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 28 February 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-2023-00280-WCO.[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,

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[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.

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, jurisdictional, Section 10/404
        ii. Wetland B, non-jurisdictional
        iii. Wetland C, non-jurisdictional
        iv. Wetland D, non-jurisdictional
        v. Wetland E, jurisdictional, Section 10/404
        vi. Wetland F, non-jurisdictional
        vii. Wetland G, jurisdictional, Section 10/404
        viii. Cromakill Creek, jurisdictional, Section 10/404
        ix. Tributaries 1 – 6, jurisdictional, Section 10/404

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 is a total of approximately 72.64 acres of an approximately 135-acre site (40.78618, -74.03903), Town of Secaucus and Township of North Bergen, Hudson County, New Jersey (partial site).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Cromakill Creek, which is a tidal waterbody to the Hackensack River, also a TNW.[6]

[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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.
   Cromakill Creek is a tidal waterbody of the Hackensack River, a TNW. Unnamed Tributaries 1 – 6 are tidal and flow directly into Cromakill Creek, a TNW. Wetlands A, E, and G are tidal wetlands at their locations that abut Cromakill Creek.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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] Wetlands A and G are tidally influenced emergent wetlands that abut Cromakill Creek within the project boundary, which is approximately 65.91 acres. Wetlands E is tidally influenced emergent wetlands that abut Cromakill Creek within the project boundary, which is approximately 6.73 acres. Wetlands A, E, and G abut Cromakill Creek and are considered to be “navigable in law”. Cromakill Creek is a tidal waterbody that flows to the Hackensack River, a TNW. Unnamed Tributaries 1 - 6 are tidally influenced as they flow directly to Cromakill Creek, a TNW, within the project boundary.

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 (ac) or linear feet (LF) and attach and reference related figures as needed.

a. Traditional Navigable Waters (TNWs) (a)(1)(i): Cromakill Creek is a tidal waterbody and drains to the Hackensack River, a TNW. Wetlands A, E, and G are tidally

[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.

influenced emergent wetlands that abut Cromakill Creek within the project boundary and are considered to be “navigable in law”.

Aquatic Resource	Size within Project Boundary
Wetland A	6.99 ac
Wetland E	2.471 ac
Wetland G	0.434 ac
Cromakill Creek	4,247 LF

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): The unnamed Tributaries 1 – 6, sited within the project boundary, are tidally influenced and flow directly to Cromakill Creek and are part of a larger tributary system, as evidenced by aerial photography, and shown on Drawing No. EX-3, titled “Cromakill Creek Tributaries”, dated November 15, 2023, prepared by Langan.

Aquatic Resource	Size within Project Boundary
Unnamed Tributary 1	111 LF
Unnamed Tributary 2	80 LF
Unnamed Tributary 3	37 LF
Unnamed Tributary 4	44 LF
Unnamed Tributary 5	19 LF
Unnamed Tributary 6	40 LF

f. Adjacent Wetlands (a)(4): N/A

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).[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): Wetlands B, C, D, and F are depressional wetlands that demonstrate no apparent continuous surface connection to Cromakill Creek and are situated at a higher elevation, surrounded by uplands, and are located at distances varying from 150 to 250 feet from Cromakill Creek as shown on Drawing No. EX-2, titled "Wetlands – Profile View", dated November 29, 2023, and last revised on January 18, 2024, prepared by Langan.

Aquatic Resource	Size within Project Boundary
Wetland B	0.161 ac
Wetland C	0.123 ac
Wetland D	0.107 ac
Wetland F	0.135 ac

Under a prior jurisdictional determination assigned Application File Number NAN-2010-00103, dated April 6, 2010, it was determined that the aquatic features categorized as Wetlands B, C, D, E, F, and G were isolated wetlands as these features did not demonstrate any visible hydrologic connection to Cromakill Creek, and therefore, were considered non-jurisdictional under Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001 (SWANCC). These former aquatic features correspond to the aquatic features currently delineated as Wetlands B, C, D, and F within the project boundary. The uplands in the project area are highly disturbed, and the property itself demonstrates a presence of historic fill material, which was commonly used to elevate the topography of properties in the region for decades. The site history of the property is well documented in the referenced applications in Paragraph 10.

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.

