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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 25-Feb-2013

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2011-01010-JD4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	NY - New York
County/parish/borough:	Orange
City:	Woodbury
Lat:	41.3174
Long:	-74.1248
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:	Woodbury Creek
Name of nearest Traditional Navigable Water (TNW):	Moodna Creek
Name of watershed or Hydrologic Unit Code (HUC):	02020008

☑ 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): ☐ 26-Oct-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 1M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland 2M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland 3M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:
OHWM Elevation: (if known)

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

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

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

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

☐ Tributary flows directly into TNW.
☐ Tributary flows through [ ] tributaries before entering TNW.
:Number of tributaries

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

☐ Project waters cross or serve as state boundaries.
Explain:
Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

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

Primary tributary substrate composition:
Not Applicable.

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

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

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

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

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

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

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

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
Wetland 1M	1.36	Forested/Open Water	Good	No
Wetland 2M	4.15	Emergent/Forested	Good	No
Wetland 3M	2.82	Emergent/Forested	Good	No

(b) General Flow Relationship with Non-TNW:
Flow is:

Wetland Name	Flow	Explain
Wetland 1M	Perennial flow.	-

Wetland 2M	Perennial flow.	-
Wetland 3M	Perennial flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland 1M	Discrete and confined	-
Wetland 2M	Discrete and confined	-
Wetland 3M	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland 1M	-	-	-
Wetland 2M	-	-	-
Wetland 3M	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland 1M	Yes	-	-	-
Wetland 2M	Yes	-	-	-
Wetland 3M	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland 1M	2-5	2-5	Wetland to navigable waters	10 - 20-year
Wetland 2M	2-5	2-5	Wetland to navigable waters	10 - 20-year
Wetland 3M	2-5	2-5	Wetland to navigable waters	10 - 20-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 1M	-	Potential pollutants include runoff from nearby roads, parking lots and stormwater discharges.
Wetland 2M	-	Potential pollutants include runoff from nearby roads, parking lots and stormwater discharges.
Wetland 3M	-	Potential pollutants include runoff from nearby roads, parking lots and stormwater discharges.

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland 1M	X	-	X	Forested/50% Open Water/50%
Wetland 2M	-	-	X	Emergent/80% Forested/20%
Wetland 3M	-	-	X	Emergent/70% Forested/30%

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 1M	X	X	Potential habitat for endangered Indiana bat.	-	-	-	-	X	-
Wetland 2M	X	X	Potential habitat for endangered Indiana bat.	-	-	-	-	-	-
Wetland 3M	X	X	Potential habitat for endangered Indiana bat.	-	-	-	-	-	-

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

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

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Significant Nexus: Not Applicable

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

1. TNWs and Adjacent Wetlands:
Not Applicable.

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

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

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

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

Wetland Name	Flow	Explain
Wetland 1M	PERENNIAL	Water within this wetland flows within the channel of Woodbury Creek, a perennial tributary to Moodna Creek, which is a tributary to the Hudson River. Aerial photography, the Cornwall, NY USGS quadrangle map, field observations, annual rainfall of 42 inches and annual snowfall of 23 inches, indicate that Woodbury Creek flows all year.
Wetland 2M	PERENNIAL	Water within this wetland flows directly into Woodbury Creek, a perennial tributary to Moodna Creek, which is a tributary to the Hudson River. Aerial photography, field observations, annual rainfall of 42 inches and annual snowfall of 23 inches, indicate that Woodbury Creek flows all year.
Wetland 3M	PERENNIAL	Water within this wetland flows directly into Woodbury Creek, a perennial tributary to Moodna Creek, which is a tributary to the Hudson River. Aerial photography, field observations, annual rainfall of 42 inches and annual snowfall of 23 inches, indicate that Woodbury Creek flows all year.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland 1M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	5499.677304
Wetland 2M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	16786.358688
Wetland 3M	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	11416.180776
Total:		**0**	**33702.216768**

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

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

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

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

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

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:[10]
Not Applicable.

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

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

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based soley on the "Migratory Bird Rule" (MBR):
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

- ☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
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	-	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	Cornwall, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Cornwall, NY	-
--State/Local wetland inventory map(s):	Cornwall, NY	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-
--Previous determination(s).	1996-03501	This property was the location of off-site mitigation for nationwide permit authorization issued on December 12, 1996.

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

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

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

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

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

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

[6]-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

[7]-Ibid.

[8]-See Footnote #3.

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

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