

**JURISDICTIONAL DETERMINATION**

Revised 8/13/04

U.S. Army Corps of Engineers

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 1999-08770

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Albany  
Center coordinates of site (latitude/longitude): lat:42-44-44.9880 lon:73-49-15.9960  
Approximate size of area (parcel) reviewed, including uplands: 28.55 acres.  
Name of nearest waterway: Unnamed Tributary  
Name of watershed: MOHAWK RIVER

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit(s)  Date(s): 7/8/99 & 10/13/05

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 6.11 acres.

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Except for Wetlands B & C, the rest of the wetlands are all contiguous with stream channels that flow into Shakers Creek, which empties into the Mohawk River.*

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- Ordinary High Water Mark indicated by:                       High Tide Line indicated by:
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> the presence of litter and debris                    | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input checked="" type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> physical markings/characteristics         |
| <input checked="" type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> tidal gages                               |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> other:                                    |
| <input type="checkbox"/> other:   |  |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 Data sheets prepared by the Corps.  
 Corps' navigable waters' studies:  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps:  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey:  
 National wetlands inventory maps:  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on: 7/8/99 & 10/13/05  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

JURISDICTIONAL DETERMINATION

Revised 8/13/04

U.S. Army Corps of Engineers

DISTRICT OFFICE: NEW YORK DISTRICT (CENAN)
FILE NUMBER: 2001-00880

PROJECT LOCATION INFORMATION:

State: New York
County: Albany
Center coordinates of site (latitude/longitude): lat:42-48-26.9640 lon:73-44-11.8680
Approximate size of area (parcel) reviewed, including uplands: 80 acres.
Name of nearest waterway: Unnamed Tributary
Name of watershed: MOHAWK RIVER

JURISDICTIONAL DETERMINATION

Completed: Desktop determination [ ] Date:
Site visit(s) [X] Date(s): Aug. 2 & 3, Nov. 29, 2001

Jurisdictional Determination (JD):

[ ] Preliminary JD - Based on available information, [ ] there appear to be (or) [ ] there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

[X] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

[X] There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

[X] There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 3.66 acres.

[ ] There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

[ ] Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

[X] The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

[X] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

[ ] (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

[ ] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

[ ] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

[ ] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

[ ] (iii) which are or could be used for industrial purposes by industries in interstate commerce.

[ ] (4) Impoundments of waters otherwise defined as waters of the US.

[X] (5) The presence of a tributary to a water identified in (1) - (4) above.

[ ] (6) The presence of territorial seas.

[X] (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Parts of the Mowak River below OHWM are on site, all other wetlands or tributaries are directly connected and flow into the Mohawk River.

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- Ordinary High Water Mark indicated by:       High Tide Line indicated by:
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> the presence of litter and debris                    | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> physical markings/characteristics         |
| <input type="checkbox"/> destruction of terrestrial vegetation                | <input type="checkbox"/> tidal gages                               |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> other:                                    |
| <input type="checkbox"/> other:   |  |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 Data sheets prepared by the Corps.  
 Corps' navigable waters' studies: Mohawk River  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps:  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey:  
 National wetlands inventory maps:  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on:  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2003-01185

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Orange  
Center coordinates of site (latitude/longitude): lat:41-26-33.0000 lon:74-21-38.0160  
Approximate size of area (parcel) reviewed, including uplands: 346.3 acres.  
Name of nearest waterway: Walkill River  
Name of watershed: HUDSON RIVER - YONKERS TO POUGHKEEPSIE

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit(s)  Date(s): November 18, 2003

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Referencee 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 24.70 acres.

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The waters on site include the Walkill River, which flows to Rondout Creek, which flows to the Hudson River, which is navigable.

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- [X] Ordinary High Water Mark indicated by: [ ] High Tide Line indicated by:
- |   |   |
|---|---|
| [X] clear, natural line impressed on the bank | [ ] oil or scum line along shore objects      |
| [X] the presence of litter and debris         | [ ] fine shell or debris deposits (foreshore) |
| [X] changes in the character of soil          | [ ] physical markings/characteristics         |
| [X] destruction of terrestrial vegetation     | [ ] tidal gages                               |
| [X] shelving                                  | [ ] other:                                    |
| [ ] other:                                    |   |

[ ] Mean High Water Mark indicated by:

- [ ] survey to available datum; [ ] physical markings; [ ] vegetation lines/changes in vegetation types.

