: Click here to enter text.
  - Manipulated (man-altered). Explain: Click here to enter text.

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

Average width: # feet  
Average depth: # feet  
Average side slopes: Choose an item.

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: Click here to enter text.
- Other. Explain: Click here to enter text.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Click here to enter text.  
Presence of run/riffle/pool complexes. Explain: Click here to enter text.  
Tributary geometry: Choose an item.  
Tributary gradient (approximate average slope): #%

(c) Flow:

Tributary provides for: Choose an item.  
Estimate average number of flow events in review area/year: Choose an item.  
Describe flow regime: Click here to enter text.  
Other information on duration and volume: Click here to enter text.

Surface flow is: Choose an item. Characteristics: Click here to enter text.

Subsurface flow: Choose an item. Explain findings: Click here to enter text.

- Dye (or other) test performed: Click here to enter text.

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

<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.

- water staining
- abrupt change in plant community [Click here to enter text.](#)
- other (list): [Click here to enter text.](#)
- Discontinuous OHWM.<sup>7</sup> Explain: [Click here to enter text.](#)

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): [Click here to enter text.](#)
- 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: [Click here to enter text.](#)

Identify specific pollutants, if known: [Click here to enter text.](#)

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

- Riparian corridor. Characteristics (type, average width): [Click here to enter text.](#)
- Wetland fringe. Characteristics: [Click here to enter text.](#)
- Habitat for:
  - Federally Listed species. Explain findings: [Click here to enter text.](#)
  - Fish/spawn areas. Explain findings: [Click here to enter text.](#)
  - Other environmentally-sensitive species. Explain findings: [Click here to enter text.](#)
  - Aquatic/wildlife diversity. Explain findings: [Click here to enter text.](#)

**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: [Click here to enter text.](#)

Wetland quality. Explain: [Click here to enter text.](#)

Project wetlands cross or serve as state boundaries. Explain: [Click here to enter text.](#)

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

Flow is: [Choose an item.](#) Explain: [Click here to enter text.](#)

Surface flow is: [Choose an item.](#)

Characteristics: [Click here to enter text.](#)

Subsurface flow: [Choose an item.](#) Explain findings: [Click here to enter text.](#)

- Dye (or other) test performed: [Click here to enter text.](#)

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

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: [Click here to enter text.](#)
  - Ecological connection. Explain: [Click here to enter text.](#)
  - Separated by berm/barrier. Explain: [Click here to enter text.](#)

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

Project wetlands are [Choose an item.](#) river miles from TNW.

Project waters are [Choose an item.](#) aerial (straight) miles from TNW.

Flow is from: [Choose an item.](#)

Estimate approximate location of wetland as within the [Choose an item.](#) 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: [Click here to enter text.](#)

Identify specific pollutants, if known: [Click here to enter text.](#)

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

- Riparian buffer. Characteristics (type, average width): [Click here to enter text.](#)
- Vegetation type/percent cover. Explain: [Click here to enter text.](#)

<sup>7</sup>Ibid.

- Habitat for:
  - Federally Listed species. Explain findings: [Click here to enter text.](#)
  - Fish/spawn areas. Explain findings: [Click here to enter text.](#)
  - Other environmentally-sensitive species. Explain findings: [Click here to enter text.](#)
  - Aquatic/wildlife diversity. Explain findings: [Click here to enter text.](#)

**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>
<i>Y/N</i>	<i>#</i>	<i>Y/N</i>	<i>#</i>
<i>Y/N</i>	<i>#</i>	<i>Y/N</i>	<i>#</i>
<i>Y/N</i>	<i>#</i>	<i>Y/N</i>	<i>#</i>
<i>Y/N</i>	<i>#</i>	<i>Y/N</i>	<i>#</i>

Summarize overall biological, chemical and physical functions being performed: [Click here to enter text.](#)

**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: [Click here to enter text.](#)
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: [Click here to enter text.](#)
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: [Click here to enter text.](#)

**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: [Click here to enter text.](#)
  - 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: [Click here to enter text.](#)

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: [Click here to enter text.](#)

**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: [Click here to enter text.](#)

**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: [Click here to enter text.](#)  
 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: [Click here to enter text.](#)

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.

**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: [Click here to enter text.](#)  
 Other factors. Explain: [Click here to enter text.](#)

**Identify water body and summarize rationale supporting determination:** [Click here to enter text.](#)

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: [Click here to enter text.](#)

- Wetlands: # acres.

<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.

**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: [Click here to enter text.](#)
- Other: (explain, if not covered above): [Click here to enter text.](#)

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: [Click here to enter text.](#)
- Wetlands: 0.42 acres total (Wetland A 0.24 ac. and Wetland B 0.18 ac.).