[9] 88 FR 3004 (January 18, 2023)

a. U.S. Army Corps of Engineers, New York District Site investigation conducted on January 9, 2024, including color, ground-level photographs

b. "U.S. Army Corps of Engineers Wetland Delineation Report, Meadowlands Logistics Center, Block 227, Lot 9 and Portion of Block 442.01, Lot 4, Town of Secaucus and Township of North Bergen, Hudson County, New Jersey", prepare by Langan Engineering and Environmental Services, Inc. (Langan), dated 22 January 2024, to include the following applicable drawings:

   i. Drawing No. EX-2, titled "Wetlands- Profile View", dated November 29, 2023, and last revised January 18, 2024, prepared by Langan

   ii. Drawing No. EX-3, titled "Cromakill Creek Tributaries", dated November 15, 2023, prepared by Langan

   iii. Drawing No. WD100A, titled "Wetland Delineation Plan (Partial Site) (Key May)", dated July 14, 2023, and last revised January 18, 2024, prepared by Langan

   iv. Drawing No. WD100, titled "Wetland Delineation Plan (Partial Site)", dated June 27, 2022, and last revised January 18, 2024, prepared by Langan

c. Wetland Field Data Sheets as part of the Wetland Delineation Report dated January 16, 2024 (Appendix C)

d. National Wetland Inventory Map as part of the report dated January 16, 2024

e. USGS Weehawken, NJ topographic map as part of report dated January 16, 2024

f. NJDEP Wetlands Map as part of report dated January 16, 2024

g. NJDEP Historic Fill Map as part of report dated January 16, 2024

h. Historic Aerial Photographs from 1979, 1987, 2001, 2010, and 2015 as part of report dated January 16, 2024

i. U.S. Environmental Protection Agency, Region 2, Letter dated December 5, 2023, to include inspection report, as part of report dated January 16, 2024 (Appendix E)

10. OTHER SUPPORTING INFORMATION. Department of the Army (DA) Application File Number NAN-2011-00397; DA Application File Number NAN-2010-00103, including AJD issued on April 6, 2010; DA Application File Number NAN-2006-03120, including AJD issued on May 17, 2007; DA Application File Number NAN-2006-00129, including AJD issued on May 17, 2007.

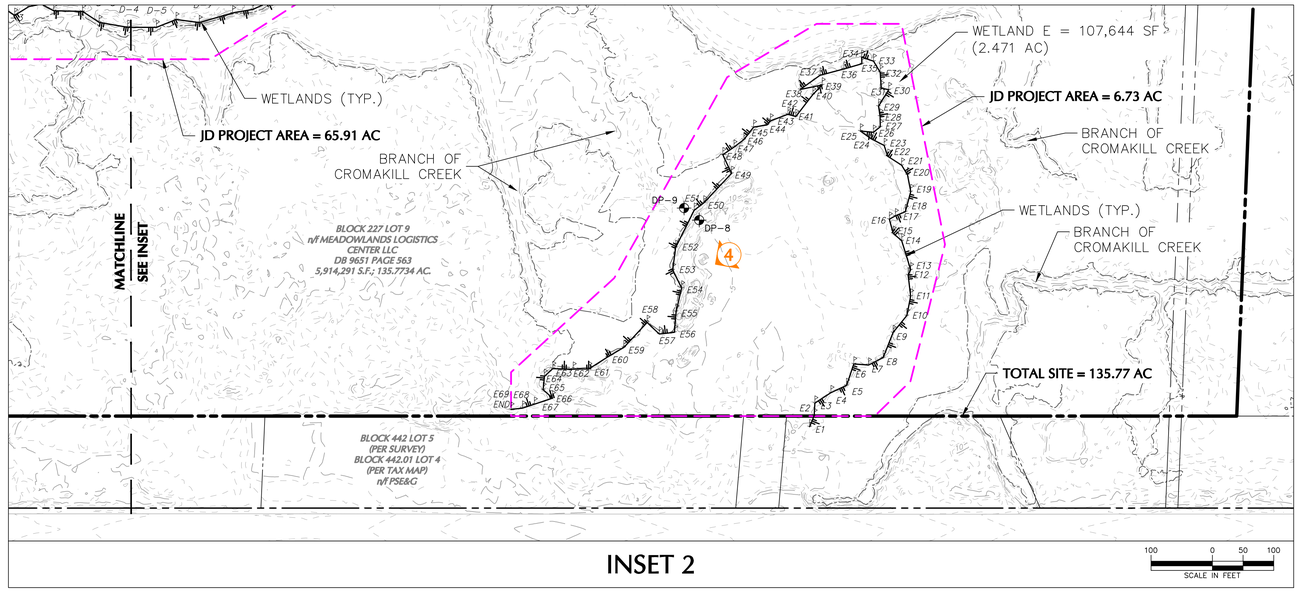
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