[X] Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- [ ] The reviewed area consists entirely of uplands.
- [ ] Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- [ ] Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- [X] The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- [ ] Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - [ ] Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - [ ] Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - [ ] Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - [ ] Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- [X] Isolated, intrastate wetland with no nexus to interstate commerce.
- [ ] Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- [ ] Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- [ ] Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- [X] Maps, plans, plots or plat submitted by or on behalf of the applicant.
- [X] Data sheets prepared/submitted by or on behalf of the applicant.
- [ ] This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- [ ] This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- [ ] Data sheets prepared by the Corps.
- [ ] Corps' navigable waters' studies:
- [ ] U.S. Geological Survey Hydrologic Atlas:
- [X] U.S. Geological Survey 7.5 Minute Topographic maps: Goshen, NY
- [ ] U.S. Geological Survey 7.5 Minute Historic quadrangles:
- [ ] U.S. Geological Survey 15 Minute Historic quadrangles:
- [X] USDA Natural Resources Conservation Service Soil Survey: Orange County, NY
- [X] National wetlands inventory maps: Goshen, NY
- [X] State/Local wetland inventory maps: Goshen, NY
- [ ] FEMA/FIRM maps (Map Name & Date):
- [ ] 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- [ ] Aerial Photographs (Name & Date):
- [X] Other photographs (Date):
- [ ] Advanced Identification Wetland maps:
- [X] Site visit/determination conducted on: November 18, 2003
- [ ] Applicable/supporting case law:
- [ ] Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2004-00485

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Westchester  
Center coordinates of site (latitude/longitude): lat:40-0-0.0000 lon:73-49-59.9880  
Approximate size of area (parcel) reviewed, including uplands: 100 acres.  
Name of nearest waterway: Unnamed Tributary  
Name of watershed: HUDSON RIVER - YONKERS TO POUGHKEEPSIE

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date: February 22, 2006  
Site visit(s)  Date(s):

**Jurisdictional Determination (JD):**

- Preliminary JD - Based on available information, *there appear to be* "waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:
- There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .
- There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.  
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

- The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

- (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
  - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
  - (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- (4) Impoundments of waters otherwise defined as waters of the US.
- (5) The presence of a tributary to a water identified in (1) - (4) above.
- (6) The presence of territorial seas.
- (7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: The wetlands on the site are contiguous with an unnamed tributary of the Hudson River.*

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- |  |  |
|--|--|
| <input type="checkbox"/> Ordinary High Water Mark indicated by:    | <input type="checkbox"/> High Tide Line indicated by:              |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> the presence of litter and debris         | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> physical markings/characteristics         |
| <input type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> tidal gages                               |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> other:                                    |
| <input type="checkbox"/> other:                                    |  |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map prepared by: Dru Associates, Inc.

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 Data sheets prepared by the Corps.  
 Corps' navigable waters' studies:  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps:  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey:  
 National wetlands inventory maps:  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on:  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2004-00607

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Kings  
Center coordinates of site (latitude/longitude): lat:40-40-14.9880 lon:74-0-16.9920  
Approximate size of area (parcel) reviewed, including uplands: 48.5 acres.  
Name of nearest waterway: Erie Basin  
Name of watershed: NEW YORK HARBOR

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit(s)  Date(s): September 8, 2005

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Erie Basin is tidally connected to upper New York Bay and is considered a navigable water. However, Graving Dock No. 1 is not considered navigable, as discussed below.

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- |  |   |
|--|---|
| <input type="checkbox"/> Ordinary High Water Mark indicated by:    | <input checked="" type="checkbox"/> High Tide Line indicated by:      |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects         |
| <input type="checkbox"/> the presence of litter and debris         | <input type="checkbox"/> fine shell or debris deposits (foreshore)    |
| <input type="checkbox"/> changes in the character of soil          | <input checked="" type="checkbox"/> physical markings/characteristics |
| <input type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> tidal gages                                  |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> other:                                       |
| <input type="checkbox"/> other:                                    |   |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:  
 Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.  
 Artificially irrigated areas, which would revert to upland if the irrigation ceased.  
 Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.  
 Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.  
 Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).  
 Isolated, intrastate wetland with no nexus to interstate commerce.  
 Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:  
 Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:  
 Other (explain): Graving Dock No. 1 is not considered a navigable waterway in accordance with 33 CFR 329.8(a).

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 Data sheets prepared by the Corps.  
 Corps' navigable waters' studies:  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps:  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey:  
 National wetlands inventory maps:  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on:  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers

Revised 8/13/04

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2005-00778

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Warren  
Center coordinates of site (latitude/longitude): lat:43-22-32.0160 lon:73-37-41.9880  
Approximate size of area (parcel) reviewed, including uplands: 4.73 acres.  
Name of nearest waterway: Halfway Brook  
Name of watershed: LAKE CHAMPLAIN

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit(s)  Date(s): June 29 and August 10, 2005

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Wetlands adjacent to an unnamed tributary to Halfway Creek*

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- |  |  |
|--|--|
| <input type="checkbox"/> Ordinary High Water Mark indicated by:    | <input type="checkbox"/> High Tide Line indicated by:              |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> the presence of litter and debris         | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> physical markings/characteristics         |
| <input type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> tidal gages                               |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> other:                                    |
| <input type="checkbox"/> other:                                    |  |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:  
 Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.  
 Artificially irrigated areas, which would revert to upland if the irrigation ceased.  
 Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.  
 Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.  
 Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).  
 Isolated, intrastate wetland with no nexus to interstate commerce.  
 Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:  
  
 Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:  
 Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):  
 Data sheets prepared by the Corps.  
 Corps' navigable waters' studies:  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps:  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey:  
 National wetlands inventory maps:  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on: June 29, August 10, 2005  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**

Revised 8/13/04

U.S. Army Corps of Engineers

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2005-01039

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Saratoga  
Center coordinates of site (latitude/longitude): lat:43-5-53.9880 lon:73-40-6.9960  
Approximate size of area (parcel) reviewed, including uplands: 89 acres.  
Name of nearest waterway: Unnamed Tributary  
Name of watershed: HUDSON RIVER - NORTH OF TROY

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit  Date: November 17, 2005

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 8.14 acres, including wetlands and 5,239 linear feet of stream channel.

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.  
 Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* The waters within the wetlands and stream channels on the project site flow into an unnamed tributary of Fish Creek. Fish Creek is considered a navigable water of the United States.

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- Ordinary High Water Mark indicated by:                     High Tide Line indicated by:
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> the presence of litter and debris                    | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> changes in the character of soil                     | <input type="checkbox"/> physical markings/characteristics         |
| <input type="checkbox"/> destruction of terrestrial vegetation                | <input type="checkbox"/> tidal gages                               |
| <input type="checkbox"/> shelving   | <input type="checkbox"/> other:                                    |
| <input type="checkbox"/> other:   |  |

- Mean High Water Mark indicated by:  
 survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: LA Group, P.C.

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.  
 Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).  
 Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).  
 The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- Isolated, intrastate wetland with no nexus to interstate commerce.  
 Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:  
 Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:  
 Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.  
 Data sheets prepared/submitted by or on behalf of the applicant.  
 This office concurs with the delineation report, dated October 7, 2005, prepared by: LA Group, P.C.  
 This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- Data sheets prepared by the Corps.  
 Corps' navigable waters' studies:  
 U.S. Geological Survey Hydrologic Atlas:  
 U.S. Geological Survey 7.5 Minute Topographic maps: Quaker Springs Quad  
 U.S. Geological Survey 7.5 Minute Historic quadrangles:  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey: Saratoga County Soil Survey  
 National wetlands inventory maps: Quaker Springs Quad  
 State/Local wetland inventory maps:  
 FEMA/FIRM maps (Map Name & Date):  
 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date):  
 Advanced Identification Wetland maps:  
 Site visit conducted on: November 17, 2005  
 Applicable/supporting case law:  
 Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

**JURISDICTIONAL DETERMINATION**

Revised 8/13/04

U.S. Army Corps of Engineers

**DISTRICT OFFICE:** NEW YORK DISTRICT (CENAN)  
**FILE NUMBER:** 2005-01152

**PROJECT LOCATION INFORMATION:**

State: New Jersey  
County: Essex  
Center coordinates of site (latitude/longitude): lat:40-41-58.9920 lon:74-9-15.0120  
Approximate size of area (pareel) reviewed, including uplands: 0.1 acres.  
Name of nearest waterway: Peddies Ditch  
Name of watershed: NEWARK BAY

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date: 16 Feb 2006  
Site visit(s)  Date(s):

**Jurisdictional Determination (JD):**

Preliminary JD - Based on available information,  *there appear to be* (or)  *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

*There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 0.1 acres.

*There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

*There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

**BASIS OF JURISDICTIONAL DETERMINATION:**

**A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":**

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":**

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands<sup>1</sup>.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent<sup>2</sup> to other waters of the US, except for those wetlands adjacent to other wetlands.

**Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above).** *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination.*

Peddies Ditch is subject to tide and is a navigable water.

**Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)**

- |  |   |
|--|---|
| <input type="checkbox"/> Ordinary High Water Mark indicated by:    | <input checked="" type="checkbox"/> High Tide Line indicated by:      |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> oil or scum line along shore objects         |
| <input type="checkbox"/> the presence of litter and debris         | <input type="checkbox"/> fine shell or debris deposits (foreshore)    |
| <input type="checkbox"/> changes in the character of soil          | <input checked="" type="checkbox"/> physical markings/characteristics |
| <input type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> tidal gages                                  |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> other:                                       |
| <input type="checkbox"/> other:                                    |   |

Mean High Water Mark indicated by:

- survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company):
- This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company):
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
  - U.S. Geological Survey 7.5 Minute Topographic maps:
  - U.S. Geological Survey 7.5 Minute Historic quadrangles:
  - U.S. Geological Survey 15 Minute Historic quadrangles:
  - USDA Natural Resources Conservation Service Soil Survey:
  - National wetlands inventory maps:
  - State/Local wetland inventory maps:
  - FEMA/FIRM maps (Map Name & Date):
  - 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
  - Aerial Photographs (Name & Date):
  - Other photographs (Date):
  - Advanced Identification Wetland maps:
  - Site visit/determination conducted on:
  - Applicable/supporting case law:
  - Other information (please specify):

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.