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: [Click here to enter text.](#)
- 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: aerial with dimensions provided by Makuszak
- 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: Data sheets prepared by USACE based on October 18, 2017 site visit
- Corps navigable waters' study: [Click here to enter text.](#)
- U.S. Geological Survey Hydrologic Atlas: [Click here to enter text.](#)
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K West Winfield – site located in a low area to the south of Cedar Lake Road. Surrounding areas are higher elevation. The same 1,200 ft. elevation contour extends to the north of Cedar Lake Road where a depression is noted, and to the south and east. Tributary to Sauquoit Creek located off site to the south. Drainage in the area appears to flow west.
- USDA Natural Resources Conservation Service Soil Survey. Citation: websoil survey accessed September 15, 2017 – Area mapped as 24C – Howard gravelly loam, 8-15% slopes, hydric rating of 1. Surrounding soils also noted as hydric ratings of 1. An open water area is noted to the northwest of site on the north side of Cedar Lake Road. No hard copy of the soil survey was produced.
- National wetlands inventory map(s). Cite name: USFWS NWI mapper -Wetland area is mapped as emergent as well as pond to the southwest on adjacent Jones parcel. Open water pond noted about 160 ft. to the northwest on northside of Cedar Lake Road. The pond is part of a larger wetland system (PEM1E & PFO1/EM1E) that extends to the northeast and continues to the south of Cedar Lake Road to the east of the site. Tributary to Sauquoit Creek off-site approximately 0.3 miles to the south.
- State/Local wetland inventory map(s): NYSDEC Environmental Resource Mapper: Large Class 2 wetland system to the north of Cedar Lake Road is listed as State Wetland WW-3. It is shown to extend to the east and south and abuts the tributary to Sauquoit Creek which is notes a class C trout stream.
- FEMA/FIRM maps: [Click here to enter text.](#)
- 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Earth Explorer USGS Oct. 13, 1958 – quality of the photo is poor but the large pond to the north is evident. Neither the Jones or Makuszak homes exist. No ponding evident in the area of Wetland A or B. NYS Orthos Online – 1994 reverse IR – Jones home evident as well as ponded water in both A & B locations. Although no evidence of flow between the two. It is noted that the Wetland A boundary extended further to the west much closer to the Jones driveway than the current location. 2003 – Wetland A smaller and evidence of recent grading between Jones driveway and Wetland A. 2013- Makuszak home evident. Wetland A evident but not ponded. Wetland B contains ponded water but no evidence of flow between the wetlands or to the north. Google Earth Pro –4/21/1998 – Pond to north, Wetland A & B all have ponded water. Pond to north extends toe road. Wetland A extends closer to Jones driveway and has small finger of ponded water extending towards Wetland B. No Makuszak home. 5/13/2015 Wetland A & B evident – Both homes evident. No evidence of surface flow. 12/2/2017 – recent fill areas in Wetland A evident.
- or  Other (Name & Date): Site photos taken during October 18, 2017 site visit document wetland surrounded by steep slopes, recent fill, upland vegetated swale extending to old pond/wetland area to the south.

Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)

Applicable/supporting case law: [Click here to enter text.](#)

Applicable/supporting scientific literature: [Click here to enter text.](#)

Other information (please specify):

October 18, 2017 USACE site visit: In attendance were Bridget Brown & Mike Uitvlugt -USACE and Bill Jones. Mr. Jones provided some historical background. He noted that in the 1960's the height of Cedar Lake Road was raised. Prior to this work, water from the pond on the north side of the road would overtop the road and spill into the low area between the Makuszak and Jones property. He believes that the Wetlands were ponds that were constructed as part of the past agricultural use when the properties were part of a large farmstead owned by their aunt. He said that the Wetland A pond had a small, possibly 2 inch, drain pipe under the road to the pond on the north side of the road, although flow was generally south. When the road was raised, no culvert was installed and it is unclear if the small pipe was removed or buried. There is currently no evidence of a pipe today. Mr. Makuszak had noted in a phone conversation prior to the site inspection that he had contacted the town regarding the existence of any culverts. They indicated no knowledge of any pipe. He also noted that the town had been placing fill at this location for years, which is evident based on the aerial photo review. The section of road between the two driveways is still a low spot on the road. Mr. Jones indicated that during storm events water flows down the road and over the embankment into the Wetland A as well as the pond to the north as there are no roadside ditches. Evidence of rills in the roadway embankment were observed.

The area on the north side of the road was walked in the area of the pond. There was a gradual slope to the pond area. No culverts were evident. Water levels were very low so the immediate area was dry due to dry summer and devoid of vegetation indicating the area is normally flooded. Standing water was present further north. The area between the pond and road sloped up to the road and contained upland plant species.

The Wetland A boundary was walked. The roadway embankment is steep (~15-20 ft. elevation change) with the wetland boundary found to be at the toe of slope. Considering the elevation on the north and south side of the road, even though the road height had been increased it is clear that the south side at the Wetland A location was substantially lower and highly unlikely that water would have flowed to the north. Given the extremely small size of the pipe Mr. Jones referenced, it would make more sense that pipe of that size was used to direct water into the area to maintain use as an agricultural pond. There was no evidence of subsurface flow again considering the elevation difference between the elevation of Wetland A and the pond to the north. The main portion of the wetland is a monotypic stand of cattail. Fill areas were noted along the northeast edge of the wetland at the roadway, which appears to only have slightly encroached into the wetland, and on the northwest edge where it had clearly been placed in wetland. Mr. Jones noted that the fill had been placed some time ago and was only recently graded. The southern boundary of the wetland was reviewed. The slope was more gradual but still went up quickly. Wetland vegetation transitioned to a mix of cattail, blue vervain and purple loosestrife and the purple loosestrife became dominant. Soils in the area were found to be hydric. Further upslope vegetation transitioned to goldenrod (FACU) and the soils were found to be non-hydric. A small upland swale was found to extend south to Wetland B. The majority of Wetland B is surrounded by steep upland slopes to adjacent agricultural fields. The perimeter of B was walked and there was no evidence of any defined surface flow or culverts. All surrounding areas would only sheet flow to the wetland. The wetland did not have standing water at the time of our visit due to the dry summer. Mr. Jones noted it is seasonally ponded but no longer has much depth as evident by the type of vegetation.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** [Click here to enter text.](#)

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Bridget Brown  
Project Manager

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April 18, 2018

Date