



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
26 FEDERAL PLAZA, ROOM 16-406  
NEW YORK, NEW YORK 10278-0090

CENAN-OP-R

18 APRIL 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> NAN-2021-00639-WOR.<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2021-00639-WOR.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

## 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland A, non-jurisdictional
  - ii. Wetland 1, non-jurisdictional
  - iii. Wetland 2, jurisdictional, Section 404
  - iv. Wetland 3, non-jurisdictional
  - v. Wetland 4, non-jurisdictional
  - vi. Wetland 5, non-jurisdictional
  - vii. Wetland 6, non-jurisdictional
  - viii. Wetland 7, non-jurisdictional
  - ix. Wetland HP-21, jurisdictional, Section 404
  - x. Wetland HP-21-1, jurisdictional, Section 404
  - xi. Wetland HP-21-2, jurisdictional, Section 404
  - xii. Wetland HP-21-3, jurisdictional, Section 404

## 2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))

3. REVIEW AREA. Review area size 88.796 acres, 41.8019, -73.9177, Town of Hyde Park, Dutchess County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Hudson River is located approximately 1.55 miles west of the project site.<sup>6</sup>

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<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2021-00639-WOR.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Waters on site flow to Crum Elbow Creek, a perennial stream that flows through the eastern portion of the site. Crum Elbow Creek flows south, off site, then west, directly into the Hudson River.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>8</sup> N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A

b. The Territorial Seas (a)(1)(ii): N/A

c. Interstate Waters (a)(1)(iii): N/A

d. Impoundments (a)(2): N/A

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conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>7</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>8</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2021-00639-WOR.

- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): Wetlands HP-21, HP-21-1, HP-21-2 and HP-21-3 directly abut Crum Elbow Creek. Wetland 2 includes an intermittent stream channel that continues through Wetland HP-21-3.
- g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</sup> N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water): Wetland A is located approximately 50 feet from and 1 foot higher in elevation than Wetland HP-21-2, the nearest water of the United States, with no apparent continuous surface connection. Wetland 1 is located approximately 225 feet from Wetland 2, the nearest waters of the United States, separated from it by a 6-foot-high hill, with no apparent continuous surface connection. Wetland 3 is located approximately 400 feet from Wetland 2, the nearest waters of the United States, separated from it by a 4-foot-high hill, with no apparent continuous surface connection. Wetland 4 is located approximately 20 feet from Wetland 2, the nearest waters of the United States, separated from it by a 10-foot-wide road, with no apparent continuous surface connection. Wetland 5 is located approximately 250 feet from Wetland 2, the nearest waters of the United States, separated from it by a 10-foot-high hill, with no apparent continuous surface connection. Wetland 6 is located approximately 30 feet from Wetland HP-21-1, the nearest waters of the United States, separated from it by an 8-foot-high hill, with no apparent continuous surface connection. Wetland 7 is located approximately 35 feet from Wetland HP-21-1, the nearest waters of the United States, separated from it by a 4-foot-high hill, with no apparent continuous surface connection.

