APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 06-Jun-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2007-01127-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	NY - New York
County/parish/borough:	Saratoga
City:	Ballston
Lat:	43.04
Long:	73.82
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 18N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 18N
Name of nearest waterbody:	Geyser Brook
Name of nearest Traditional Navigable Water (TNW):	Kayaderosseras Creek
Name of watershed or Hydrologic Unit Code (HUC):	

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office Determination Date:

☑ Field Determination Date(s): ☐ 15-Jun-2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wetland A, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:
Wetland WA is an isolated wetland that extends north to south, parallel to the existing track. The wetland formed within the un-maintained ditch created adjacent to the track. There is no current or historic connection to the nearby wetlands and tributaries. The source of hydrology for WA is primarily overland flow associated with stormwater runoff. No evidence of groundwater discharge into the wetland was observed in the field.

At the south end of wetland WA, the linear distance to watercourse FGH is approximately 135 feet (ft). The ground surface elevation changes from approximately 311.5 ft at the wetland to 300 ft at the 4-foot box culvert under the tracks at FGH.

At the north end of wetland WA, the linear distance from wetland WA to watercourse IJ is approximately 236 ft and the ground surface elevation changes from 306 ft at the wetland to 279 ft at the 6-foot stone culvert under the tracks at IJ.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size:
Drainage area:
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.
- ☐ Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.
Project waters are river miles from RPW.
Project Waters are aerial (straight) miles from TNW.
Project waters are aerial(straight) miles from RPW.

- ☐ Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:
Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:
Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):
All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

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

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wetland A, 2007-01127, CP Railway	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland A, 2007-01127, CP Railway	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland A, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands	-	3682.63896
Total:		**0**	**3682.63896**

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- [ ] 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:
- [x] Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- [x] Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based soley 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):

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

Water Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland A, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands	-	3682.63896
Total:		**0**	**3682.63896**

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	delineation drawings submitted by consultant	Drawings entitled "CANADIAN PACIFIC RAILROAD, Wetland Delineation Map", figunre nos. JD-1through JD-15, all prepared by HDR, and dated 19 MAR 2009
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
--Photographs	-	-
----Other	site photographs	Photographs taken at site inspections on 8 APR 2012 and 15 JUN 2010
--Other information	Site Inspection Reports	observations of representative of this office at inspections of the project site on 8 APR 2010 and 15 JUN 2010

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

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[1]-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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

[3]-Supporting documentation is presented in Section III.F.

[4]-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5]-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

[6]-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.

[7]-Ibid.

[8]-See Footnote #3.

[9] -To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10]-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 06-Jun-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2007-01127-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	NY - New York
County/parish/borough:	Saratoga
City:	Ballston
Lat:	43.04
Long:	73.82
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 18N Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 18N
Name of nearest waterbody:	Geyser Brook
Name of nearest Traditional Navigable Water (TNW):	Kayaderosseras Creek
Name of watershed or Hydrologic Unit Code (HUC):	

☐ 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 the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office Determination Date:

☑ Field Determination Date(s): ☐ 15-Jun-2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ 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 "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Wetland WI, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m^2)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:
Wetland WI is a small isolated wetland to the north of the existing bridge crossing over Route 50. The wetland formed within an un-maintained ditch created adjacent to the track. There is no current or historic connection to the nearby wetlands and tributaries.

Wetland WI formed in an un-maintained ditch created parallel to the existing tracks. Similar to wetland WA, the source of hydrology for WI is primarily overland flow associated with stormwater runoff.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size:
Drainage area:
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

- ☐ Tributary flows directly into TNW.
- ☐ Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.
Project waters are river miles from RPW.
Project Waters are aerial (straight) miles from TNW.
Project waters are aerial(straight) miles from RPW.

☐ Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:
Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:
Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):
All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

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.

Significant Nexus: **Not Applicable**

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

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

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

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:[10]

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Wetland WI, 2007-01127, CP Railway	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland WI, 2007-01127, CP Railway	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland WI, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands	-	40.46856
Total:		**0**	**40.46856**

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- [ ] 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:
- [x] Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- [x] Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based soley 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):

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

Water Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland WI, 2007-01127, CP Railway	Isolated (interstate or intrastate) waters, including isolated wetlands	-	40.46856
Total:		**0**	**40.46856**

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.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Delineation drawings provided by consultant	Drawings entitled "CANADIAN PACIFIC RAILROAD, Wetland Delineation Map", figunre nos. JD-1through JD-15, all prepared by HDR, and dated 19 MAR 2009
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
--Photographs	-	-
----Other	site photographs	Photographs taken at site inspections on 8 APR 2010 and 15 JUN 2010
--Other information	Site Inspection Reports	observations of representative of this office at site inspections on 8 APR 2010 and 15 Jun 2010

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

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[1]-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

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

[3]-Supporting documentation is presented in Section III.F.

[4]-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5]-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

[6]-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.

[7]-Ibid.

[8]-See Footnote #3.

[9] -To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10]-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.