

**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): 12 JAN 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, Austin Construction, LLC – Campbell Mine, LRB-2020-01442

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Steuben City: Town of Campbell
Center coordinates of site (lat/long in degree decimal format): Lat. 42.24839° N, Long. -77.20972° W
Universal Transverse Mercator:

Name of nearest waterbody: Cohocton River

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

Name of watershed or Hydrologic Unit Code (HUC): 8-digit HUC: 02050105; Upper Susquehanna

- 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: 12 JAN 2022
- X Field Determination. Date(s): 25 OCT 2021

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):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: 1987 Delineation Manual

Elevation of established OHWM (if known): Unknown

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: **The subject wetlands (Wetlands 2, 8, & 9) and pond are isolated, intrastate wetlands and waters which have no interstate or foreign commerce nexus.**

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).

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: [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 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: acres

Drainage area: acres

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 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:

Identify flow route to TNW⁵:

Tributary stream order, if known:

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

Tributary is: Natural

Artificial (man-made). Explain: [Click here to enter text.](#)

Manipulated (man-altered). Explain:

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

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.

- Bedrock Vegetation. Type/% cover:
 Other. Explain: Detritus

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
 Presence of run/riffle/pool complexes. Explain: .
 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:.
 Other information on duration and volume:
 Surface flow is: [Choose an item](#). Characteristics: .
 Subsurface flow: Unknown 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
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community [Click here to enter text](#).
 other (list): [Click here to enter text](#).
 Discontinuous OHWM.⁷ 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: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list): [Click here to enter text](#).

(iii) Chemical Characteristics:

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

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:
 Wetland type. Explain:

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.

Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent and Ephemeral Flow Explain:

Surface flow is: Discrete and Confined

Characteristics:.

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:

Ecological connection. Explain:

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:

(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: *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:

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:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

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: [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:

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:

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-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).
- 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:
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

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

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
 - Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:

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).

⁸See Footnote # 3.

⁹ 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):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: [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.

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): A site visit was conducted at the subject parcel on 25 OCT 2021. In addition, a wetland delineation report (dated 30 APR 2021, and updated drawing dated 25 OCT 2021) submitted by Diehlux LLC was reviewed. Finally, in-house resources including, topographical maps, historic aerial photography and soils maps were reviewed. After review of the available resources, delineation report, additional information and observations from the field, no surface water flows or culverts were located flowing from Wetland 2 (3.87 acres), Wetland 8 (0.21 acre), Wetland 9 (0.30 acre), or the pond (0.26 acre).

The boundary of Wetland 2 (3.87 acres) was walked and based on the on-site walkover and review of in-house resources it was determined the wetland is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. Wetland 2 is approx. 25 linear feet from the open-water feature and more than 200 linear feet from Wetland 6 (a possible connection to a downstream TNW). During the site investigation, no surface water connections or culverts were located flowing from the open-water feature. Also, it is approx. 125 linear feet and separated by the raised railroad from Wetland 1. No other drainageways or drainage patterns were located flowing into or out from the wetland during the site visit or from a desktop review of mapping resources. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain from any surface connections and any subsurface connection would be speculative but based on the topography would not be expected to occur.

The boundary of Wetland 8 (0.21 acre) was walked and based on the on-site walkover and review of in-house resources it was determined the wetland is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. The surrounding land to this feature is approx. five feet higher in elevation. Further, Wetland 8 is approx. 100 linear feet from Wetland 7 and approx. 200 linear feet from the Wetland 6 (a possible connection to a downstream TNW). No other drainageways or drainage patterns were located flowing into or out from the wetland during the site visit or from a desktop review of mapping resources. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain from any surface connections and any subsurface connection would be speculative but based on the topography would not be expected to occur.

The boundary of Wetland 9 (0.30 acre) was walked and based on the on-site walkover and review of in-house resources it was determined the wetland is a closed depressional wetland that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. The surrounding land to this feature is approx. 10 feet higher in elevation. Further, Wetland 9 is approx. 300 linear feet from Wetland 5 (a possible connection to a downstream TNW). No other drainageways or drainage patterns were located flowing into or out from the wetland during the site visit or from a desktop review of mapping resources. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain from any surface connections and any subsurface connection would be speculative but based on the topography would not be expected to occur.

The boundary of the pond (0.26 acre) was walked and based on the on-site walkover and review of in-house resources it was determined the pond is a closed depressional open-water feature that was not abutting or adjacent to a drainage-way nor appeared to flow directly into a drainage-way or a TNW. The pond is approx. 1,050 linear feet from Wetland 6 (a possible connection to a downstream TNW). No other drainageways or drainage patterns were located flowing into or out from the pond during the site visit or from a desktop review of mapping resources. The pond is a shallow surface concave depression that collects water but does not drain from any surface connections and any subsurface connection would be speculative but based on the topography would not be expected to occur.

