

**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 27, 2020**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Detroit District, Michiana Branch, Robinson - unauthorized wetland fill, LRE-2017-00917-120-U19**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: 51149 CR 109 and adjacent parcels; Simonton Lake**

State: Indiana County/parish/borough: Elkhart City: Elkhart  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.750185° N, Long. -85.958891° W.  
Universal Transverse Mercator: Zone 16, X 586559, Y 4622563

Name of nearest waterbody: Simonton Lake

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: St. Joseph River

Name of watershed or Hydrologic Unit Code (HUC): 04050001

- 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: December 20, 2019  
 Field Determination. Date(s): January 24, 2019, July 18, 2019, August 21, 2019, and November 4, 2019

**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: 365 linear feet: width (ft) and/or acres.  
Wetlands: 4.26 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: .

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

**1. TNW**

Identify TNW: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

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

Identify flow route to TNW<sup>5</sup>: .

Tributary stream order, if known: .

<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.

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

- Tributary is:  Natural  
 Artificial (man-made). Explain: .  
 Manipulated (man-altered). Explain: .

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

- Average width: feet  
Average depth: feet  
Average side slopes: **Pick List**.

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: |                                   |
| <input type="checkbox"/> Other. Explain: . |  |                                   |

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

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

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- Dye (or other) test performed: .

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           |
| <input type="checkbox"/> other (list):  |   |
| <input type="checkbox"/> 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):

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

(iii) **Chemical Characteristics:**

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

Explain: .

Identify specific pollutants, if known: .

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

<sup>7</sup>Ibid.

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

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

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size:        acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** 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: .

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: .
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - 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: **Pick List**

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:
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:

### 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: Simonton Lake is a 301 acre glacial lake (maximum depth 24 feet) located less than ½ mile from the Indiana/Michigan State Line. Simonton Lake's 8.2 square mile watershed extends north into Cass County, Michigan. Simonton Lake is depicted as a perennial lake on the USGS Topographic map, the Elkhart County Soil Survey, and the NWI map, which also indicates that the water regime for Simonton Lake is permanently flooded; water covers the bottom substrate throughout the year in all years. Review of aerial photos from 1939, 1951, 1957, 1965, 1973, and 2016, along with Google Earth images dated 3/1999, 9/2003, 3/2005, 8/2005, 9/2005, 12/2005, 7/2006, 8/2006, 8/2007, 10/2008, 8/2010, 6/2011, 10/2011, 9/2015, and 4/2017 confirm the lake is permanently flooded. A State of Indiana Public Freshwater Lake (defined in

Indiana Code 14-26-2-1.5 as a “reasonably permanent body of water”), the state maintains a public access site on the lake for boaters. According to the Indiana Department of Natural Resources, Simonton Lake is heavily used by in-state and out-of-state residents for recreational boating, fishing, and swimming. The JD review area includes approximately 365 linear feet of Simonton Lake shoreline at its northern extent. Simonton Lake drains to the south out of its east basin through Osolo Township Ditch (Lily Creek), an Elkhart County regulated drain. Osolo Township Ditch is depicted as solid blue line perennial stream on the USGS Topographic Map, which the USGS defines as normally having water in its channel at all times. Perennial flow of Osolo Township Ditch is confirmed by visible surface water present in-channel in multiple aerial photos (Google Earth Images, 3/1999, 9/2003, 3/2005, 8/2005, 9/2005, 12/2005, 8/2007, 10/2008, 10/2011, and 4/2017). At a Corps inspection of the waterway for an unrelated file (LRE-2014-00472-120), Osolo Township Ditch held flowing water, exhibited a defined bed and bank with an OHWM, and was determined to be an RPW with perennial flow. Osolo Township Ditch discharges into the St. Joseph River just upstream of the Elkhart dam. The St. Joseph River, a Traditional Navigable Water (TNW) outlets into Lake Michigan, also a TNW.