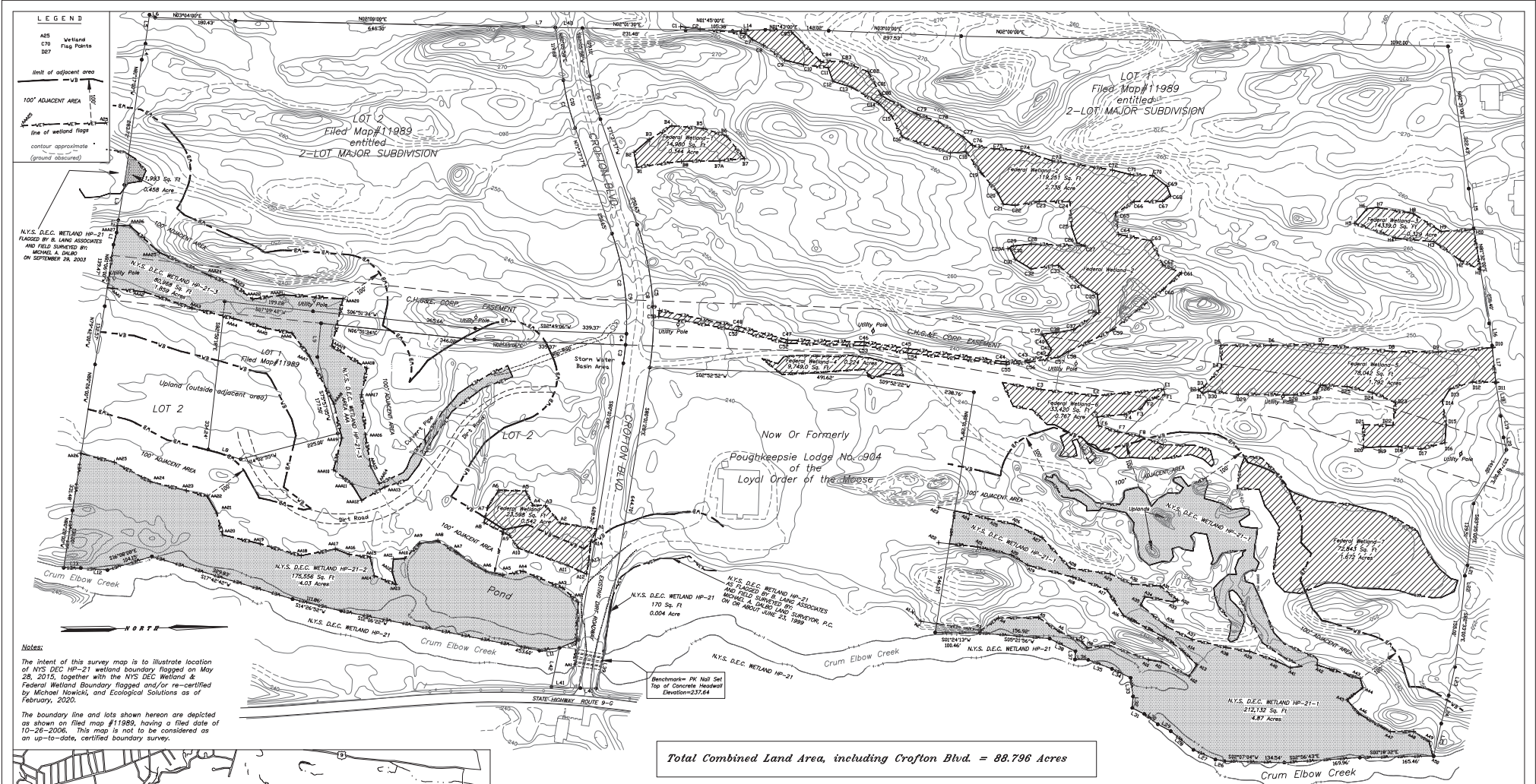
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<sup>9</sup> 88 FR 3004 (January 18, 2023)

CENAN-OP-R

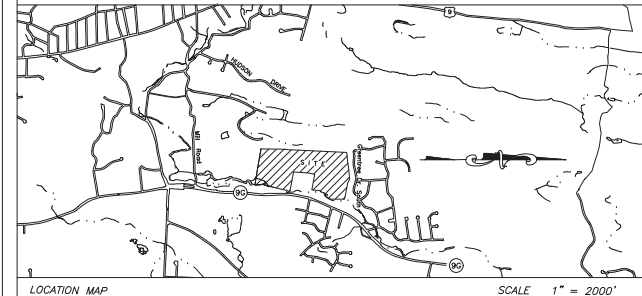
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2021-00639-WOR.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Site visit conducted on July 23, 2003, under Application Number NAN-2000-00976-YS.
  - b. Approved jurisdictional determination letter issued June 9, 2004, under Application Number NAN-2000-00976-1-YS, including referenced delineation drawing.
  - c. "Wetland Delineation Report – Elbow Creek-Crofton Mews Route 9G Town of Hyde Park Dutchess County, NY", prepared by Ecological Solutions LLC, dated March 12, 2021, including color, ground-level photographs.
  - d. USDA Web Soil Survey as part of Wetland Delineation Report dated March 12, 2021
  - e. USGS Hyde Park, NY topographic map
  - f. FEMA firm map 36027C0266E
10. OTHER SUPPORTING INFORMATION. N/A
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



**Notes:**  
 The intent of this survey map is to illustrate location of NYS DEC HP-21 wetland boundary flagged on May 28, 2015, together with the NYS DEC Wetland & Federal Wetland Boundary, flagged and/or re-certified by Michael Nowicki, and Ecological Solutions as of February, 2020.  
 The boundary line and lots shown hereon are depicted as shown on filed map #11989, having a filed date of 10-26-2006. This map is not to be considered as an up-to-date, certified boundary survey.

