



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

CENAN-OP-RE

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-2024-00603-EMI²

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. Wetland A – non-jurisdictional
 - ii. Wetland B – 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.

The review area consists of an approximately 5.934 acre property located adjacent and southwest of West Commercial Avenue in Moonachie, Bergen County, New Jersey. Two wetlands were identified on the project site which are bound between a railroad to the south and west and an existing commercial building.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. East Riser Ditch, a tributary of the Hackensack River⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [

Wetlands A and B did not appear to have any flow path to a TNW.

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.

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

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.

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).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).
 - Wetland A is an approximately 11,614 square foot palustrine emergent wetland located on the south side of the existing abandoned rail spur.
 - Wetland B is an approximately 4,035 square foot palustrine emergent wetlands located on the north side of the existing rail spur. An outfall draining the upland property is located on the eastern side of Wetland B.

Neither Wetland A nor Wetland B appear to have a continuous surface connection to a jurisdictional water. Both wetlands seem to collect stormwater runoff from the railroads and the upland property.

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. Virtual Office Investigation dated September 13, 2024;
 - b. Wetland Delineation Plan titled “Boundary and Topographic Survey of 210 West Commercial Avenue Extension (AKA 7 Caesar Place), dated April 5, 2024, last revised September 16, 2024”;
 - c. Wetland Delineation Sheets and Site Photos prepared by PetroScience, Inc. dated March 14, 2024; and
 - d. National Wetland Inventory Map dated March 14, 2024

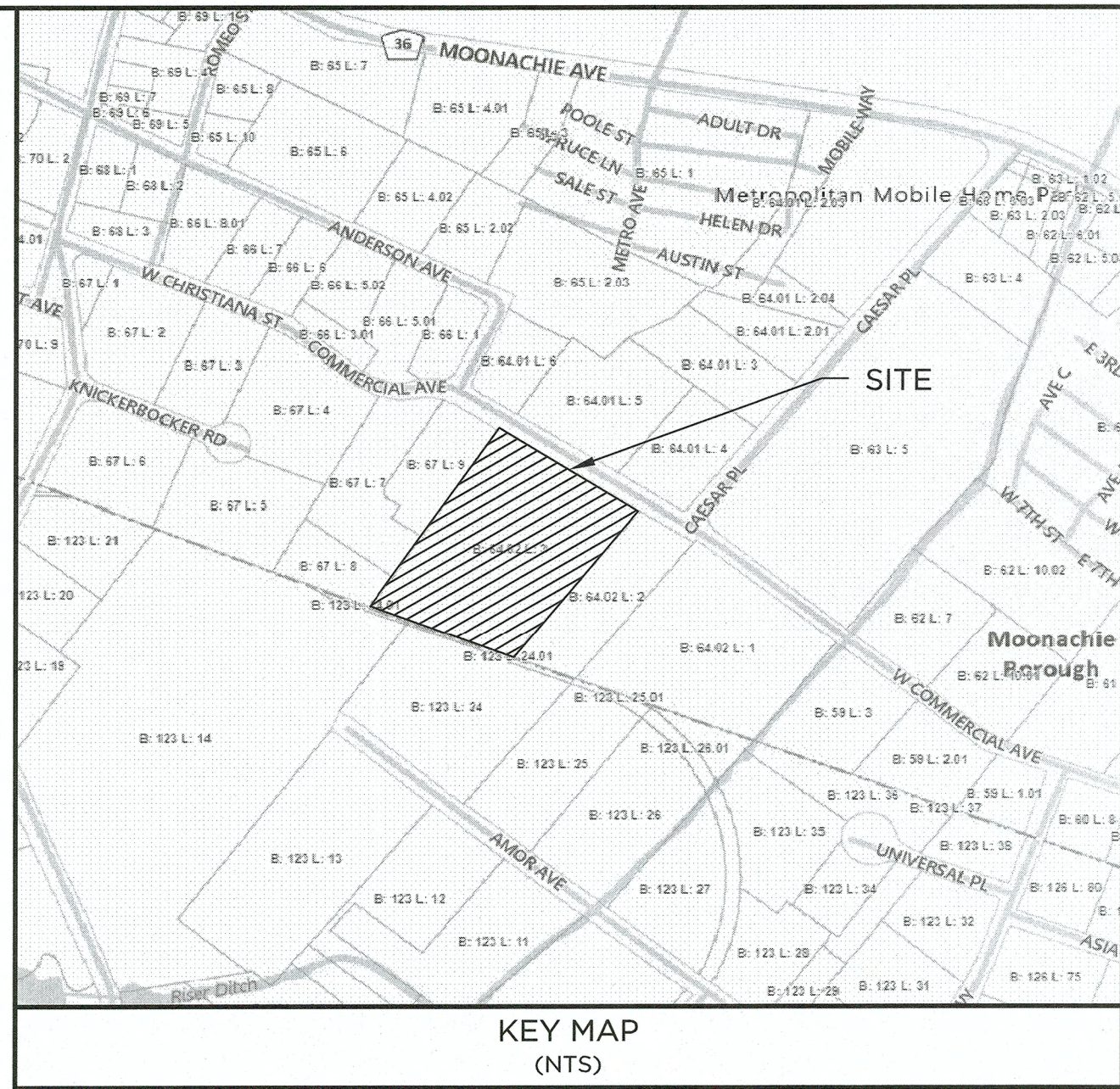
⁹ 88 FR 3004 (January 18, 2023)

