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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 16-Jan-2013

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2012-01293-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	NY - New York
County/parish/borough:	Dutchess
City:	East Fishkill
Lat:	41.523086
Long:	-73.836622
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:	Wiccopee Creek
Name of nearest Traditional Navigable Water (TNW):	Hudson River
Name of watershed or Hydrologic Unit Code (HUC):	

☐ 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): ☐ 29-Nov-2012

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 A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland B	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland C	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland D	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.

OHWM Elevation: (if known)

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

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

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

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

(i) General Area Conditions:
Watershed size:
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 A	.22	Wet meadow	good	-
Wetland B	.09	Emergent wetland/ wet meadow	good	-
Wetland C	.29	Wetland areas appeared to consist of wet meadows	Good	-
Wetland D	.41	Wet meadow	Impacted by historic fill which has disconnected this wetland from Wetland A. Quality is low possible due to manipulation of site by the installation of a drainage system and the historic discharge of fill material.	-

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

Wetland Name	Flow	Explain
Wetland A	Perennial flow.	-
Wetland B	Perennial flow.	-
Wetland C	Intermittent flow.	-
Wetland D	Perennial flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland A	Discrete and confined	Wetland may have intermittent connection to Wetland D. Evidence of former wetland soils was found between wetland flags A-3 and D-7.
Wetland B	Overland sheetflow	Wetland B appeared to drain via overland sheet flow from approximately wetland flag B-4 to the catch basin to the west at Warren Farm Road
Wetland C	Overland sheetflow	Wetland appears to intermittently flow towards southern boundary of site across road to larger NYSDEC wetland. Wetland is considered to be adjacent to offsite wetlands.
Wetland D	Overland sheetflow	Wetland appears to have been separated from Wetland A by historic discharge of fill material. Overland sheet flow may provide intermittent connection to Wetland A.

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland A	Yes	Owner stated that drainage storm sewer existed throughout the property. Drainage basin located at Wetland flag A-6.	-
Wetland B	Yes	Owner of property stated that an existing drainage easement/storm sewer provided offsite drainage of review area to stream north of Warren Road. Drawings depict extent of drainage easement and storm sewers.	-
Wetland C	-	-	-
Wetland D	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland A	No	X	-	-
Wetland B	Yes	X	-	-
Wetland C	No	-	-	X
Wetland D	No	-	-	X

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland A	2-5	5-10	Wetland to navigable waters	100 - 500-year
Wetland B	5-10	5-10	Wetland to navigable waters	50 - 100-year
Wetland C	5-10	5-10	Wetland to navigable waters	20 - 50-year
Wetland D	-	-	-	-

(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 A	-	-
Wetland B	-	-
Wetland C	-	-
Wetland D	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland A	-	-	X	soft wood (FACW) soft rush (FACW) tussock sedge (FACW) purple loosestrife (FACW) reed canary grass (FACW) sensitive fern (FACW)
Wetland B	-	-	X	Vegetation primarily consisted of Purple Loosestrife, tussock sedge, soft rush and reed grass.
Wetland C	-	-	X	soft wood (FACW) soft rush (FACW) tussock sedge (FACW) purple loosestrife (FACW) reed canary grass (FACW) sensitive fern (FACW)
Wetland D	-	-	X	soft wood (FACW) soft rush (FACW) tussock sedge (FACW) purple loosestrife (FACW) reed canary grass (FACW) sensitive fern (FACW)

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 A	PERENNIAL	Hydrologic indicators consisted of presence of saturation and surface water. Water marks and water stained leaves were also observed.
Wetland B	PERENNIAL	Hydrologic indicators consisted of presence of saturation and surface water. Water marks and water stained leaves were also observed.
Wetland C	PERENNIAL	Hydrologic indicators consisted of presence of saturation and surface water. Water marks and water stained leaves were also observed.
Wetland D	PERENNIAL	Hydrologic indicators consisted of presence of saturation and surface water. Water marks and water stained leaves were also observed.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m²)
Wetland A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	906.495744
Wetland B	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	372.310752
Wetland C	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1177.635096
Wetland D	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1659.21096
Total:		**0**	**4115.652552**

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).	-	-
--USDA Natural Resources Conservation Service Soil Survey.	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

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

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

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

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

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

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

7-Ibid.

8-See Footnote #3.

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

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