

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

SECTION I: BACKGROUND INFORMATION**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 19-Oct-2012**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2006-00233-JD1**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State : NY - New York
County/parish/borough: Saratoga
City: Clifton Park
Lat: 42.89183
Long: -73.77639
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: Dwaas Kill
Name of nearest Traditional Navigable Water (TNW): Hudson River
Name of watershed or Hydrologic Unit Code (HUC): 02020003 Hudson-Hoosic

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): 17-Nov-2011

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 3, 2006-233	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: 1987 Delineation Manual.

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 3, consisting of 0.16 acre, is a man-induced wetland situated within a borrow area (depression) that was established to construct Interstate 87 several decades ago. The wetland is primarily scrub-shrub, but is sparsely vegetated, and has different soils than the on-site wetlands. Wetland 3 is located approximately 400 feet to the north of the nearest jurisdictional water (Wetland 2), and is located over 1,000 feet south of Wetland A. A mature wooded ridge separates Wetland 2 and 3. Wetland 3 does not extend off-site, and is surrounded by non-hydric soils and upland vegetation. There is no man-made or natural discrete and/or confined surface water connection between Wetland 3 and any other jurisdictional water. No evidence of past connections between Wetland 3 and any jurisdictional water was observed. Wetland 3 is not located within a mapped 100 year floodplain. 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 Wetland 3. In addition, Wetland 3 would not be considered a traditional navigable water in that it does not have the necessary water depth to support navigation of any kind, and it does not have any surface hydrologic connection to a waterbody that would. Wetland 3 does not cross any state boundary and does not have a use that would associate it with interstate commerce.

SECTION III: GWA 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 3, 2006-233	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Wetland 3, 2006-233	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 3, 2006-233	Isolated (interstate or intrastate) waters, including isolated wetlands	-	647.49696
Total:		0	647.49696

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 3, 2006-233	Isolated (interstate or intrastate) waters, including isolated wetlands	-	647.49696
Total:		0	647.49696

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	Entitled "Waters of the United States, Lands of Country Club Acres, Inc.", Sheets WL-1 and WL-2, prepared by Ivan Zdrahal Associates, PLLC, both dated October 2011, with Sheet WL-1 last revised on May 18, 2012, and Sheet WL-2 last revised on December 1, 2011.
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	Delineation Report	Prepared by North Country Ecological Services, Inc., entitled "Delineation of Waters of the United States Including Freshwater Wetlands, Lands of Country Club Acres", and dated October 10, 2011.
--Corps navigable waters study	-	Listing for Hudson River
--U.S. Geological Survey map(s).	7.5' Quadrangle	Round Lake Quadrangle
--USDA Natural Resources Conservation Service Soil Survey.	County Survey	Saratoga County Survey
--State/Local wetland inventory map(s):	State Map	depicted on Round Lake Quadrangle
--Photographs	-	Taken by NCES and included in wetland delineation report dated October 10,

---Other	Photographs	2011.
--Other information	Site Inspection	Conducted by representative of this office on November 17, 2011.

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.

(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
3	Stream 1, 2006-233

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Stream 1, 2006-233	X				

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Stream 1, 2006-233	30	4	

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Stream 1, 2006-233		X			X				

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

Tributary Name	Condition/Stability	Run/Riffle/Pool Complexes	Geometry	Grade
Stream 1, 2006-233	Tributary is stable. Meandering stream with developed floodplain with adjacent wooded wetlands.	Riffle and pool complexes are present in this reach of stream.	Meandering	2

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Stream 1, 2006-233	Perennial flow			

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
Stream 1, 2006-233		

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Stream 1, 2006-233			

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
Stream 1, 2006-233	X	X		

Tributaries with OHWM⁸ - (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. Sta
Stream 1, 2006-233	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, 2006-233	Water is clear.	

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Stream 1, 2006-233	X	Wooded wetlands.			X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Usage of
Stream 1, 2006-233	X							X	

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 No.
Wetland 2, 2006-233	13	Has a mixture of all three cover types, PFO, PSS and PEM.		

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
Wetland 2, 2006-233	Perennial flow.	

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland 2, 2006-233		

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland 2, 2006-233			

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland 2, 2006-233	Yes			

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland 2, 2006-233	2-5	2-5	Wetland to navigable waters	5 - 10-year

(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 2, 2006-233		

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland 2, 2006-233	X	Ranges from 100 to about 350 feet on site.		

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Wetland 2, 2006-233	X							X	

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 significant 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 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 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 spot (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 si

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:

Wetland Name	Flow	Explain
Stream 1, 2006-233	PERENNIAL	Water present year round.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Stream 1, 2006-233	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	566.3184	-
Total:		566.3184	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.