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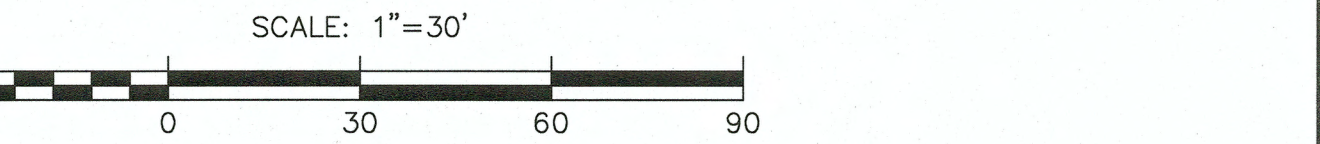
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10. OTHER SUPPORTING INFORMATION. N/A

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.



THIS SURVEY IS CERTIFIED TO:
FIDELITY NATIONAL TITLE INSURANCE COMPANY
DORA'S NATURALS, INC.
210 WEST COMMERCIAL LLC
SAIBER LLC
RANDI SCHILLINGER, ESQ.
ROCKLAND TRUST COMPANY ISAOA ATIMA



5	REVISED WETLAND AREA NOTES	2024-09-16
4	CHANGED N/F AND CURRENT DEED	2024-08-28
3	PAVEMENT ADDED	2024-08-16
	WETLAND NOTES & HATCHING AND PER ATTORNEY'S COMMENTS	2024-06-03
1	PER TITLE COMPANY REMARKS	2024-04-25
REVISION	DESCRIPTION	DATE












BOUNDARY AND TOPOGRAPHIC SURVEY		
OF		
210 WEST COMMERCIAL AVENUE EXTENSION (AKA 7 CAESAR PLACE)		
BLOCK 64.02 LOT 3		
MUNICIPALITY OF MOONACHIE	BERGEN COUNTY	NEW JERSEY
PREPARED FOR		
DORA'S NATURALS, INC AND 210 WEST COMMERCIAL LLC		



VISION NO.: 5	DRAWN BY: JOM	DATE: April 5, 2024	SCALE: 1"=30'	PROJECT NUMBER: 24-112	DRAWING NUMBER: BT-1
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HEREBY STATE THAT THIS PLAN IS BASED ON A FIELD SURVEY MADE BY ME OR UNDER MY IMMEDIATE SUPERVISION IN ACCORDANCE WITH THE PROVISIONS OF N.J.A.C. 17:40-5.1. PREPARATION OF LAND SURVEYS AND TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF AND IN MY PROFESSIONAL OPINION CORRECTLY REPRESENTS THE CONDITIONS FOUND ON THE DATE OF THE FIELD SURVEY AT THE SUBJECT PROPERTY.

JOSEPH C. O'MAHONEY
PROFESSIONAL ENGINEER, LICENSE NO. - No. 24698A-EXP. DATE 06/30/2010
PERMITTEE OF AUTHORIZATION No. 24698A00

HYD	Fire hydrant		Flag pole			Doors
	Tree		Yard drain		GW	Guy wire
	Power pole		Sanitary manhole		CLF	Chain link fence
TX	Transformer	BOL	Bollard		BW/TW	Bottom/Top of wall
VP	Vent pipe				BC/TC	Bottom/Top of curb
WF	Wetland flag		Power pole w/ light		SS	Sanitary sewer line
		FES	Flared end section		OHP	Overhead wires
		BB	Belgin block		x3.75	Spot grade
IPC	Iron pipe	Conc.	Concrete	S 38°50'04" W S 47°47'50" W		NJSPCS
		EP	Edge of pavement			Filed map bearing

SCHEDULE B, PART II-EXCEPTIONS (ref NOTE#1):

10. NO EASEMENTS IMPACTING PROPERTY ON FILED MAP 5644.

11. DB 4920 PG 359: PUBLIC SERVICE ELECTRIC AND GAS COMPANY BLANKET EASEMENT.

12. DB 4946 PG 267 AND FURTHER DESCRIBED IN DB 4946 PG 273 AND DB 4946 PG 279.

13. DB 4946 PG 279 (PLOTTED).

14. DB 8416 PG 518 (PLOTTED).

S 38°50'04" W
S 47°47'50" W