



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
1 BUFFINGTON ST. BLDG 10, 3RD FL N
WATERVLIET NY 12189-4050

CENAN OP-RU

11 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-2024-00323-UCA

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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.

- 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, jurisdictional, Section 404
 - iii. Wetland 2, jurisdictional, Section 404
 - iv. Wetland 3, jurisdictional, Section 404
 - v. Wetland 4, jurisdictional, Section 404
 - vi. Wetland 5, jurisdictional, Section 404
 - vii. Perennial RPW 1, jurisdictional, Section 404
 - viii. Perennial RPW 2, jurisdictional, Section 404
 - ix. Perennial RPW 3, jurisdictional, Section 404
 - x. Perennial RPW 4, jurisdictional, Section 404
 - xi. Perennial RPW 5, jurisdictional, Section 404
 - xii. Perennial RPW 6, jurisdictional, Section 404
 - xiii. Perennial RPW 7, jurisdictional, Section 404
 - xiv. Perennial RPW 8, jurisdictional, Section 404
 - xv. Perennial RPW 9, jurisdictional, Section 404
 - xvi. Perennial RPW 10, jurisdictional, Section 404
 - xvii. Perennial RPW 11, jurisdictional, Section 404
 - xviii. Perennial RPW 12, jurisdictional, Section 404
 - xix. Perennial RPW 13, jurisdictional, Section 404

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xx. Perennial RPW 14, jurisdictional, Section 404

xxi. Perennial RPW 15, 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)
- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. Review area size: 127.14 acres, Lat: 42.9550732, Long: - 73.7963555", Town of Malta, Saratoga County, New York

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hudson River which is jurisdictional under Section 10.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The Onsite Wetlands 1, 2, 3, and 4 directly abut the Perennial RPWs onsite, which flow southwesterly off the parcels where they enter one of the many culverts located under the Zim Smith Mid-County Trail and then enter Wetland 5 which directly abuts Perennial RPW 15 (Ballston Creek). Ballston Creek flows southerly off the subject parcel for approximately 0.90± aerial miles entering a series of culverts, first under the Round Lake Bypass, Goldfoot Road, Route 9 and then Maltaville Road where Ballston Creek enters Round Lake. Round Lake outlets into the Anthony Kill which flows southeasterly for approximately 6.10± aerial miles entering a series of culverts. First under Coons Crossing Road then Round Lake Avenue, Viall Avenue, the railroad, North Central Avenue, Frances Street, and finally under North Main Street where the Anthony Kill enters the Hudson River, the nearest navigable water.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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): Perennial RPW 1, 0.018 acres, 203 LF; Perennial RPW 2, 0.133 acres, 1,351 LF; Perennial RPW 3, 0.296 acres, 1,479 LF; Perennial RPW 4, 0.137 acres, 1,102 LF; Perennial RPW 5, 0.038 acres, 386 LF; Perennial RPW 6, 0.012 acres, 211 LF; Perennial RPW 7, 0.004 acres, 69 LF; Perennial RPW 8, 0.003 acres 49 LF; Perennial RPW 9, 0.003 acres, 45 LF; Perennial RPW 10, 0.005 acres, 54 LF; Perennial RPW 11, 0.026 acres, 302 LF; Perennial RPW 12, 0.001 acres, 33 LF; Perennial RPW 13, 0.011 acres, 184 LF; Perennial RPW 14,

⁵ 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.

⁶ 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.

0.001 acres, 9 LF; Perennial RPW 15, 0.982 acres, 1,291 LF. Perennial streams RPW 1 through RPW 14 flow westerly and enter RPW 15 which is Ballston Creek. See attached drawing entitled “Wetland Delineation Map,” prepared by Gilbert VanGuilder, Land Surveyor PLLC, and dated May 24, 2023.

- f. Adjacent Wetlands (a)(4): Wetland 1, 5.15 acres; Wetland 2, 1.87 acres; Wetland 3, 0.08 acres; Wetland 4, 9.43 acres; Wetland 5, 4.93 acres. All wetlands directly abut perennial RPW streams onsite that eventually flow into Perennial RPW 15. See attached drawing entitled “Wetland Delineation Map,” prepared by Gilbert VanGuilder, Land Surveyor PLLC, and dated May 24, 2023.