- 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: **365** linear feet      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: **A total of 4.26 acres of wetland was identified within the current JD request area, with additional wetlands delineated outside of the current review area. The consultant labeled three areas of wetland within the current request area as Wetland 01, Wetland 02, and Wetland 03, however a review of historical aerial photography and applicable resource maps provide evidence that the current JD request area is part of a larger forested wetland complex that is contiguous with Simonton Lake; the areas that are non-wetland in the current delineation schematic were previously subject to fill activities. The areas that currently meet wetland criteria within the review are what remains of the forested wetland complex abutting Simonton Lake, and will be referenced as Wetland 01/02/03 for purposes of this JD, because man-made fills do not sever adjacency or otherwise alter connectivity for jurisdictional purposes. Aerial photos show the JD request area to be forested in 1939, 1951, 1957, 1965, and 1973. Between 1973 and 1999 fill was placed in the wooded wetland complex for the development of a residential property with a house, barn, and driveway. Portions of the project site have undergone additional human alteration since 2015, including the areas of wetland fill mapped on the delineation schematic (figure dated November 25, 2019). Those areas that were recently subjected to mechanized landclearing and fill meet wetland criteria as described in the delineation report and data forms for DP 01, DP 03, and DP 05. The U.S. Army Corps of Engineers (Corps) previously documented forested wetland immediately west of the current JD request area and noted its extension eastward into the present JD review area (Corps file numbers LRE-93-120-021), providing further evidence of Wetland 01/02/03 being part of one large, forested wetland complex. In addition to the historical evidence, Wetland 01/02/03 occupies the same, low landscape position according to elevation data and field observations. In addition, the hydrology appears similar throughout Wetland 01/02/03 based upon field observations and applicable resource maps. The Soil Survey for Elkhart County maps the JD review area as a Maumee Loamy Sand, a hydric soil series. The Maumee Loamy Sand soil series has a water table that ranges from 0-12” from the surface and is rapidly permeable. The hydrology indicators documented by the consultant in Wetland 01/02/03 are similar to those documented in the larger forested wetland complex outside of the current JD request area. In addition to the hydrology data recorded in August 2019, the consultant’s report from March 2019 noted the presence of standing water in Wetland 01/02/03. Standing water was also observed and documented in Wetland 01/02/03 by the Indiana Department of Environmental Management on May 8, 2019, and by the Corps on November 4, 2019. In addition to hydrology**

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

and elevation, the soil descriptions recorded for the data points in both the wetlands and disturbed areas meet hydric soil indicators. The vegetation is similar throughout the undisturbed portions of Wetland 01/02/03 and the overall forested wetland complex with dominant species including *Lindera benzoin* (FACW), and *Ulmus americana* (FACW), with *Symplocarpus foetidus* (OBL) observed throughout the site. The landscape position, hydrology, vegetation, and soils all indicate that Wetland 01/02/03 is functioning as one wetland. Wetland 01/02/03 directly abuts Simonton Lake. This is supported by Corps site inspections on January 24, 2019, July 18, 2019, August 21, 2019, and November 4, 2019 where a direct hydrologic surface connection was observed and documented. Also, the aerial photos dated 1939, 1951, 1957, 1965, 1973, 3/1999, 9/2003, 3/2005, 8/2005, 9/2005, 12/2005, 7/2006, 8/2006, 8/2007, 10/2008, 8/2010, 6/2011, 10/2011, 9/2015, 2016 and 4/2017 all show Wetland 01/02/03 abutting Simonton Lake. In addition to the aeriels and site visits, the Soil Survey for Elkhart County depicts the dominant soil series for the site directly abutting Simonton Lake. Elevation maps of the JD review area also indicate that the area of Wetland 01/02/03 and Simonton Lake are at a similar elevation, which supports the presence of a direct, hydrologic surface connection between the wetland and the 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: **4.26** acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

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

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

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

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

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain: .  
 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.

