



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ATTN: CENAN-OP-RU
UPSTATE REGULATORY FIELD OFFICE
1 BUFFINGTON ST., BUILDING 10, 3RD FL. NORTH
WATERVLIET, NEW YORK 12189-4000

CENAN-OP-RU

17 September 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) ,¹ NAN-2023-00941-UJA.²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

¹ 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.

² 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

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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. Area 1, non-jurisdictional
 - ii. Area 2, non-jurisdictional

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))
- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. Review area size 51.789 acres; 42.716, -73.715, Town of Colonie, Albany County, New York

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Neither Area 1 nor Area 2 are connected to any TNW, the territorial seas, or interstate waters.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The subject aquatic resources do not flow directly into any TNW, the territorial seas, or interstate waters.

⁶ 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 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.

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6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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
 - e. Tributaries (a)(3): N/A
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁷ 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.

⁸ 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.

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- 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).⁹ 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).
The aquatic resources referred to as Area 1 (0.267 acres) and Area 2 (0.045 acres) are both small palustrine open water ponds located within a derelict railyard. They appear to have been constructed as detention basins in the 1980s and currently receive runoff from across the railyard as their main hydrology source. The northerly pond, Area 2, is connected to the southerly pond, Area 1, via a 4-foot-by-4-foot concrete box culvert. Area 1 drains into a 5-foot-by-5-foot box culvert which flows south until it empties into uplands located within a residential neighborhood along 8th Avenue in the Town of Colonie. These aquatic resources do not have any other outlets. These aquatic resources do not have any continuous surficial connections to any other waters, including potentially jurisdictional waters.
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. Delineation drawing entitled “Existing Conditions Map,” Drawing Number EC-01, prepared by McFarland Johnson Engineers, Planning, and Construction Administration, and dated April 2024.
 - b. USGS Troy South 7.5’ Quadrangle, Albany County, NY.
 - c. Web Soil Survey 3.2 – Albany County Soil Survey, NY.
 - d. NYS Dept. of Environmental Conservation Resource Mapper – Albany County, NY.

⁹ 88 FR 3004 (January 18, 2023)

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- e. USFWS National Wetlands Inventory Wetlands Map, Albany, County, NY.
- f. FEMA Flood Hazard Areas, Albany County, NY.
- g. Site photographs included in JD request submittal dated March 9, 2023.
- h. Wetland Determination Data Sheets – Northcentral and Northeast Region.
- i. EDR Aerial Photo Decade Package, Flight Years 1952, 1960, 1977, 1986, 2006, 2008, 2009, and 2011.

10. OTHER SUPPORTING INFORMATION. Previous jurisdictional determination under NAN-2020-00184-ULA, dated January 7, 2021, expired January 7, 2026.

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.



McFarland Johnson
 Engineers, Planning & Construction Administration
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 SARATOGA SPRINGS, NEW YORK 12866
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 SaratogaROM@mjinc.com