- 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).⁷ 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 non-jurisdictional because it is a non-tidal wetland that does not have a continuous surface connection to a jurisdictional water identified in 33 CFR 328.3(a)(1). Wetland A is approximately 65± feet north of the nearest jurisdictional stream and approximately 242± feet west of the nearest jurisdictional wetland. Wetland A is approximately 20± feet higher in elevation than the nearest jurisdictional stream and approximately 46± feet lower in elevation than the nearest jurisdictional wetland. Wetland A is not located within a mapped floodplain. Wetland A was confirmed to be isolated during the site visit conducted May 29, 2024. It is situated on a plateau confined by uplands that are surrounded by steep terrain.

⁷ 88 FR 3004 (January 18, 2023)

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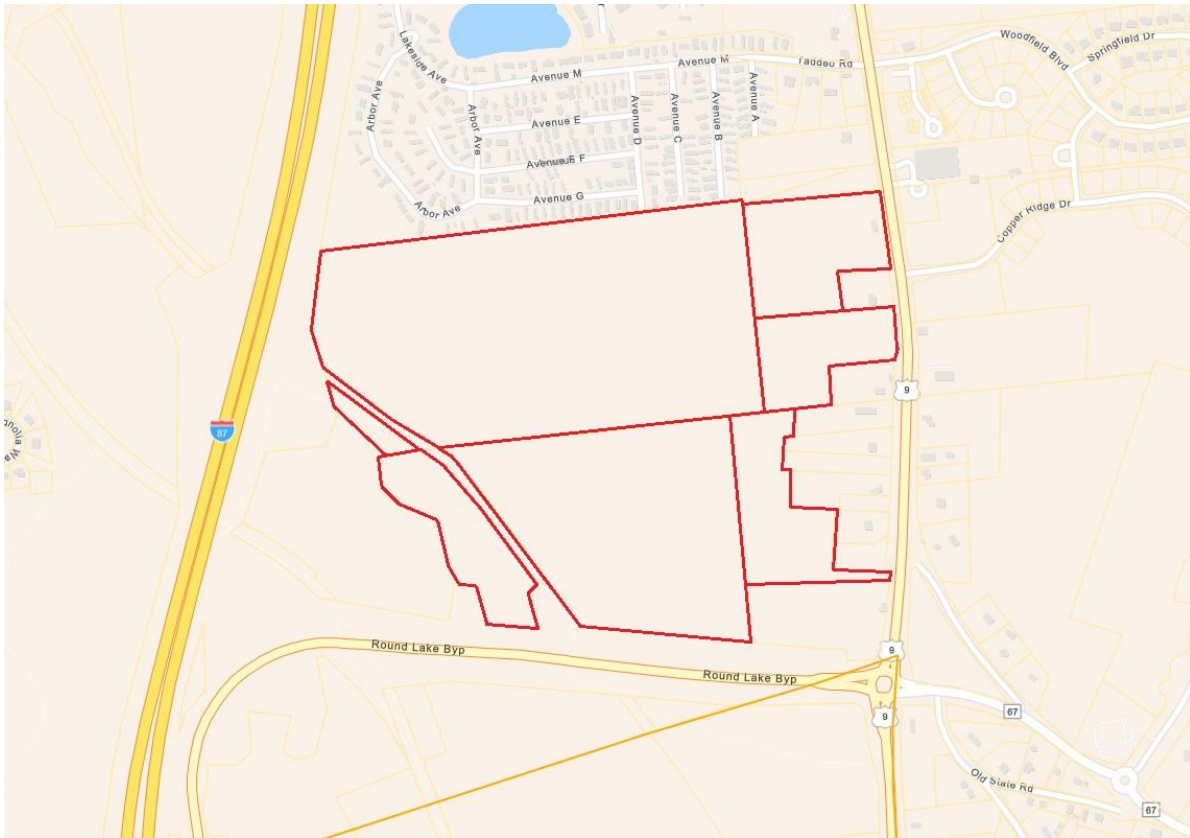
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. A field visit was conducted on May 29, 2024.
- b. "Wetland Delineation Map" prepared by Gilbert Van Guilder, Land Surveyor, PLLC, dated May 24, 2023.
- c. Figure 1: Site Location Map
- d. Figure 2: Site Aerial
- e. Figure 3: National Wetlands Inventory
- f. Figure 4: NYSDEC Wetland Mapping
- g. Figure 5: USGS Round Lake, NY Quadrangle
- h. Figure 6: NRCS Soil Survey

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.

