

**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 21, 2014**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, F.S. Lopke Contracting, Incorporated, 2005-00795**

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

State: New York County/parish/borough: Tioga City: Town of Nichols  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.0665 °, Long. -76.3306 °  
Universal Transverse Mercator: UTM Y Coordinate 4658016.18766455; UTM X Coordinate 389916.6510376  
Name of nearest waterbody: Susquehanna River  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: NA  
Name of watershed or Hydrologic Unit Code (HUC): 2050103

- 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: October 18, 2013  
 Field Determination. Date(s): August 22, 2005 5T

**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: 5T

**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: 5T linear feet: 5T width (ft) and/or 5T acres.  
Wetlands: 5T acres.

**c. Limits (boundaries) of jurisdiction based on: 7T**

Elevation of established OHWM (if known): 5T

**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:** Three wetlands were delineated on the project site. However, these wetland had no visible outlets to another waterbody. Wetlands A (0.9 acres), B (0.9 acres) and C (0.75) were delineated on the subject parcel. 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) (See Section IVB of this form); therefore, the wetlands are considered to be intrastate, non-navigable, isolated waters.

<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.

**Wetlands A, B, and C 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, B, and C 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. is not an impoundment of water otherwise defined as WOUS under the definition;
5. is not a tributary of waters identified in paragraphs (a)(1)-(4) of this section;
6. is not a territorial sea;
7. is not 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 400 feet from Smith Creek, and Wetland C is located approximately 275 feet from a backwater channel of the Susquehanna River. 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.**

### 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: 7T

Summarize rationale supporting determination: 5T

##### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

#### 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: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW<sup>5</sup>: 7T

Tributary stream order, if known: 7T

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

Tributary is:  Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain: 7T

<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.

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

Average width: 7T feet  
Average depth: 7T feet  
Average side slopes: 7T

Primary tributary substrate composition (check all that apply):

- |   |   |                                   |
|---|---|-----------------------------------|
| <input type="checkbox"/> Silts              | <input type="checkbox"/> Sands                        | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles            | <input type="checkbox"/> Gravel                       | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock            | <input type="checkbox"/> Vegetation. Type/% cover: 7T |                                   |
| <input type="checkbox"/> Other. Explain: 7T |   |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) Flow:

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

- Dye (or other) test performed: 7T

Tributary has (check all that apply):

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

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

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list): 7T                          |  |

**(iii) Chemical Characteristics:**

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

Explain: 7T

Identify specific pollutants, if known: 7T

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

<sup>7</sup>Ibid.

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

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
  - Federally Listed species. Explain findings: 7T
  - Fish/spawn areas. Explain findings: 7T
  - Other environmentally-sensitive species. Explain findings: 7T
  - Aquatic/wildlife diversity. Explain findings: 7T

**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: 7T acres

Wetland type. Explain: 7T

Wetland quality. Explain: 7T

Project wetlands cross or serve as state boundaries. Explain: 7T

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

Flow is: 7T Explain: 7T

Surface flow is: 7T

Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

Dye (or other) test performed: 7T

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

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: 7T

Ecological connection. Explain: 7T

Separated by berm/barrier. Explain: 7T

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

Project wetlands are 7T river miles from TNW.

Project waters are 7T aerial (straight) miles from TNW.

Flow is from: 7T

Estimate approximate location of wetland as within the 7T 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: 7T

Identify specific pollutants, if known: 7T

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

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: 7T
- Habitat for:
  - Federally Listed species. Explain findings: 7T
  - Fish/spawn areas. Explain findings: 7T
  - Other environmentally-sensitive species. Explain findings: 7T
  - Aquatic/wildlife diversity. Explain findings: 7T

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

All wetland(s) being considered in the cumulative analysis: 7T

Approximately (7T) 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>
7T	7T	7T	7T
7T	7T	7T	7T
7T	7T	7T	7T
7T	7T	7T	7T

Summarize overall biological, chemical and physical functions being performed: 7T

### 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: 7T
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: 7T
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: 7T

### 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: 7T linear feet 7T width (ft), Or, 7T acres.
- Wetlands adjacent to TNWs: 7T 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: 7T.
- 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: 7T.