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*.

After performing a site visit, reviewing the delineation report, and in-house resources, there was no evidence of drainage or flow from the wetlands or pond to any of the drainage features identified on or adjacent to the delineated parcel. Due to the distance to the nearest drainageways, on-site soil conditions, and topography, it is unlikely that any shallow subsurface connection exists between the wetlands/pond and the nearest drainageways. The wetlands and pond are physically and geographically isolated within depressions on the landscape and water would not make it to a TNW. An ecological nexus between the wetland and the surrounding wetlands and waterways is low to nonexistent because of the distance between the wetlands and nearest drainageways. Based on the above information, the wetlands do not meet the wetland adjacency criteria. Therefore, Wetlands 2, 8, 9, and pond are isolated, intrastate, non-navigable waters/wetlands which have no interstate or foreign commerce nexus and there are not subject to federal jurisdiction.

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: 0.26 acres.
- Other non-wetland waters: # acres. List type of aquatic resource: [Click here to enter text.](#)
- Wetlands: Wetland 2 – 3.87 acres; Wetland 8 – 0.21 acres; Wetland 9 – 0.36 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: [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 or plots submitted by or on behalf of the applicant/consultant: "Proposed Austin Mining Expansion Project Approved Jurisdictional Determination Request", dated 30 APR 2021. A subsequent delineation map was submitted dated 25 OCT 2021.
- 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: [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, Campbell.
- USDA Natural Resources Conservation Service Soil Survey: Web Soil Survey provided in wetland delineation.
- National wetlands inventory map(s). Cite name: NWI map provided in wetland delineation.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: [Click here to enter text.](#)
- 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 1) Google Earth dated 21 APR 1994, 16 JUN 2003, 4 JUN 2006, 30 APR 2007, 23 MAY 2008, 3 MAY 2009, 26 MAY 2011, 16 SEP 2013, & 5 OCT 2016. 2) Connect Explorer dated 8 MAY 2019, 11 MAY 2019.
 - or Other (Name & Date): Corps site visit dated 25 OCT 2021.
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law: [Click here to enter text.](#)
- Applicable/supporting scientific literature: [Click here to enter text.](#)
- Other information (please specify): [Click here to enter text.](#)

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The submitted wetland delineation report was reviewed and the wetland boundaries included in the revised map were verified in the field on 25 OCT 2021.

The USGS NHD depicts a drainage that flows along the western boundary of the railroad from northwest to southeast. This feature appears to flow into and through Wetland 2 south off the property. However, no surface water drainages in this area were located during the 25 OCT 2021 site visit. The feature in the NHD does flow south and ultimately into the Cohocton River.

The USGS topography map did not depict any waterbodies on the parcel.

Six soils were mapped within the delineated parcel in the Web Soil Survey:

- 1) Atherton silt loam (At) – 90 hydric rating.
- 2) Braceville gravelly silt loam, 0-3% slopes (BrA) – 0 hydric rating.
- 3) Canandaigua silt loam (Ca) – 90 hydric rating.
- 4) Howard gravelly loam, 0-3% slopes (HoA) – 0 hydric rating.
- 5) Howard gravelly loam, undulating (HoB) – 0 hydric rating.
- 6) Red Hook silt loam (Rh) – 10 hydric rating.
- 7) Wallington silt loam (Wa) – 5 hydric rating.

The NWI mapped an emergent wetland and forested wetland in the location of Wetland 5. The pond was mapped as an open-water feature. It also mapped an emergent wetland in the location of Wetland 2. Also, a riverine wetland was mapped in the location of where the USGS NHD mapped a channel on the east and west side of the railroad. The emergent wetland in the location of Wetland 2 extends offsite to the south and connects with stream that ultimately flow to the Cohocton River. However, during the site investigation, neither Wetland 2 extended south from the boundaries located nor was a surface water flowing south located.

Review of historic aerial photos showed the area to be routinely disturbed from agricultural and mining operations. The pond appears to have been constructed between 2003 and 2006. The 1994 photo shows the area of the pond as potentially forested. In addition, the area between the pond and Wetland 8 was vegetated in the 1994 photo indicating there may have been a possible wetland connecting the two areas. Most subsequent photos show the area being undisturbed and vegetated, but no confined, discrete channel can be viewed. However, during the 25 OCT 2021 site investigation, no surface water connection or wetland existed between the two areas.

The 1994 photo appeared to show a possible channel connecting Wetland 2 and Wetland 6, located on the east side of the farmed field (which currently is the location of the open-water pond between the two wetlands). All subsequent photos do not show this channel and it was not located during the 25 OCT 2021 site investigation. This possible channel may have lined up with the feature depicted in the USGS NHD.

Wetland 5 was evaluated under a PJD.