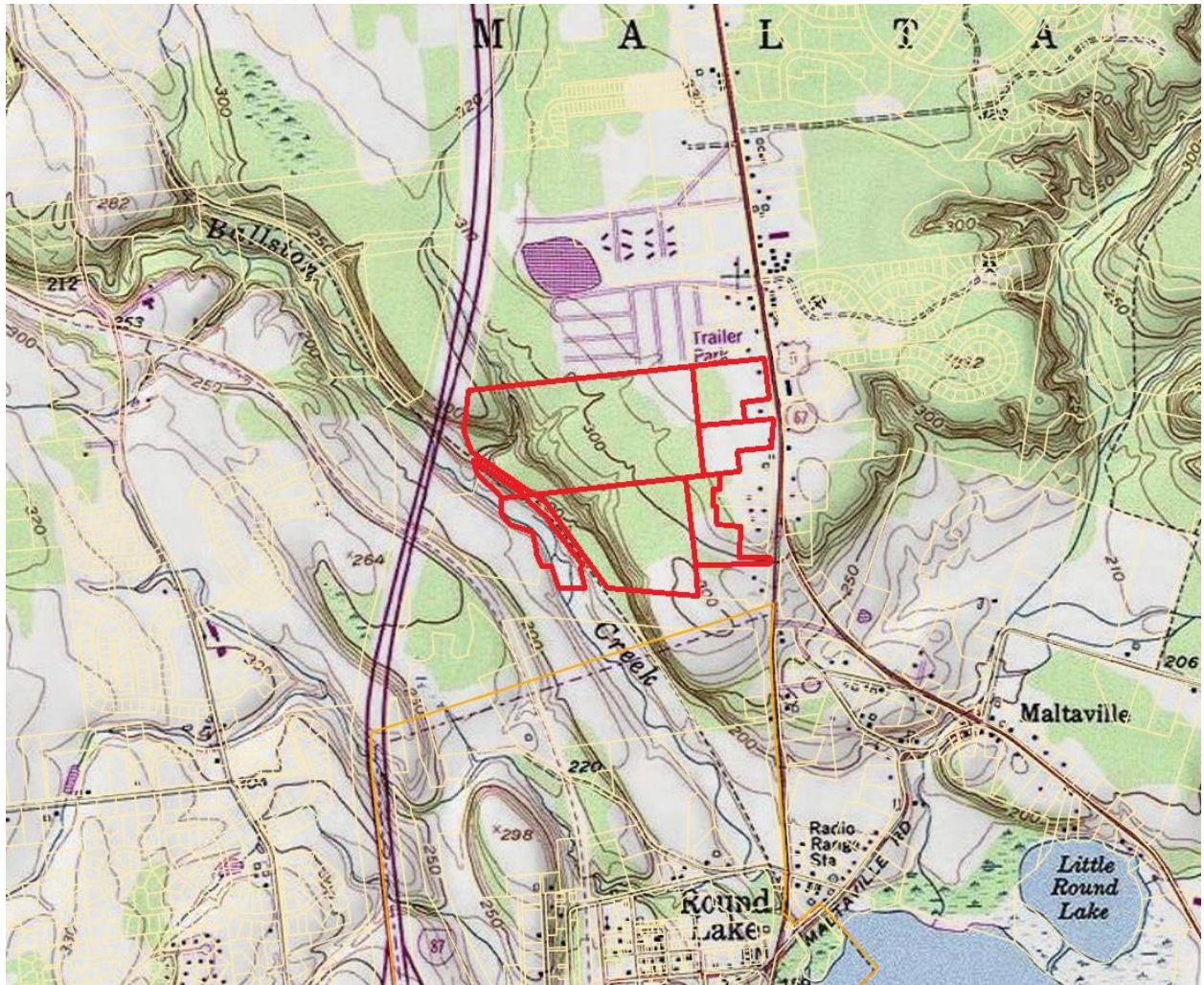
Site Location Map: Figure 1



