

**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): January 4, 2022**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, (Johnson, Robert), LRB-2021-00959.**

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

State: New York County/parish/borough: Erie City: Hamburg  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.728324° N, Long. -78.853759° W.  
Universal Transverse Mercator: 17  
Name of nearest waterbody: An unnamed tributary to Lake Erie

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

Name of watershed or Hydrologic Unit Code (HUC): 0412010304 (Smoke Creek-Frontal Lake Erie)

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: January 4, 2022

Field Determination. Date(s): August 9, 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: .

**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: 255 linear feet: 3 width (ft) and/or acres.

Wetlands: 2.79 - acres.

**c. Limits (boundaries) of jurisdiction based on: Established by OHWM.**

Elevation of established OHWM (if known): clear water line pressed upon the bank, absent vegetation, flow lines.

**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: 817 **square miles**

Drainage area: 817 **square miles**

Average annual rainfall: 40.55 inches

Average annual snowfall: 96.3 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **2** 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>: The wetland is adjacent to a ditch (seasonal RPW) that flows intermittently for 255 linear feet above ground to the east where it enters a culvert that is underground beneath the adjacent (to the north) residential

<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.

subdivision. The ditch surfaces just north of Oakhill Drive to the east of Chapel Glen Drive, approximately 1000 feet from the wetland. Approximately 600 feet to the north, the ditch flows into a USGS mapped dotted, blue-line stream which flows approximately 2.5 miles to the northeast where it enters Lake Erie, a Section 10 Navigable waterway. Tributary stream order, if known: .

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain: The ditch is man-made and was likely created during construction of the adjacent (to the north) residential subdivision.  
 Manipulated (man-altered). Explain: .

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

Average width: 4 feet  
Average depth: 2.5 feet  
Average side slopes: **2:1**.

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

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable, no erosion noted during the August 9, 2021 Corps' site visit.

Presence of run/riffle/pool complexes. Explain: None present.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: The flow of the ditch (Seasonal RPW) collects water during snow meltoff, precipitation times and the flow continues intermittently as it receives water slowly from Wetland A.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: The ditch (Seasonal RPW) is designed to contain water in a defined area, contributing flow from the west portion of the property and conveying it to the east downstream.

Subsurface flow: **Unknown**. Explain findings: Subsurface flow is not known on the review area, but Ditch 1 (Seasonal RPW) does go underground into a culvert as it leaves the review area.

Dye (or other) test performed: .

**Tributary has (check all that apply):**

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank  the presence of litter and debris  
 changes in the character of soil  destruction of terrestrial vegetation  
 shelving  the presence of wrack line  
 vegetation matted down, bent, or absent  sediment sorting  
 leaf litter disturbed or washed away  scour  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain: .

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

High Tide Line indicated by:  Mean High Water Mark indicated by:  
 oil or scum line along shore objects  survey to available datum;  
 fine shell or debris deposits (foreshore)  physical markings;  
 physical markings/characteristics  vegetation lines/changes in vegetation types.  
 tidal gauges

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

<sup>7</sup>Ibid.

other (list):

**(iii) Chemical Characteristics:**

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

Explain: As observed during the August 9, 2021, the water in the ditch (Seasonal RPW) appeared dark and mirky, with presence of organic matter in the bottom of the channel.

Identify specific pollutants, if known: The ditch collects water from the adjacent residential subdivision which contributes contaminants from the road (asphalt chemicals) and pesticides from some of the homes.

(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:

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: 2.79 - acres

Wetland type. Explain: Palustrine Forested.

Wetland quality. Explain: The wetland is of moderate quality with few invasive species, young-to-intermediate forest growth, and a moderate amount of wetland plant diversity.

Project wetlands cross or serve as state boundaries. Explain: Wetland A does not cross or serve as state boundaries.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The flow of the ditch (Seasonal RPW) collects water during snow melt off, precipitation times and the flow continues intermittently as it receives water slowly from Wetland A.

Surface flow is: **Overland sheetflow**

Characteristics: The wetland is adjacent to, and flows directly into Ditch 1 through overland sheetflow, primarily at the western extent of the ditch.

Subsurface flow: **Unknown**. Explain findings: Subsurface flow was not observed during the Corps' August 9, 2021 site visit nor was subsurface flow researched further.

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: There is an upland strip between the wetland and Ditch 1 (Seasonal RPW), ranging in size from 6-feet to 20-feet in width, with a portion of it being maintained lawn that provides little-to-no grade change allowing for overland sheetflow from the wetland to the Ditch 1 (Seasonal RPW) intermittently throughout a typical year.

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **100 - 500-year** 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: The wetland did not contain water at the time of the August 9, 2021 Corps' site visit, as it was the dry season. The general watershed contains much development (residential and commercial) growth and receives a lot of pollutant runoff associated with surrounding development.

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: Forested cover - 70%; scrub-shrub - 15%; Emergent herbaceous - 15%.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The wetland serves as wildlife habitat for aquatic species in a portion of the watershed where aquatic resources are becoming lessened due to development.