PROJECT MILESTONE
PRELIMINARY PLANS

NO.	DATE	DESCRIPTION

CLIENT: **LINCOLN AVENUE DEVELOPMENT, LLC**
 TOWN OF COLONIE, NEW YORK
 PROJECT: **PROPOSED MIXED-USE 950 FIFTH STREET**

DRAWN	TCH
DESIGNED	AJF
CHECKED	AJF
SCALE	1"=80'
DATE	APRIL 2024
PROJECT	18672.02

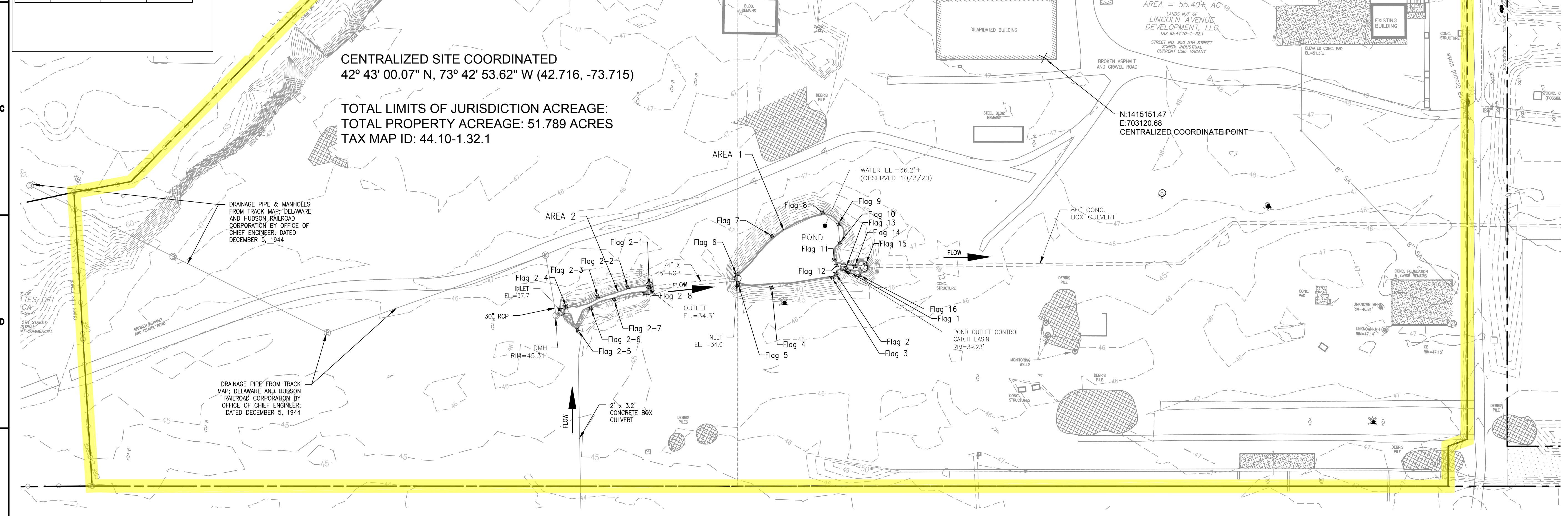
CONCEPT DESIGN
 NOT FOR CONSTRUCTION

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECT DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR, TO ALTER AN ITEM IN ANY WAY. IF AN ITEM BEARING THE STAMP OF A LICENSED PROFESSIONAL IS ALTERED, THE ALTERING ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR SHALL STAMP THE DOCUMENT AND INCLUDE THE NOTATION "ALTERED BY" FOLLOWED BY THEIR SIGNATURE, THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

DRAWING TITLE
EXISTING CONDITIONS MAP

DRAWING NUMBER
EC-01
 1 OF 44

Point #	Northing	Eastng	Description
2	1415528.43	702904.10	wf 1
4	1415548.93	702908.53	wf 2
5	1415555.98	702904.31	wf 3
6	1415646.84	702917.73	wf 4
7	1415692.96	702936.79	wf 5
9	1415690.87	702952.73	wf 6
10	1415622.51	702991.74	wf 7
12	1415522.52	702977.82	wf 9
13	1415528.70	702950.33	wf 10
14	1415544.50	702929.84	wf 11
15	1415531.24	702912.27	wf 13
16	1415544.06	702920.17	wf 12
17	1415518.50	702909.70	wf 14
18	1415501.67	702907.80	wf 15
19	1415515.69	702895.09	wf 16
20	1415821.15	702975.94	wf 2-1
22	1415852.03	702984.43	wf 2-2
23	1415899.30	702985.39	wf 2-3
24	1415949.15	702985.44	wf 2-4
26	1415943.49	702947.04	wf 2-5
27	1415914.76	702971.68	wf 2-6
28	1415877.36	702973.72	wf 2-7
29	1415830.76	702967.92	wf 2-8
34	1415539.78	703002.10	wf 8



SURVEY NOTES:

- TAX MAP DESIGNATION: 44.10-1-32.1.
- TOPOGRAPHIC INFORMATION SHOWN HEREON FOR A PORTION OF THE SUBJECT PREMISES OBTAINED FROM NYSGIS CLEARINGHOUSE FILE GEODATABASES OF VECTOR 2-FT CONTOURS FOR ALBANY COUNTY DERIVED 2008 LIDAR DATA AND THE REMAINING PORTION SHOWN HEREON ARE FROM AN ACTUAL FIELD SURVEY PERFORMED BY ADVANCE ENGINEERING & SURVEYING PLLC.
- BASEMAP AND BOUNDARY LINE INFORMATION SHOWN HEREON PROVIDED ELECTRONICALLY BY NATHAN M. BURROWS L.S.

OWNER/APPLICANT:
NAME: LINCOLN AVENUE DEVELOPMENT, LLC
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SUMMARY TABLE				
AREA	ACREAGE	COORDINATES	COMMUNITY TYPE	USACE JURISDICTION
1	0.267 ACRES	42° 42' 59.26" N 73° 42' 55.52" W	OPEN WATER POND	POTENTIALLY NON-JURISDICTIONAL
2	0.045 ACRES	42° 43' 02.14" N 73° 42' 55.17" W	OPEN WATER POND	POTENTIALLY NON-JURISDICTIONAL