<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: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Preliminary delineation report: Regulated Waters Delineation Report, Vincente Robinson, Elkhart, Indiana, March 2019. Regulated Waters Updated Delineation Report, Vincente Robinson, Elkhart, Indiana, September 10, 2019 by Cardno, with revised figures submitted December 9, 2019 (revised figures dated November 25, 2019).
- 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: November 4, 2019.
- Corps navigable waters’ study: .
- U.S. Geological Survey Hydrologic Atlas: 04050001.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Adamsville, 1:24K Elkhart.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Elkhart County, Indiana.
- National wetlands inventory map(s). Cite name: USFWS Online Wetlands Mapper.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Indiana University Bloomington, Indiana Geologic Survey Map (<https://igws.indiana.edu/IHAPI/Map/>) dated 1939, 1951, 1957, 1965, and 1973. Google Earth Images dated 3/1999, 9/2003, 3/2005, 8/2005, 9/2005, 12/2005, 7/2006, 8/2006, 8/2007, 10/2008, 8/2010, 6/2011, 10/2011, 9/2015, 4/2017; Indiana leaf-off imagery 2016.  
or  Other (Name & Date): Corps site inspection photos dated January 24, 2019, July 18, 2019, property owner photo dated August 20, 2016, undated property owner photos, Indiana Department of Environmental Management photos May 8, 2019, .
- Previous determination(s). File no. and date of response letter: 05-120-027-0, dated September 13, 2005; LRE-2017-00917-120-A17-2, January 8, 2018; LRE-2017-00917-120-U19, February 6, 2019.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: R. Edgell. Simonton Lake, Elkhart County, 2007 Fish Management Report, Indiana Department of Natural Resources Division of Fish and Wildlife; Simonton Lake Diagnostic/Feasibility Study, Elkhart County, Indiana. May 2011. Prepared for Simonton Lake Home Owners Association c/o William Broderick, 1424 Johnson St., Elkhart, IN 46514, Prepared by: JFNew, 708 Roosevelt Road, Walkerton, Indiana 46574; .
- Other information (please specify): Detroit District Portal GIS Viewer: USGS 3DEP Elevation and Contour Data, Corps site inspections January 24, 2019, July 18, 2019, August 21, 2019, and November 4, 2019; USGS Water Resources of the United States, Water Basics Glossary: [https://water.usgs.gov/water-basics\\_glossary.html#P](https://water.usgs.gov/water-basics_glossary.html#P); Osolo Township Regulated Drains, <http://elkcosurveyor.org/resources/drainage-maps/osolo-township.pdf>; Simonton Lake Sediment Removal Plan, October 27, 2013, Elkhart County, Indiana, Prepared for: Simonton Lake Area Homeowners Association, P.O. Box 1706, Elkhart, IN 46515-1706,

Prepared by: All Things Water, 1926 Leininger Ave., Elkhart, IN 46514; Preliminary Subsurface Exploration and Recommendations, Proposed Log Cabin and Garage Additions; 51149 County Road 109, Elkhart Indiana 46514, GME Testing Project No. G18-034855, Prepared for: Mr. Vince Robinson, April 10, 2018 by GME Testing; Corps File Nos. LRE-93-120-021 and LRE-2014-00472-120.

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

The JD request area is situated at the south side of Simonton Lake. This forested area is located at a low elevation, near lake level, and is mapped with hydric soils, primarily Maumee Loamy Sand, which is very poorly drained and typically occurs in depressions and flats of outwash plains. The Maumee Loamy Sand soil series has a water table that ranges from 0-12" from the surface and is rapidly permeable. Dark areas, considered to be "wet signatures" or indicators of surface water presence or saturation are visible in Google Earth Imagery dated 3/1999, 3/2005, and in the 2016 Indiana leaf-off imagery of the review area. Wetland hydrology throughout the review area is confirmed by the hydrology indicators recorded in the delineation report and observed at multiple site inspections. The initial March 2019 delineation report noted the presence of standing water throughout the site, and the Indiana Department of Environmental Management documented surface water in photos taken in May 2019. Surface water was also present in the wetland during the November 4, 2019 site inspection. Vegetation is similar throughout the wetland complex; dominant species include *Lindera benzoin* (FACW), and *Ulmus americana* (FACW). Confirmed by multiple inspections, the consultant's wetland delineation report, and a review of historical aerial photography and applicable resource maps, the JD request area is part of a larger forested wetland complex that is contiguous with/directly abutting Simonton Lake.