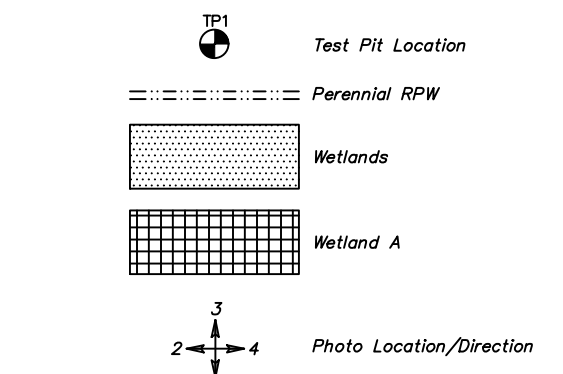
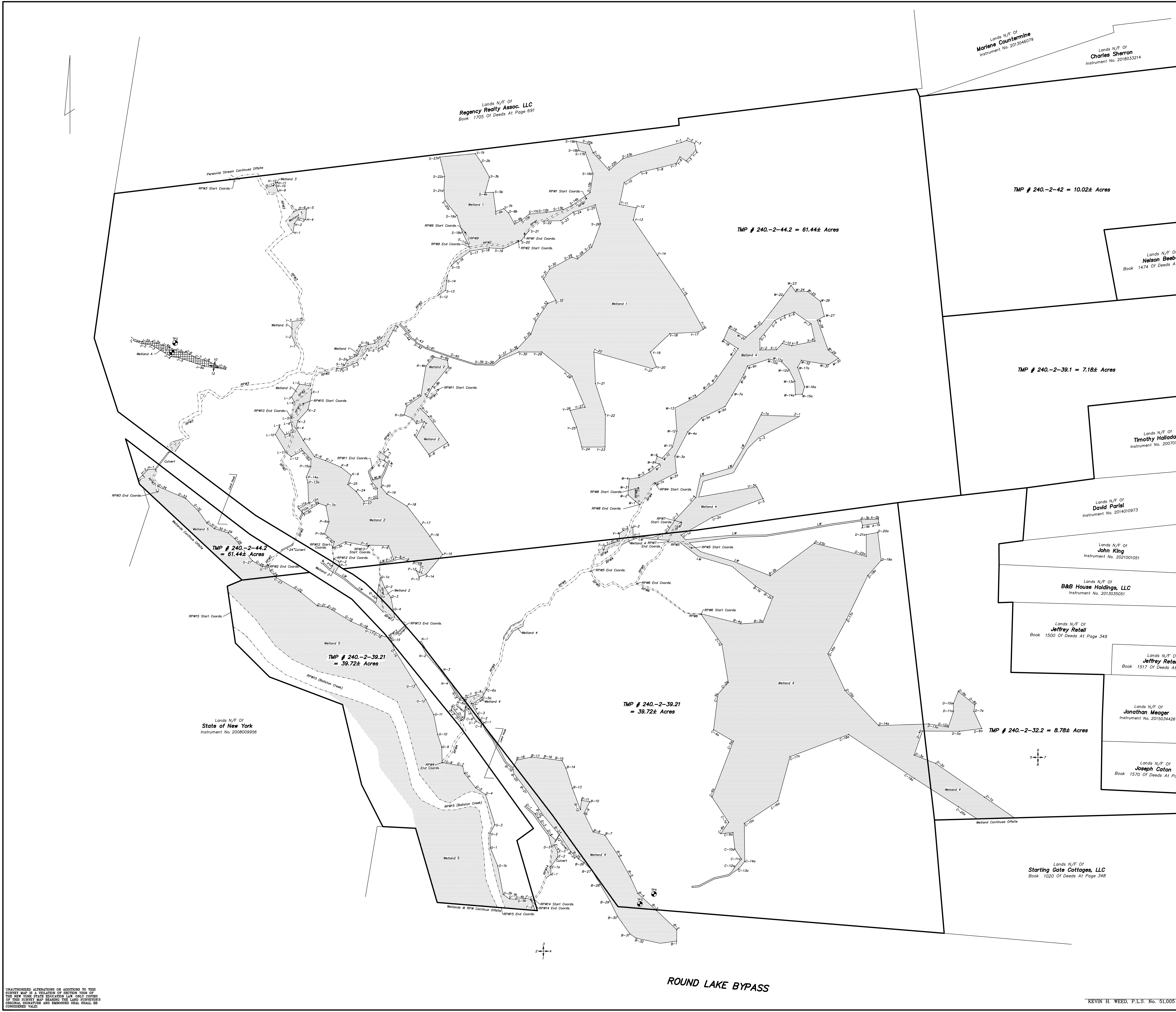
Site Aerial: Figure 2