**Total Combined Land Area, including Crofton Blvd. = 88.796 Acres**



LOCATION MAP SCALE 1" = 2000'

**Boundary Course Data Table**

Station	Bearing	Distance	Station	Bearing	Distance
1	N74°14'30"W	87.79	15	S92°43'00"E	85.16
2	N67°15'00"W	15.17	16	S74°10'00"E	85.36
3	N74°15'00"W	86.51	17	S76°13'00"E	75.00
4	N74°15'00"W	86.51	18	S76°13'00"E	75.00
5	N81°30'00"W	62.66	19	S54°39'24"E	64.08
6	N2°41'00"E	14.69	20	S89°45'00"E	65.00
7	N2°41'00"E	14.69	21	S89°45'00"E	65.00
8	N89°08'00"W	76.38	22	S89°45'00"E	65.00
9	N74°15'00"W	86.51	23	S89°45'00"E	65.00
10	N74°15'00"W	86.51	24	S89°45'00"E	65.00
11	S74°15'00"E	86.51	25	S89°45'00"E	65.00
12	S74°15'00"E	86.51	26	S89°45'00"E	65.00
13	S74°15'00"E	86.51	27	S89°45'00"E	65.00
14	N67°15'00"E	75.00	28	S89°45'00"E	65.00
15	N67°15'00"E	75.00	29	S89°45'00"E	65.00
16	N89°08'00"E	76.38	30	S89°45'00"E	65.00
17	N74°15'00"E	86.51	31	S89°45'00"E	65.00
18	N74°15'00"E	86.51	32	S89°45'00"E	65.00
19	S74°15'00"E	86.51	33	S89°45'00"E	65.00
20	S74°15'00"E	86.51	34	S89°45'00"E	65.00
21	S74°15'00"E	86.51	35	S89°45'00"E	65.00
22	S84°05'00"E	56.91	36	S89°45'00"E	65.00
23	S84°05'00"E	56.91	37	S89°45'00"E	65.00
24	S84°05'00"E	56.91	38	S89°45'00"E	65.00
25	S84°05'00"E	56.91	39	S89°45'00"E	65.00
26	S84°05'00"E	56.91	40	S89°45'00"E	65.00
27	S84°05'00"E	56.91	41	S89°45'00"E	65.00
28	S84°05'00"E	56.91	42	S89°45'00"E	65.00
29	S84°05'00"E	56.91	43	S89°45'00"E	65.00
30	S84°05'00"E	56.91	44	S89°45'00"E	65.00
31	S84°05'00"E	56.91	45	S89°45'00"E	65.00
32	S84°05'00"E	56.91	46	S89°45'00"E	65.00
33	S84°05'00"E	56.91	47	S89°45'00"E	65.00
34	S84°05'00"E	56.91	48	S89°45'00"E	65.00
35	S84°05'00"E	56.91	49	S89°45'00"E	65.00
36	S84°05'00"E	56.91	50	S89°45'00"E	65.00

**Boundary Course - Curve Data Table**

Station	Bearing	Radius	Arc Length	Chord Length	Chord Bearing
1	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
2	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
3	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
4	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
5	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
6	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
7	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
8	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
9	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
10	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
11	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
12	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
13	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
14	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
15	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
16	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
17	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
18	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
19	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
20	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
21	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
22	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
23	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
24	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
25	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
26	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
27	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
28	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
29	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
30	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
31	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
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33	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
34	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
35	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
36	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
37	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
38	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
39	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
40	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
41	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
42	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
43	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
44	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
45	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
46	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
47	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
48	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
49	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W
50	S74°15'00"E	425.00	110.64	106.69	N74°15'00"W

Owner Name:  
 Elbow Creek LLC,  
 Address: 241 Hudson St. Hackensack N.J. 07601  
 Parcel Number: 133200-6165-01-36580-0000  
 Parcel Address: Route 90, Hyde Park N.Y. 12538

*Michael A. Dalbo*

Prepared By:  
 MICHAEL A. DALBO, LAND SURVEYOR, P.C.  
 19 Shadow Lane, Poughkeepsie, N.Y. 12601

Wetland Survey Prepared For  
 ELBOW CREEK, LLC  
 showing  
 NYS DEC Wetland HP-21  
 &  
 A.O.C.E. FEDERAL WETLANDS  
 within Lot 1 & Lot 2, as shown on Filed Map #11989

Town of Hyde Park, Dutchess County New York  
 Date: March 15, 2020 Scale: 1"=100'  
 Revised Date: Feb. 11, 2021 (map changes only)