In the initial, incomplete March 2019 report, the consultant had labeled two areas of wetland as Wetland 01 and Wetland 02. The revised delineation report labels three areas of wetland as Wetland 01, Wetland 02, and Wetland 03. These wetland areas are all part of the overall wetland complex abutting Simonton Lake. The areas within the JD request boundaries that do not meet wetland criteria are the results of fill activities undertaken without the necessary authorization from the U. S. Army Corps of Engineers (Corps) in the recent past, as evidenced by aerial photos, and information gained during site inspections. Additionally, the areas mapped as wetland fill on the delineation schematic (figures dated November 25, 2019) meet wetland criteria as described in the delineation report and in the data forms for DP 01, DP 03, and DP 05. For purposes of this JD, the wetland within the request area has been referenced as Wetland 01/02/03. The landscape position, hydrology, vegetation, and soils all indicate that Wetland 01/02/03 is functioning as one wetland; berms, dikes and other man-made barriers do not sever jurisdiction.

Based on a review of aerial photos, the current JD request area has been forested going back to the late 1930's. Lack of clearing and tillage suggests that the land immediately south of Simonton Lake at this area was historically too wet for sustained cultivation. The majority of the property is mapped Maumee Loamy Sand, a hydric soil that is very poorly drained, rapidly permeable, and occurs in depressions and flats of outwash plains. The presence of hydric soils was later confirmed on-site by soil profile data recorded by the consultant and the Corps. Historical aerial photos also show the areas to the east and west of the parcel becoming increasingly developed over time, while the forestland and near the current request area remained intact. The 1957 aerial shows what might be a road fill or road cut approaching or crossing the current property line, but no further development can be seen in the 1965 and 1973 aerial photos. Between 1973 and 1999 fill was placed in the wooded wetland complex for the construction of a driveway, house, and barn. A review of aerial photos (Google Earth Images 3/1999, 9/2003, 3/2005, 8/2005, 9/2005, 12/2005, 7/2006, 8/2006, 8/2007, 10/2008, 8/2010, 6/2011, and 10/2011) shows varying degrees of potential fill placement immediately adjacent to the house and pole barn. A review of past Army Corps actions in the vicinity indicate that the placement of fill was conducted without the necessary authorization from the Corps. In 2011, there appears to be a rock seawall along the Simonton Lake shoreline, and also rock placement along the edge of the mowed lawn at the east and west sides of the house. Based on recent site inspections, this rock line appears to mark the current wetland boundary near the house, where the old fill slopes into the wetland; the stone appears to have been placed to stabilize and/or landscape the fill side-slopes.

In the 9/2015 and especially the 4/2017 Google Earth aerial photos, there appears to be potential land-clearing and/or fill expansion. The 2017 aerial photo depicts a new structure (pole barn) immediately adjacent to the older pole barn, and a new shed near the lake. In 2017 or later, additional mechanized landclearing and wetland fill has been documented in the areas mapped on the delineation figures dated November 25, 2019. In summary, the soil survey reports the property as mapped in hydric soils and historical aerial photos show the area to have been forested back to 1939. Based on the review of applicable resource maps, which includes elevation data, the soil survey, and aerial photos, it appears that JD request area is (Wetland 01/02/03) and was a forested wetland complex contiguous with/directly abutting Simonton Lake. Areas that do not currently meet wetland criteria appear to have resulted from prior fill placement. Overall, landscape position, aerial photos, soil data, vegetation, hydrology data, the consultant's delineation reports, and multiple Corps site visits confirm that Wetland 01/02/03 abuts and/or is contiguous with Simonton Lake and functions as part of the overall large forested wetland with a direct surface connection to Simonton Lake, a tributary of the St. Joseph River (TNW), and ultimately Lake Michigan (TNW). Simonton Lake and its adjacent wetlands are waters of the United States.