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

All wetland(s) being considered in the cumulative analysis: **1**

Approximately ( 2.79 ) 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 - Y	2.79		

Summarize overall biological, chemical and physical functions being performed: This wetland is a headwater wetland serving as the primary collector of organic matter before being transported and conveyed to downstream waters. Specifically, Wetland A is in an area that has a lot of development and fewer waters, directly reducing pollutants and nutrient load into Lake Erie. This wetland provides stormwater retention, nutrient sorting and retention, pollutant filtration, biological productivity of micro/macro flora and fauna, decomposition, and community structure; and wildlife support including providing habitat and foodchain connectivity.

### 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: Wetland 1 is adjacent to Ditch 1 (Seasonal RPW), separated by a strip of upland ranging in width from 5-feet to 20-feet in width. The strip of upland along Ditch 1 and Wetland 1 is maintained lawn with minor grade change and allows for overland sheetflow from the wetland into the ditch (Seasonal RPW). Wetland 1 is adjacent to a ditch (Seasonal RPW) that flows intermittently for 255 linear feet above ground to the east where it enters a culvert that is underground beneath the adjacent (to the north) residential subdivision. The ditch surfaces just north of Oakhill Drive to the east of Chapel Glen Drive, approximately 1000 feet from the wetland. Approximately 600 feet to the north, the ditch flows into a USGS mapped dotted, blue-line stream which flows approximately 2.5 miles to the northeast where it enters Lake Erie, a Section 10 Navigable waterway.

#### SIGNIFICANT FACTORS

Wetland 1 is a forested wetland with low diversity, primarily consisting of Facultative (FAC) tree species with a few Facultative Wet (FACW) tree species, a good mix of FAC and FACW shrubs, but also containing European Buckthorn (*Rhamnus cathartica*) - an invasive species, and presence of few Obligate (OBL) species, such as Swamp Rose (*Rosa palustris*). The wetland is of moderate-to-low quality, providing functions of stormwater retention, pollutant filtration to downstream waters. Wildlife habitat functions of Wetland 1 are considered to be moderate-to-high due to the limited number of wetlands remaining in the area.

#### CONCLUSION

Wetland 1 is adjacent to Ditch 1 (Seasonal RPW) and provides intermittent flow from the wetland to Ditch 1. Both Wetland 1 and Ditch 1 were found to influence the chemical, physical, and biological integrity of downstream waters. Based on the information on this form, it has been determined that a significant nexus exists between Wetland 1 through Ditch 1 (Seasonal RPW) to Lake Erie, a navigable waterway of the United States. Therefore, it has been determined that Wetland 1 is a jurisdictional water of the United States.

**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: The flow of the ditch collects water during snow meltoff, precipitation times and the flow continues intermittently as it receives water slowly from Wetland A. The intermittent flow is evident by the presence of water in a portion of the channel during the August 9, 2021 site visit, but no flow was occurring at that time.

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

- Tributary waters: **255** linear feet **2.5 at OHW** 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: Wetland A is adjacent to Ditch 1 at its western extent as observed during the August 9, 2021 Corps' site visit.

Provide acreage estimates for jurisdictional wetlands in the review area: **2.79**-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: **Wetland A is adjacent to Ditch 1 at its western extent as observed during the August 9, 2021 Corps' site visit - 2.79**-acres.

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

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

- 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: \_\_\_\_\_  
 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.**

<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.

**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:Wetland Delineation for Pleasant Ave, Hamburg, NY; prepared for Robert Johnson, 4046 Lake Shore Road, Hamburg, NY 14075, by Wetlands Investigation Co., 503 Maynard Drive, Amherst, NY 14226 The Corps agrees with the majority of the submitted delineation report, but disagrees with the outlined flow pattern of the water flowing south to Eighteenmile Creek as discussed on page 1 of the report.
- 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: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name:7.5 minute series, 1:24000. NY - Hamburg.
- USDA Natural Resources Conservation Service Soil Survey. Citation:Erie County Soil Survey, 1978 and Web Soil Survey - <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> - Hamburg, NY .
- National wetlands inventory map(s). Cite name:<https://www.fws.gov/wetlands/data/mapper.html> - Hamburg, NY.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): .  
or  Other (Name & Date):Connect Explorer - <https://explorer.pictometry.com/index.php#> - Oblique Imagery dates -

April 25, 2020.

- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify):USGS Stream Stats - <https://streamstats.usgs.gov/ss/> was evaluated indicating flow travels north into the unnamed tributary to Lake Erie, flowing to the Northwest.

A Corps' site visit was conducted on August 9, 2021.

The Corps agrees with the majority of the submitted delineation report, but disagrees with the outlined flow pattern of the water flowing south to Eighteenmile Creek as discussed on page 1 of the report.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Based on the above information, considering on-site observations, an in-office resource review, submittals from the consultant on behalf of the client, it has been determined that Wetland A (total of 2.79-acres) and Ditch 1 (255 linear feet) are waters of the United States that are subject to Section 404 of the Clean Water Act jurisdiction.