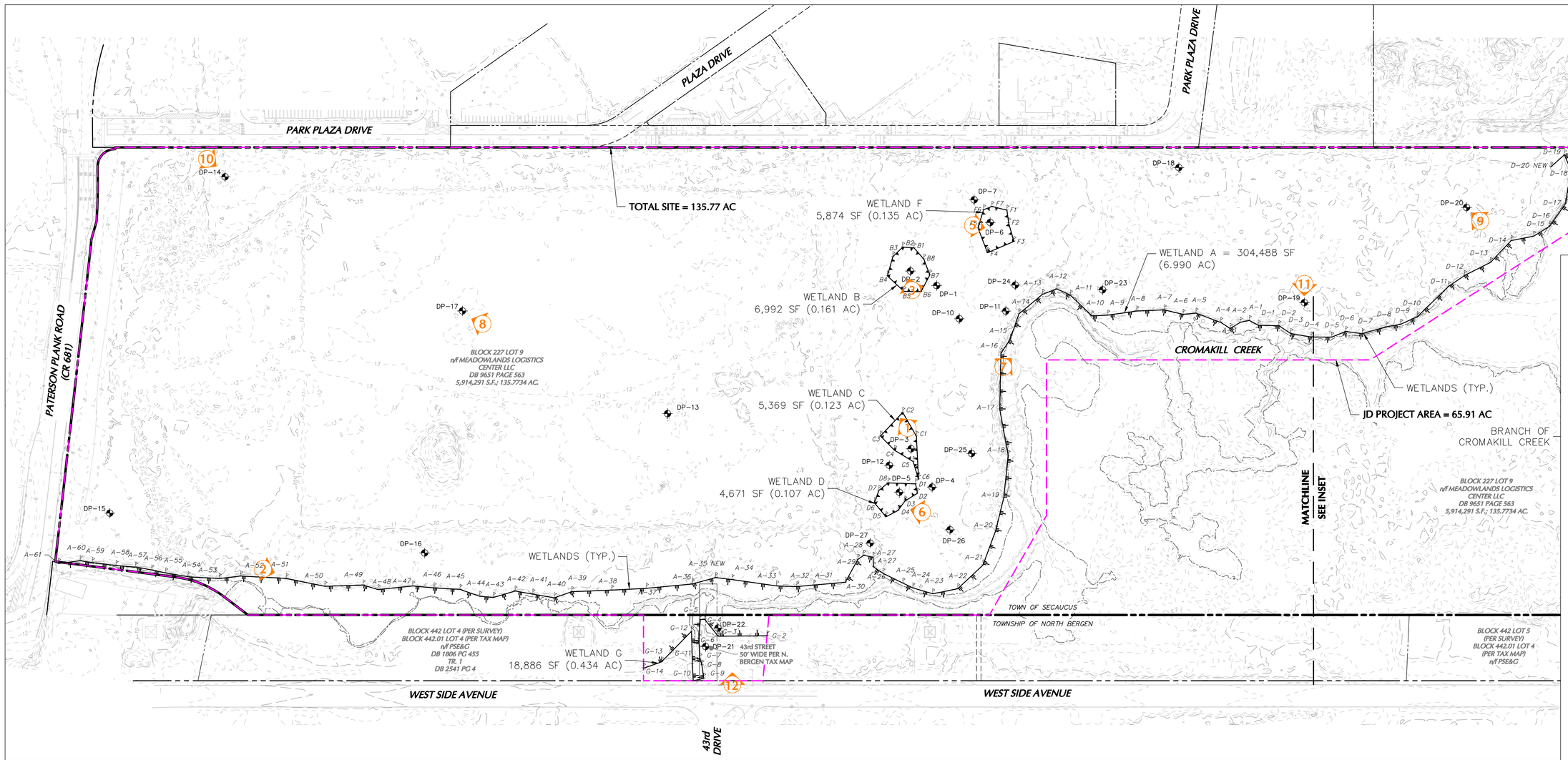
LEGEND:

- PROPERTY BOUNDARY (135.77 AC)
- MEAN HIGH WATER (EL. 2.8) (CROMAKILL CREEK)
- WETLANDS
- JD PROJECT AREA (72.64 AC)
- DP-1 — DATA POINT LOCATION
- A-1 — DELINEATION FLAG
- 1 — PHOTOGRAPH LOCATION

