

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 10-Oct-2013

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2011-01467-JD1

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State : NY - New York  
 County/parish/borough: Orange  
 City: Walkill  
 Lat: 41.4806  
 Long: -74.4079  
 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: Masonic Creek  
 Name of nearest Traditional Navigable Water (TNW): Walkill River  
 Name of watershed or Hydrologic Unit Code (HUC): 02020007

- 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):  08-May-2013

**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:<sup>1</sup>

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

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

Area: (m<sup>2</sup>)  
 Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on:  
 OHWM Elevation: (if known)

**2. Non-regulated waters/wetlands:<sup>3</sup>**

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

**1. TNW**  
 Not Applicable.

**2. Wetland Adjacent to TNW**  
 Not Applicable.

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

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

(i) General Area Conditions:  
 Watershed size: acres  
 Drainage area: 13.7 acres

Average annual rainfall: 47 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 2-5 river miles from TNW.  
 Project waters are 1 (or less) river miles from RPW.  
 Project Waters are 2-5 aerial (straight) miles from TNW.  
 Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:<sup>5</sup>

Water within Wetlands A, B and C, flows within the channel of a seasonal unnamed tributary to Masonic Creek, into a perennial unnamed tributary, then into Masonic Creek, which then flows into the Walkkill River, which is a TNW.

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	.45	Forested	Good	No
Wetland B	.86	Forested	Good	No
Wetland C	1.81	Forested	Good	No

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

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

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland A	Discrete and confined	-
Wetland B	Discrete and confined	-

Wetland C	Discrete and confined	-
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**Subsurface flow:**

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland A	-	-	-
Wetland B	-	-	-
Wetland C	-	-	-

**(c) Wetland Adjacency Determination with Non-TNW:**

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland A	Yes	-	-	-
Wetland B	Yes	-	-	-
Wetland C	Yes	-	-	-

**(d) Proximity (Relationship) to TNW:**

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland A	2-5	2-5	Wetland to navigable waters	500-year or greater
Wetland B	2-5	2-5	Wetland to navigable waters	500-year or greater
Wetland C	2-5	2-5	Wetland to navigable waters	500-year or greater

**(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	-	-

**(iii) Biological Characteristics. Wetland supports:**

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland A	-	-	X	Forested/90%
Wetland B	-	-	X	Forested/90%
Wetland C	-	-	X	Forested/90%

**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 A	X	X	Possible habitat for Indiana bat	-	-	-	-	-	-
Wetland B	X	X	Possible habitat for Indiana bat	-	-	-	-	-	-
Wetland C	X	X	Possible habitat for 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.

**Findings for: Wetland A, Wetland B, Wetland C**

Wetlands A, B and C, and the seasonal stream that they directly abut, can retain, convert, and cycle the pollutants from the hillside, Maples Road and nearby residential developments that would otherwise directly enter the TNW. Furthermore, during large storm events, the wetlands can serve as flood storage areas.

**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:<sup>8</sup>**

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	SEASONAL	Water within this wetland flows within the channel of a seasonal unnamed tributary to Masonic Creek, through two more tributaries, then directly into the Walkkill River. Aerial photography, field observations clearly showing the on-site seasonal stream, and annual rainfall of 47 inches, indicate that the on-site stream flows at least 3 consecutive months.
Wetland B	SEASONAL	Water within this wetland flows within the channel of a seasonal unnamed tributary to Masonic Creek, through two more tributaries, then directly into the Walkkill River. Aerial photography, field observations clearly showing the on-site seasonal stream, and annual rainfall of 47 inches, indicate that the on-site stream flows at least 3 consecutive months.
Wetland C	SEASONAL	Water within this wetland flows within the channel of a seasonal unnamed tributary to Masonic Creek, through two more tributaries, then directly into the Walkkill River. Aerial photography, field observations clearly showing the on-site seasonal stream, and annual rainfall of 47 inches, indicate that the on-site stream flows at least 3 consecutive months.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Wetland A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1821.0852
Wetland B	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	3480.29616
Wetland C	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	7324.80936
<b>Total:</b>		<b>0</b>	<b>12626.19072</b>

**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:<sup>9</sup>**

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:<sup>10</sup>**

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS**

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

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered 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).	Middletown, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Middletown, NY	-
--State/Local wetland inventory map(s):	Middletown, NY	-
--FEMA/FIRM maps	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**  
Not Applicable.

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

<sup>2</sup>-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).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

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

<sup>5</sup>-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.

<sup>6</sup>-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.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

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

<sup>10</sup>-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.



