

JURISDICTIONAL DETERMINATION  
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: NEW YORK DISTRICT (CENAN)  
FILE NUMBER: 2003-01075

PROJECT LOCATION INFORMATION:

State: New York  
County: Dutchess  
Center coordinates of site (latitude/longitude): lat:41-35-42.0000 lon:73-45-36.0000  
Approximate size of area (parcel) reviewed, including uplands: 480 acres.  
Name of nearest waterway: Fishkill Creek  
Name of watershed: HUDSON RIVER - YONKERS TO POUGHKEEPSIE

JURISDICTIONAL DETERMINATION

Completed: Desktop determination  Date:  
Site visit(s)  Date(s): October 16, 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 (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: 113.75 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:*

**B(5):** Fishkill Creek flows directly in to the Hudson River, a well established navigable waterway.

**B(7):** Wetlands that occurred in 100-year floodplain and relative proximity.

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

Ordinary High Water Mark indicated by:  High Tide Line indicated by:

- clear, natural line impressed on the bank  
 the presence of litter and debris  
 changes in the character of soil  
 destruction of terrestrial vegetation  
 shelving  
 other:
- oil or scum line along shore objects  
 fine shell or debris deposits (foreshore)  
 physical markings/characteristics  
 tidal gages  
 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: **Hopewell Junction, NY and Poughquag, NY**  
 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: **October 16, 2003**  
 Applicable/supporting case law:  
 Other information (please specify): Consultant's soils maps

<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:** 2004-00191

**PROJECT LOCATION INFORMATION:**

State: New York  
County: Onondaga  
Center coordinates of site (latitude/longitude): lat:43-6-18.6840 lon:76-6-3.7800  
Approximate size of area (parcel) reviewed, including uplands: 9.31 acres.  
Name of nearest waterway: unnamed tributary to North Branch Ley Creek  
Name of watershed: LAKE ONTARIO

**JURISDICTIONAL DETERMINATION**

**Completed:** Desktop determination  Date:  
Site visit(s)  Date(s): November 18, 2003, and March 10, 2004

**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: 1.7 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 wetlands on the site are contiguous with an unnamed tributary to the North Branch Ley Creek, which is a tributary to Ley Creek, which is a tributary to Onondaga Lake, which outfalls to the Seneca River, which is a tributary to the Oswego River, which is a tributary to Lake Ontario, a Section 10 waterway.

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

- Ordinary High Water Mark indicated by:
- |  |  |
|--|--|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> High Tide Line indicated by:              |
| <input type="checkbox"/> the presence of litter and debris         | <input type="checkbox"/> oil or scum line along shore objects      |
| <input type="checkbox"/> changes in the character of soil          | <input type="checkbox"/> fine shell or debris deposits (foreshore) |
| <input type="checkbox"/> destruction of terrestrial vegetation     | <input type="checkbox"/> physical markings/characteristics         |
| <input type="checkbox"/> shelving                                  | <input type="checkbox"/> tidal gages                               |
| <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: C & S Engineers, 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 January 2004, prepared by (company):  
C & S Engineers, Inc.  
 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: Syracuse East, NY  
 U.S. Geological Survey 7.5 Minute Historic quadrangles: Syracuse East, NY 1943  
 U.S. Geological Survey 15 Minute Historic quadrangles:  
 USDA Natural Resources Conservation Service Soil Survey: Onondaga County, NY  
 National wetlands inventory maps: Syracuse East, NY  
 State/Local wetland inventory maps: Syracuse East, NY  
 FEMA/FIRM maps (Map Name & Date): FIRM map dated 1 Mar 79  
 100-year Floodplain Elevation is: (NGVD)  
 Aerial Photographs (Name & Date):  
 Other photographs (Date): 18 Nov 03 and 15 Mar 04  
 Advanced Identification Wetland maps:  
 Site visit/determination conducted on: 18 Nov 03 and 10 Mar 04  
 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.