

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

SECTION I: BACKGROUND INFORMATION**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 29-Nov-2012**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2009-01142-JD1**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State : NY - New York
County/parish/borough: Saratoga
City: Stillwater
Lat: 43.004
Long: -73.734
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: Unnamed tributary
Name of nearest Traditional Navigable Water (TNW): Saratoga Lake
Name of watershed or Hydrologic Unit Code (HUC): Hudson River

 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): 14-Apr-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 2 (IW1 and IW2), 2009-1142	Isolated (interstate or intrastate) waters, including isolated wetlands

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

Area: (m²)

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:
 There are two isolated wetlands within the property boundary, totaling 0.008 acres in size. The closest of these wetlands is located approximately 25 linear feet from the closest jurisdictional wetland. The upland area that separates these wetlands contains upland soils, no signs of hydrology, and upland vegetation. The isolated wetlands are surrounded by upland vegetation and upland soils, and fail to show any hydrological connection to the jurisdictional wetland. Past logging on the property may have resulted in the creation of both these wetlands, as deep ruts are present in both. There are no man-made or natural discrete and/or confined surface water connection between the wetlands and any jurisdictional water of the United States. The wetlands are not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into these subject wetlands. The wetlands would not be considered a traditional navigable water in that they don't have the necessary water depth to support navigation of any kind, and don't have any surface hydrologic connection to a waterbody that would. The wetlands don't cross any state boundary and don't have a use that would associate them with interstate commerce.

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 2 (IW1 and IW2), 2009-1142	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland 2 (IW1 and IW2), 2009-1142	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 2 (IW1 and IW2), 2009-1142	Isolated (interstate or intrastate) waters, including isolated wetlands	-	32.374848
Total:		0	32.374848

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:

- 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):

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) (m ²)
Wetland 2 (IW1 and IW2), 2009-1142	Isolated (interstate or intrastate) waters, including isolated wetlands	-	32.374848
Total:		0	32.374848

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	Wetland Delineation	"Wetland Delineation Map, prepared for Mason Street, LLC", prepared by Northeast Land Survey & Land Development Consultants, P.C., dated July 28, 2009, and last revised November 14, 2012
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	Quaker Springs Quad	-
--USDA Natural Resources Conservation Service Soil Survey.	Saratoga County Soil Survey	-
--State/Local wetland inventory map(s):	Quaker Springs Quad	-

--Photographs	-	-
---Other	-	-
--Other information	Site Inspection Report dated April 21, 2010	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

-
- 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): 29-Nov-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2009-01142-JD2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
 County/parish/borough: Saratoga
 City: Stillwater
 Lat: 43.004
 Long: -73.734
 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: Unnamed tributary

Name of nearest Traditional Navigable Water (TNW): Saratoga Lake

Name of watershed or Hydrologic Unit Code (HUC): Hudson River

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): 14-Apr-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 1, 2009-1142	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)

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: There are two isolated wetlands within the property boundary, totaling 0.008 acres in size. The closest of these wetlands is located approximately 25 linear feet from the closest jurisdictional wetland. The upland area that separates these wetlands contains upland soils, no signs of hydrology, and upland vegetation. The isolated wetlands are surrounded by upland vegetation and upland soils, and fail to show any hydrological connection to the jurisdictional wetland. Past logging on the property may have resulted in the creation of both these wetlands, as deep ruts are present in both. There are no man-made or natural discrete and/or confined surface water connection between the wetlands and any jurisdictional water of the United States. The wetlands are not located within a mapped 100-year flood plain. Therefore, during times of heavy precipitation, there is very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into these subject wetlands. The wetlands would not be considered a traditional navigable water in that they don't have the necessary water depth to support navigation of any kind, and don't have any surface hydrologic connection to a waterbody that would. The wetlands don't not cross any state boundary and don't have a use that would associate them with interstate commerce.

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:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
Wetland 1, 2009-1142	16.4	PFO	-	-

(b) General Flow Relationship with Non-TNW:

Flow is:

Not Applicable.

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland 1, 2009-1142	-	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland 1, 2009-1142	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland 1, 2009-1142	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland 1, 2009-1142	1-2	1-2	Wetland to navigable waters	-

(ii) Chemical Characteristics:

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

Wetland Name	Explain	Identify specific pollutants, if known
Wetland 1, 2009-1142	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland 1, 2009-1142	-	-	-	-

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.

Wetland Name	Flow	Explain
Wetland 1, 2009-1142	PERENNIAL	Wetlands have a direct continuous hydrological connection to perennial RPW.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 1, 2009-1142	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	66368.4384
Total:		0	66368.4384

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

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

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:

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):

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:

Not Applicable.

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	Wetland Delineation	"Wetland Delineation Map, prepared for Mason Street, LLC", prepared by Northeast Land Survey & Land Development Consultants, P.C., dated July 28, 2009, and last revised November 14, 2012

--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	Quaker Springs Quad	-
--Photographs	-	-
---Other	-	-
--Other information	SIR 4-21-10	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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.
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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.

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U.S. Army Corps of Engineers

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A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 29-Nov-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2009-01142-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
 County/parish/borough: Saratoga
 City: Stillwater
 Lat: 43.004
 Long: -73.734
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 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: Unnamed tributary
 Name of nearest Traditional Navigable Water (TNW): Saratoga Lake
 Name of watershed or Hydrologic Unit Code (HUC): Hudson River

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.

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Office Determination Date:

Field Determination Date(s): 14-Apr-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
Stream 1, 2009-1142	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

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

Area: (m²)

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:

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:

Order	Tributary Name
1	Stream 1, 2009-1142

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Stream 1, 2009-1142	X				

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Stream 1, 2009-1142	6	1	

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Stream 1, 2009-1142				X	X				

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition/Stability	Run/Riffle/Pool Complexes	Geometry	Gradient (%)
Stream 1, 2009-1142				

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Stream 1, 2009-1142	Perennial flow	20 (or greater)		

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
Stream 1, 2009-1142		

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Stream 1, 2009-1142			

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM?	Explain
Stream 1, 2009-1142		X		

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wreck Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	W. Slo
Stream 1, 2009-1142	X	X							X		X	X		

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.).

Tributary Name	Explain	Identify specific pollutants, if known
Stream 1, 2009-1142		

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Stream 1, 2009-1142					

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 an 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 flow 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 species that may be present in the tributary or 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

C. 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:

Wetland Name	Flow	Explain
Stream 1, 2009-1142	PERENNIAL	Perennial RPW flows continuously throughout the year

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Stream 1, 2009-1142	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	981.456	-
Total:		981.456	0

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, WATERS:¹⁰
Not Applicable.

Identify water body and summarize rationale supporting determination:
Not Applicable.

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

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:

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):

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 irrigated agriculture), using best professional judgment:
Not Applicable.

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	Wetland Delineation	"Wetland Delineation Map, prepared for Mason Street, LLC", prepared by Northeast Land Survey & Land Developer July 28, 2009, and last revised November 14, 2012
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	Quaker Springs Quad	-
--Photographs	-	-
---Other	-	-
--Other information	SIR 4-21-10	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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 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