(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:<sup>5</sup>

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 D	10.74	Forested/Emergent	Good	No

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
Wetland D	Perennial flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland D	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland D	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier

Wetland D	Yes	-	-	-
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(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland D	2-5	2-5	Wetland to navigable waters	100 - 500-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 D	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland D	X	-	X	Forested/80% Emergent/10%

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 D	X	X	Potential habitat for Indiana bats	-	-	-	-	X	-

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than 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:<sup>8</sup>

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 D	PERENNIAL	Water within this wetland flows within the channel of a perennial unnamed tributary to Masonic Creek, into Masonic Creek, then into the Walkkill River. Aerial photography, field observations, and annual rainfall of 47 inches indicate that the on-site stream flows all year.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Wetland D	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	43463.23344
<b>Total:</b>		<b>0</b>	<b>43463.23344</b>

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:<sup>9</sup>**

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:<sup>10</sup>**

Not Applicable.

**Identify water body and summarize rationale supporting determination:**

Not Applicable.

**Provide estimates for jurisdictional waters in the review area:**

Not Applicable.

**F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS**

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

**Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., 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).	Middletown, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Middletown, NY	-
--State/Local wetland inventory map(s):	Middletown, NY	-
--FEMA/FIRM maps	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

Not Applicable.

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

<sup>2</sup>-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).

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

<sup>10</sup>-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 Rapans.

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 10-Oct-2013

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2011-01467-JD3

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

**State :** NY - New York  
**County/parish/borough:** Orange  
**City:** Walkill  
**Lat:** 41.4806  
**Long:** -74.4079  
**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:** Masonic Creek

**Name of nearest Traditional Navigable Water (TNW):** Walkill River

**Name of watershed or Hydrologic Unit Code (HUC):** 02020007

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):  08-May-2013

**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:<sup>1</sup>**

Water Name	Water Type(s) Present
Wetland F	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:** (m<sup>2</sup>)

**Linear:** (m)

**c. Limits (boundaries) of jurisdiction:**

based on:

**OHWM Elevation:** (if known)

**2. Non-regulated waters/wetlands:<sup>3</sup>**

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

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

**1. TNW**

Not Applicable.

**2. Wetland Adjacent to TNW**

Not Applicable.

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

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

**(i) General Area Conditions:**

**Watershed size:** acres  
**Drainage area:** 10.2 acres  
**Average annual rainfall:** 47 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** 2-5 river miles from TNW.  
**Project waters are** 1 (or less) river miles from RPW.  
**Project Waters are** 2-5 aerial (straight) miles from TNW.  
**Project waters are** 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

**Explain:**

**Identify flow route to TNW:<sup>5</sup>**

Water within Wetland F flows off site, into the channel of a seasonal unnamed tributary to Masonic Creek, into a perennial unnamed tributary, then into Masonic Creek, which then flows into the Walkill River, which is a TNW.

**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 F	.16	Emergent	Fair	No

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

Wetland Name	Flow	Explain
Wetland F	Intermittent flow.	-

**Surface flow is:**

Wetland Name	Flow	Characteristics
Wetland F	Overland sheetflow	-

**Subsurface flow:**

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland F	-	-	-

**(c) Wetland Adjacency Determination with Non-TNW:**

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland F	Yes	-	-	-

**(d) Proximity (Relationship) to TNW:**

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain

Wetland F	2-5	2-5	Wetland to navigable waters	100 - 500-year
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**(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 F	-	-

**(iii) Biological Characteristics. Wetland supports:**

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland F	-	-	X	Emergent/90%

**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.

**Findings for: Wetland F**

Wetland F and the seasonal stream that it directly abuts, can retain, convert, and cycle the pollutants from the hillside, Maples Road and nearby residential developments that would otherwise directly enter the TNW. Furthermore, during large storm events, the wetlands can serve as flood storage areas.

**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:<sup>8</sup>**

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 F	SEASONAL	Water within this wetland flows off site, into a seasonal unnamed tributary to Masonic Creek, through two more tributaries, then directly into the Walkill River. Aerial photography, field observations clearly showing the off-site seasonal stream, and annual rainfall of 47 inches, indicate that the off-site stream flows at least 3 consecutive months.

**Provide acreage estimates for jurisdictional wetlands in the review area:**

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Wetland F	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	647.49696
<b>Total:</b>		<b>0</b>	<b>647.49696</b>

**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:<sup>9</sup>**  
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:<sup>10</sup>**  
Not Applicable.

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

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

**F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS**

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

**Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered 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).	Middletown, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Middletown, NY	-
--State/Local wetland inventory map(s):	Middletown, NY	-
--FEMA/FIRM maps	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

Not Applicable.

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

<sup>2</sup>-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).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

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

<sup>5</sup>-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.

<sup>6</sup>-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.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

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

<sup>10</sup>-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.