Wetland Name	Flow	Explain
Wetland 2, 2006-233	PERENNIAL	Large wetland complex directly abutting perennial stream.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 2, 2006-233	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	52609.128
Total:		0	52609.128

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	Delineation Drawings	Entitled "Waters of the United States, Lands of Country Club Acres", Sheets WL-1 and WL-2, prepared by Ivan Zdrahal Associates, Inc. on October 2011, with Sheet WL-1 last revised on May 18, 2012, and Sheet WL-2 last revised on December 1, 2011.
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	Delineation Report	Prepared by North Country Ecological Services, Inc., entitled "Delineation of Waters of the United States Including Freshwater Waters of Country Club Acres", and dated October 10, 2011.
--Corps navigable waters study	-	Listing for Hudson River
--U.S. Geological Survey map(s).	7.5' Quadrangle	Round Lake Quadrangle
--USDA Natural Resources Conservation Service Soil Survey.	County Survey	Saratoga County Survey
--State/Local wetland inventory map(s):	State Map	depicted on Round Lake Quadrangle
--Photographs	-	-
---Other	Photographs	Taken by NCES and included in wetland delineation report dated October 10, 2011.
--Other information	Site Inspection	Conducted by representative of this office on November 17, 2011

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 and 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 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.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 19-Oct-2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2006-00233-JD3

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York
 County/parish/borough: Saratoga
 City: Clifton Park
 Lat: 42.89183
 Long: -73.77639
 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: Dwaas Kill
 Name of nearest Traditional Navigable Water (TNW): Hudson River
 Name of watershed or Hydrologic Unit Code (HUC): 02020003 Hudson-Hoosic

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): 17-Nov-2011

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 2, 2006-233	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
Wetland 1, 2006-233	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland 4, ABC, 2006-233	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: 1987 Delineation Manual.

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: acres
 Drainage area: 150 acres

Average annual rainfall: 48 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 5-10 river miles from TNW.
 Project waters are 1 (or less) river miles from RPW.
 Project Waters are 5-10 aerial (straight) miles from TNW.
 Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:
 Waters do not cross or serve as state boundaries.

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Order	Tributary Name
1	Stream 2, 2006-233

(b) General Tributary Characteristics:

Tributary is:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Stream 2, 2006-233	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Stream 2, 2006-233	4	1	-

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Stream 2, 2006-233	-	X	-	X	X	-	-	-	-

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

Tributary Name	Condition/Stability	Run/Riffle/Pool Complexes	Geometry	Gradient (%)
Stream 2, 2006-233	Tributaries stable, and well confined.	Too steep to have these features.	Relatively straight	6

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Stream 2, 2006-233	Seasonal flow	-	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
Stream 2, 2006-233	Discrete and confined	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Stream 2, 2006-233	Yes	groundwater presence	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM?	Explain
Stream 2, 2006-233	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	W-Sta
Stream 2, 2006-233	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 2, 2006-233 Water is clear.

(iv) Biological Characteristics, Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Stream 2, 2006-233	X	-	X	-	X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Stream 2, 2006-233	X	-	-	-	-	-	-	X	On-site o

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, 2006-233	2.33	Predominantly PEM with PSS.	-	Does not cross or serve as state boundaries.
Wetland 4, ABC, 2006-233	2.6	Predominantly PFO.	-	Does not cross or serve as state boundary.

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
Wetland 1, 2006-233	Intermittent flow.	-
Wetland 4, ABC, 2006-233	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland 1, 2006-233	Discrete	-
Wetland 4, ABC, 2006-233	Discrete	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland 1, 2006-233	-	-	-
Wetland 4, ABC, 2006-233	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland 1, 2006-233	Yes	-	-	-
Wetland 4, ABC, 2006-233	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles Front TNW	Flow Direction	Within Floodplain
Wetland 1, 2006-233	5-10	5-10	Wetland to navigable waters	-
Wetland 4, ABC, 2006-233	5-10	5-10	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, 2006-233	-	-
Wetland 4, ABC, 2006-233	-	-

(iii) Biological Characteristics, Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland 1, 2006-233	X	-	-	-
Wetland 4, ABC, 2006-233	X	-	-	-

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Wetland 1, 2006-233	X	-	-	-	-	-	-	X	-
Wetland 4, ABC, 2006-233	X	-	-	-	-	-	-	X	-

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 specific flow event (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.

Findings for: Stream 2, 2006-233, Wetland 1, 2006-233, Wetland 4, ABC, 2006-233
Significant nexus present for relatively permanent waters and directly abutting wetlands.

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:

Wetland Name	Flow	Explain
Stream 2, 2006-233	SEASONAL	Presence of groundwater, observation of flow, and close proximity to perennial RPW on-site.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Stream 2, 2006-233	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	1058.8752	-
Total:		1058.8752	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.

Wetland Name	Flow	Explain
Wetland 1, 2006-233	SEASONAL	
Wetland 4, ABC, 2006-233	SEASONAL	Directly abutting a seasonal RPW stream

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland 1, 2006-233	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	9429.17448
Wetland 4, ABC, 2006-233	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	10521.8256
Total:		0	19951.00008

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, WATERWAYS: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 endangere 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	Delineation Drawings	Entitled "Waters of the United States, Lands of Country Club Acres, Inc." Sheets WL-1 and WL-2, prepared by Ivan Zdrahal Asso October 2011, with Sheet WL-1 last revised on May 18, 2012, and Sheet WL-2 last revised on December 1, 2011.
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	Delineation Report	Prepared by North Country Ecological Services, Inc., entitled "Delineation of Waters of the United States Including Freshwater W Club Acres", and dated October 10, 2011.
--Corps navigable waters study	-	Listing for Hudson River
--U.S. Geological Survey map(s).	7.5' Quadrangle	Round Lake Quadrangle
--USDA Natural Resources Conservation Service Soil Survey.	County Survey	Saratoga County Survey
--State/Local wetland inventory map(s):	State Map	depicted on Round Lake Quadrangle
--Photographs	-	-
----Other	Photographs	Taken by NCES and included in wetland delineation report dated October 10, 2011.
--Other information	Site Inspection	Conducted by representative of this office on November 17, 2011.

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 acid 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 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.