USGS Round Lake, NY Quadrangle: Figure 5



NOTES:
1. WETLANDS SHOWN HEREON WERE DELINEATED ON MAY 7, 2024, BY GILBERT VANGUILDER LAND SURVEYOR, PLLC, AND ARE SUBJECT TO AGENCY REVIEW.
2. ANY CONSTRUCTION ACTIVITIES WITHIN THE WETLANDS, ADJACENT AREA OR STREAMS WILL REQUIRE A.C.C.E.P.A.T.S.D.E.C. COMPLIANCE PERMITS.
3. PROPERTY LINES SHOWN HEREON ARE PER SARATOGA COUNTY TAX MAPPING.



Wetland Table		
Total Site Area & Jurisdictional Review Area	127.14± Acres	
Wetland 1	42.9550732° -73.7983555°	5.15± Acres
Wetland 2	42.9528013° -73.7953400°	1.87± Acres
Wetland 3	42.9549095° -73.7956940°	0.08± Acres
Wetland 4	42.9525753° -73.7953147°	9.43± Acres
Wetland 5	42.9513394° -73.7959476°	4.93± Acres
Total Wetlands Onsite		21.46± Acres
Wetland A	42.9538213° -73.8009410°	0.09± Acres

Coordinate Table				
	RPW Start Onsite Latitude/Longitude	RPW End Onsite Latitude/Longitude	Average Annual Rainfall/Snowfall	Onsite Linear Feet/Acreage
Perennial RPW 1	42.9550319° -73.7985620°	42.9547549° -73.7972289°	50 inches	203± LF 0.018± Acres
Perennial RPW 2	42.9547020° -73.7972851°	42.9521600° -73.8000141°	50 inches	1,351± LF 0.133± Acres
Perennial RPW 3	42.9552271° -73.8003882°	42.9527448° -73.8011925°	50 inches	1,479± LF 0.296± Acres
Perennial RPW 4	42.9522814° -73.7958515°	42.9502687° -73.7981605°	50 inches	1,022± LF 396± LF 0.137± Acres
Perennial RPW 5	42.9522657° -73.7954635°	42.9502687° -73.7954611°	50 inches	396± LF 0.038± Acres
Perennial RPW 6	42.9517425° -73.7953644°	42.9519874° -73.7960339°	50 inches	211± LF 0.072± Acres
Perennial RPW 7	42.9524698° -73.7957009°	42.9523176° -73.7957145°	50 inches	69± LF 0.004± Acres
Perennial RPW 8	42.9527438° -73.7960294°	42.9526128° -73.7950140°	50 inches	49± LF 0.003± Acres
Perennial RPW 9	42.9547107° -73.7978665°	42.9546553° -73.7978245°	50 inches	322± LF 0.002± Acres
Perennial RPW 10	42.9534501° -73.7996194°	42.9533178° -73.7997497°	50 inches	344± LF 0.005± Acres
Perennial RPW 11	42.9533312° -73.7981701°	42.9529182° -73.7988847°	50 inches	98± LF 0.003± Acres
Perennial RPW 12	42.9522920° -73.7953151°	42.9522018° -73.7953055°	50 inches	334± LF 0.001± Acres
Perennial RPW 13	42.9523052° -73.7989322°	42.9516728° -73.7985468°	50 inches	184± LF 0.011± Acres
Perennial RPW 14	42.9494039° -73.7971863°	42.9494000° -73.7972204°	50 inches	98± LF 0.001± Acres
Perennial RPW 15	42.9515884° -73.8004154°	42.9494399° -73.7975393°	50 inches	1,291± LF 0.982± Acres
Total Perennial RPW Onsite				6,768± LF 1.87± Acres

Revised Per USACE Comments - 7/25/24
Revised Per USACE Comments - 4/2/24

WETLAND DELINEATION MAP

TMP # 240.-2-32.2, 240.-2-39.1, 240.-2-39.21, 240.-2-42 & 240.-2-44.2

TOWN OF MALTA

SARATOGA COUNTY, NEW YORK

MAP NUMBER 21 - 30 - 100A

SCALE 1" = 100'

DATE: MAY 24, 2023

Gilbert VanGuilder

Land Surveyor, PLLC

Professional Land Surveyors

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KEVIN H. WEED, P.L.S. No. 51,005

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