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 10-Oct-2013

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2011-01467-JD4

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

**State :** NY - New York  
**County/parish/borough:** Orange  
**City:** Walkill  
**Lat:** 41.4806  
**Long:** -74.4079  
**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:** Masonic Creek  
**Name of nearest Traditional Navigable Water (TNW):** Walkill River  
**Name of watershed or Hydrologic Unit Code (HUC):** 02020007

- 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):  08-May-2013

**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:<sup>1</sup>**

Water Name	Water Type(s) Present
Wetland J	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland I	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:** (m<sup>2</sup>)  
**Linear:** (m)

**c. Limits (boundaries) of jurisdiction:**

**based on:**  
**OHWM Elevation:** (if known)

**2. Non-regulated waters/wetlands:<sup>3</sup>**

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:<sup>5</sup>

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 J	34.98	Emergent/Forested	Good	No
Wetland I	31.71	Emergent/Scrub Shrub/Forested	Good	No

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
Wetland J	Perennial flow.	-
Wetland I	Perennial flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland J	Discrete and confined	-
Wetland I	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test

Wetland J	-	-	-
Wetland I	-	-	-

**(c) Wetland Adjacency Determination with Non-TNW:**

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland J	Yes	-	-	-
Wetland I	Yes	-	-	-

**(d) Proximity (Relationship) to TNW:**

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland J	2-5	2-5	Wetland to navigable waters	20 - 50-year
Wetland I	2-5	2-5	Wetland to navigable waters	50 - 100-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 J	-	-
Wetland I	-	-

**(iii) Biological Characteristics. Wetland supports:**

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland J	X	-	X	Emergent/50% Forested/50%
Wetland I	X	-	X	Emergent/50% Scrub Shrub/10% Forested/40%

**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 J	X	X	Potential habitat for Indiana bats	-	-	-	-	X	-
Wetland I	X	X	Potential habitat for Indiana bats	-	-	-	-	X	-

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

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

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

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than 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:<sup>8</sup>**  
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 J	PERENNIAL	Water within this wetland flows within the channel of Masonic Creek, which then flows directly into the Walkkill River. Aerial photography, the Middletown, NY, quadrangle map, field observations, and annual rainfall of 47 inches indicate that Masonic Creek flows all year.
Wetland I	PERENNIAL	Water within this wetland flows through culverts under on-site railroad tracks, then into Wetland J, which includes a portion of Masonic Creek. Water then flows directly into the Walkkill River. Aerial photography, the Middletown, NY, quadrangle map, field observations, and annual rainfall of 47 inches indicate that Masonic Creek flows all year.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Wetland J	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	141559.02288
Wetland I	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	128325.80376
<b>Total:</b>		<b>0</b>	<b>269884.82664</b>

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:<sup>9</sup>

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:<sup>10</sup>

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

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

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered 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).	Middletown, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Middletown, NY	-
--State/Local wetland inventory map(s):	Middletown, NY	-
--FEMA/FIRM maps	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

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

<sup>2</sup>-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).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

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

<sup>5</sup>-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.

<sup>6</sup>-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.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

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

<sup>10</sup>-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 Rapans.



(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:<sup>5</sup>

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 K	26	Emergent/Forested	Fair	No

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
Wetland K	Perennial flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
Wetland K	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Wetland K	-	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier

Wetland K	Yes	-	-	-
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(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland K	2-5	2-5	Wetland to navigable waters	50 - 100-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 K	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
Wetland K	X	-	X	Emergent/60% Forested/40%

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 K	X	X	Potential habitat for Indiana bats	-	-	-	-	X	-

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

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than 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:<sup>8</sup>

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 K	PERENNIAL	Water within this wetland flows within the channel of a perennial unnamed tributary to Masonic Creek, through culverts under off-site railroad tracks, then into Masonic Creek. Water then flows directly into the Walkkill River. Aerial photography, the Middletown, NY, quadrangle map, field observations, and annual rainfall of 47 inches indicate that Masonic Creek flows all year.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Wetland K	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	105218.256
<b>Total:</b>		<b>0</b>	<b>105218.256</b>

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:<sup>9</sup>  
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:<sup>10</sup>  
Not Applicable.

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

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

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

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

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered 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).	Middletown, NY	-
--USDA Natural Resources Conservation Service Soil Survey.	Orange County, NY	-
--National wetlands inventory map(s).	Middletown, NY	-
--State/Local wetland inventory map(s):	Middletown, NY	-
--FEMA/FIRM maps	-	-
--Photographs	-	-
----Aerial	-	-
----Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:  
Not Applicable.

<sup>1</sup>-Boxes checked below shall be supported by completing the appropriate sections in Section III below.  
<sup>2</sup>-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).  
<sup>3</sup>-Supporting documentation is presented in Section III.F.  
<sup>4</sup>-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.  
<sup>5</sup>-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.  
<sup>6</sup>-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.  
<sup>7</sup>-Ibid.  
<sup>8</sup>-See Footnote #3.  
<sup>9</sup>-To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.  
<sup>10</sup>-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.