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

- Tributary waters: 7T linear feet 7T width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

**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: 7T linear feet 7T width (ft).  
 Other non-wetland waters: 7T acres.  
Identify type(s) of waters: 7T

**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: 7T  
 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: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 7T 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: 7T 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: 7T 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: 7T  
 Other factors. Explain: 7T

**Identify water body and summarize rationale supporting determination: 7T**

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

- Tributary waters: 7T linear feet 7T width (ft).  
 Other non-wetland waters: 7T acres.  
Identify type(s) of waters: 7T  
 Wetlands: 7T 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: 7T
- Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: **Wetlands A (0.9 acres), B (0.9 acres) and C (0.75) 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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T 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: Thomas J. McLane Associates
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Owego Quad. The areas where Wetlands A, B and C are located are identified as depressions within the project site. Smith Creek is located on the south side of the property and the Susquehanna River is located on the west, both outside of the study area.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Tioga County Soil Survey. Soils include Tiogasilt loam (Ts), Unadilla fine sandy loam (Ufn) and Unadillasilt loam (Unn). No hydric soils are on site.
- National wetlands inventory map(s). Cite name: Owego Quad. The area in which Wetland B was delineated is identified as an emergent wetland. The area in which Wetland C is delineated is noted as a pond. No other wetlands are noted within the study area.
- State/Local wetland inventory map(s): Owego Quad. No State wetlands are mapped on the project site.
- FEMA/FIRM maps: The majority of the site is located within the 100-year flood zone of the Susquehanna River. The applicant confirmed that the entire site was flooded during the 500 year storm events that occurred in 2006 and 2011.
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): series of aerial photographs provided with original delineation report. Aerial Photographs: Evaluated Comments: 2002 - Evidence of the Chenango Extension Canal (see discussion below regarding the canal) is seen onsite, but is not found off site. In addition, Wetland C is evident as an isolated area surrounded by agricultural fields. The area delineated as Area B appears to be slightly wetter than the adjacent fields. There is an area to the southeast of Wetland B that is not cropped. This area is a steep slope evident in the topographical maps. 1995 - Same as 2002. 1975 - Same as 1995. 1967 - The area delineated as Wetland B is not identified on this aerial. Wetland C is slightly visible, but does not appear to be wooded. Wetland A (canal) is seen, but only by a small linear row of trees. No connections from these wetlands to the creek or river are found. 1955 - Same as 1967. 1937 - The section of the Chenango Canal Extension is identified on the site but does not appear to be vegetated. The area delineated as Wetland C can also be seen, but is not vegetated (with trees). It almost looks like it could have been recently excavated. The Canal Extension does not connect to the Susquehanna River in any of these photos.
  - or  Other (Name & Date): on-site photos provided with delineation report
- Previous determination(s). File no. and date of response letter: 2005-00795, December 9, 2005 (same results)
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T



- Other information (please specify): While a site inspection was not conducted for the review of this request for a jurisdictional determination, a site visit was conducted by the Corps project manager on August 22, 2005 in the review of the previous request. At that time the wetland boundaries and the lack of hydrological connection were confirmed.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The study area is approximately 55 acres in size. Three wetlands were identified as A, B and C. Wetland A is located in the historical Chemung Canal Extension and is 0.9 acres in size, Wetland B is located adjacent to A and is 0.9 acres in size and Wetland C is located in the middle of an agricultural field, and is 0.75 acres in size. Based upon information from the American Canal Society Canal Index, the description of the Chenango Canal Extension notes that it was never completed, and that it as well as the Chenango Canal were abandoned on May 1, 1878. Based upon information provided by the applicant in the original jurisdictional determination, construction of the canal extension was authorized in 1863 with construction beginning in 1865. It was supposed to be 40 miles in length and to connect the NY Canal system with PA, but was never fully completed and never used. The Chenango Canal Extension is not identified on the Buffalo District's list of navigable waterways, and based upon the information from the Canal Society, it was likely never used for commercial navigation. Therefore, it would not be regulated under Section 10 of the Rivers and Harbors Act. Wetlands A and B are located over 400 feet from Smith Creek, and Wetland C is located approximately 275 feet from a backwater channel of the Susquehanna River. The area surrounding the wetlands is active agricultural fields, and are not ecologically contiguous with the streams. Although the site is located within the 100-year floodplain to the Susquehanna River, there is no evidence of any connection between the wetlands and the river. The soils are all non-hydric, and there is no ecological continuum between the wetlands and the river. There is also no evidence of any shallow sub-surface connection to nearby jurisdictional waters. Therefore, for the reasons noted above, the wetlands are not adjacent to the nearby streams.

Summary: Based upon the above information, the delineated wetlands are hydrologically isolated from Smith Creek and the Susquehanna River. These areas appeared to have been excavated from non-hydric soils.

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7T

Date