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Regulatory Program



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

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): SEP 12 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAN-2018-00053-WNE

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Dutchess City: Dover

Center coordinates of site (lat/long in degree decimal format): Lat. 41.6594, Long. -73.5252.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: 9/10/2019 Field Date(s): 12/12/2018.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date:

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date: Dover Plains, NY.

USDA NRCS Soil Survey. Citation: Dutchess County, NY.

USFWS National Wetlands Inventory maps. Citation: Dover Plains, NY.

State/Local wetland inventory maps. Citation: Dover Plains, NY.

FEMA/FIRM maps. Citation: 36027C0441E.

Photographs: Aerial. Citation: . or Other. Citation:

LiDAR data/maps. Citation:

Previous JDs. File no. and date of JD letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

(a)(3): The territorial seas.

- **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD:

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
Stream 2	Intermittent	Tenmile River	Yes	Stream 2 shows indicators of bed and banks as well as ordinary high water (OHW). The stream flows through a culvert under Old Forge Road, into Tenmile River, then into the Housatonic River, the southern-most portion of which is navigable.

Deuel Hollow Brook	Perennial	Tenmile River	Yes	Deuel Hollow Brook shows indicators of bed and banks as well as OHW. The stream flows through a culvert under Old Forge Road, into Tenmile River, then into the Housatonic River, the southern-most portion of which is navigable.
Tenmile River	Perennial	Housatonic River	Yes	Tenmile River shows indicators of bed and banks as well as OHW. Tenmile River flows to the Housatonic River, the southern-most portion of which is navigable.

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Wetland A	Stream 2	Wetland A was delineated using the 87 Manual/Regional Supplement and is physically contiguous to an intermittent, unnamed tributary to Tenmile River that flows through the wetland.
Wetland B	Stream 2	Wetland B was delineated using the 87 Manual/Regional Supplement and is physically contiguous to an intermittent, unnamed tributary to Tenmile River that flows through the wetland.
Wetland C	Deuel Hollow Brook	Wetland C was delineated using the 87 Manual/Regional Supplement and is physically contiguous to Deuel Hollow Brook, a perennial tributary to Tenmile River that flows through the wetland.
Wetland D	Tenmile River	Wetland D was delineated using the 87 Manual/Regional Supplement and is physically contiguous to Tenmile River, which flows along the edge of the wetland.
Wetland E	Tenmile River	Wetland E was delineated using the 87 Manual/Regional Supplement and is neighboring to the Tenmile River, as it is located within 100 feet of the river.
Wetland F	Tenmile River	Wetland F was delineated using the 87 Manual/Regional Supplement and is physically contiguous to Tenmile River, which flows along the edge of the wetland.
Wetland G	Tenmile River	Wetland G was delineated using the 87 Manual/Regional Supplement and is physically contiguous to Tenmile River, which flows along the edge of the wetland.
Wetland H	Unnamed Off-Site Stream	Wetland H was delineated using the 87 Manual/Regional Supplement and is physically contiguous to an intermittent, off-site stream. Water within Wetland H flows into Pond 7, then off-site, then into Tenmile River.
Pond 1	Stream 2	Pond 1 includes an OHW, and flows through an outlet structure, directly into Wetland B, which includes Stream 2.
Pond 2	Stream 2	Pond 2 includes an OHW, and flows through an outlet structure, directly into Pond 1, which flows to Wetland B, which includes Stream 2.
Pond 3	Stream 2	Pond 3 includes an OHW, and flows through an outlet structure, directly into Pond 1, which flows to Wetland B, which includes Stream 2.
Pond 5	Tenmile River	Pond 5 includes an OHW and is neighboring to the Tenmile River, as it is located within 100 feet of the river.

Pond 7	Unnamed Off-Site Stream	Pond 7 includes an OHW and is physically contiguous to an intermittent, off-site stream. Water within Pond 7 flows off-site, then into Tenmile River
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Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
A	Pond 4	Housatonic River	SPOE A is shown on the attached map, and is approximately 1544 square miles. Pond 4 is not located within a 100-year floodplain, as shown on the FEMA web site. Pond 4 has no known similarly situated waters other than Ponds 6 and 8. Given the relatively small size of the pond (0.024 acres), the small size of the micro watershed (72 acres), and the lack of development uphill of this area, Pond 4 likely does not store much runoff of flood waters, trap much sediment, trap much pollutants or recycle much nutrients. There is no apparent surface waters connection, as Pond 4 is located approximately 190 feet from the nearest water of the United States (Tenmile River), so Pond 4 does not appear to contribute

			significant flow to downstream waters, nor does it appear to export organic matter. There are no areas within Pond 4 from which fish or shellfish can be or are taken and there are no signs that any features of this wetland contribute to the life cycles or aquatic habitat of species within (a)(1), (a)(2) or (a)(3) waters. The use, degradation or loss of Pond 4 will not affect other waters of the U.S.
A	Pond 6	Housatonic River	SPOE A is shown on the attached map, and is approximately 1544 square miles. Pond 6 is not located within a 100-year floodplain, as shown on the FEMA web site. Pond 6 has no known similarly situated wetlands other than Ponds 4 and 8. Given the relatively small size of the wetland (0.026 acres), the small size of the micro watershed (8 acres), and the lack of development uphill of this area, Pond 6 likely does not store much runoff of flood waters, trap much sediment, trap much pollutants or recycle much nutrients. There is no apparent surface connection to other waters, as Pond 6 is located approximately 750 feet from the nearest water of the United States (Deuel Hollow Brook), so Pond 6 does not appear to contribute flow to downstream waters, nor does it appear to export organic matter. There are no areas within Pond 6 from which fish or shellfish can be or are taken and there are no signs that any features of this wetland contribute to the life cycles or aquatic habitat of species within (a)(1), (a)(2) or (a)(3) waters. The use, degradation or loss of Pond 6 will not affect other waters of the U.S.
A	Pond 8	Housatonic River	SPOE A is shown on the attached map, and is approximately 1544 square miles. Pond 8 is not located within a 100-year floodplain, as shown on the FEMA web site. Pond 8 has no known similarly situated wetlands other than Ponds 4 and 6. Given the relatively small size of the wetland (0.031 acres), and the small size of the micro watershed (3 acres), Pond 8 likely does not store much runoff of flood waters, trap much sediment, trap much pollutants or recycle much nutrients. There is no apparent surface connection to other waters, as Pond 8 is located approximately 600 feet from the nearest water of the United States (Tenmile River), so Pond 8 does not appear to contribute flow to downstream waters, nor does it appear to export organic matter. There are no areas within Pond 8 from which fish or shellfish can be or are taken and there are no signs that any features of this wetland contribute to the life cycles or aquatic habitat of species within (a)(1), (a)(2) or (a)(3) waters. The use, degradation or loss of Pond 8 will not affect other waters of the U.S.

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A