Identified Feature	Wetland Type (Cowardin Classifcation)	Coordinated (Centerpoint)		Area (Acres) and Linear Feet Within Project Area
		Lat	Long	
Wetland A	PEM5	*40.7868°	*-74.0387°	6.99
Wetland B	PEM5	40.7868°	-74.0405°	0.161
Wetland C	PEM5	40.7863°	-74.0393°	0.123
Wetland D	PEM5	40.7860°	-74.0389°	0.107
Wetland E	PEM5	*40.7913	*-74.0363°	2.471
Wetland F	PEM5	40.7874°	-74.0405°	0.135
Wetland G	PEM5	40.7846°	-74.0387°	0.434
Cromakill Creek	E1UBL6	*40.7869°	*-74.0388°	4,247 LF
Unnamed Tributary to Cromakill Creek 1	E1UBL6	40.7846°	-74.0388°	111 LF
Unnamed Tributary to Cromakill Creek 2	E1UBL6	40.7872°	-74.0393°	80 LF
Unnamed Tributary to Cromakill Creek 3	E1UBL6	40.7880°	-74.0389°	37 LF
Unnamed Tributary to Cromakill Creek 4	E1UBL6	40.7886°	-74.0385°	44 LF
Unnamed Tributary to Cromakill Creek 5	E1UBL6	40.7891°	-74.0382°	19 LF
Unnamed Tributary to Cromakill Creek 6	E1UBL6	40.7906°	-74.0362°	40 LF

* Coordinates taken at midpoint of wetland line





NJ NAD 83 (2011)

NOTES:
1. BOUNDARY, TOPOGRAPHY AND EXISTING FEATURES SHOWN HEREON FOR BLOCK 227, LOT 9 IN SECAUCUS ARE BASED ON "ALTA/NSPS LAND TITLE SURVEY" DATED 06/17/2021, LAST REVISED 03/24/2023, PREPARED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC FOR HARTZ MOUNTAIN INDUSTRIES. THE CONTRACTOR SHALL VERIFY ALL INFORMATION TO HIS SATISFACTION PRIOR TO THE EXECUTION OF CONTRACTS OR COMMENCING WORK. ANY DISCREPANCIES SHALL BE IMMEDIATELY REPORTED TO THE ENGINEER OF RECORD.
2. ALL ELEVATIONS ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
3. WATER ELEVATION DATA HAS BEEN DETERMINED FROM TIDAL BENCHMARK 853-0538F 1976 SET IN THE SOUTHWEST BASE OF THE HIGH VOLTAGE WIRE TOWER ON THE SOUTHWESTERLY SIDE OF 69TH STREET IN NORTH BERGEN TOWNSHIP. CORRECTIONS WERE APPLIED TO ACCOUNT FOR SEA LEVEL RISE BASED UPON NOAA DATA AT CONTROL STATION THE BATTERY 851-8750.
   MHW = 2.8; MHHW = 3.1
4. WETLAND FLAGS NUMBERED A-1 TO A-60, D-1 TO D-20 AND G-2 TO G-14 ARE SHOWN PER USACE JD NAN-2019-01529-WCA. LANGAN REVIEWED THIS WETLAND BOUNDARY PURSUANT TO USACE JD NAN-2019-01529-WCA IN 2021 AND 2022 AND AGREES WITH THIS BOUNDARY. THE FLAGS WERE LOCATED BY LANGAN FIELD PERSONNEL IN MAY 2019. THE REMAINING WETLANDS SHOWN HEREON WERE DELINEATED BY LANGAN WETLAND SCIENTISTS AND LOCATED BY LANGAN ON 12/10/2021, 2/11/2022 AND 5/13/2022.
5. THE PROJECT AREA SUBJECT TO THE DELINEATION AND JURISDICTIONAL DETERMINATION IS 72.64 ACRES OF THE 135.77 ACRE SITE, APPROXIMATELY 9.987 ACRES OF WETLANDS WERE IDENTIFIED WITHIN THE PROJECT AREA.

Date	Description	No.
01/18/2024	UPDATES PER USACE COMMENTS	4
11/15/2023	UPDATES PER USACE COMMENTS	3
7/14/2023	UPDATES PER USACE COMMENTS	2
3/30/2023	UPDATES PER USACE COMMENTS	1

REVISIONS

1/22/24

SIGNATURE DANIEL MIOLA DATE SIGNED
PROFESSIONAL ENGINEER NJ Lic. No. 24GE04676300

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NJ CERTIFICATE OF AUTHORIZATION No. 24GA27996400

Project
MEADOWLANDS LOGISTICS CENTER
BLOCK No. 227, LOT No. 9
TOWN OF SECAUCUS
HUDSON COUNTY NEW JERSEY

Drawing Title
WETLAND DELINEATION PLAN (PARTIAL SITE)

Project No.	Drawing No.
100891601	WD100
Date: 6/27/2022	
Drawn By: CS/BB	
Checked By: DM/KMR	Sheet of

PROJECT NO. 100891601

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- PROPERTY BOUNDARY (135.77 AC)
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- WETLANDS
- JD PROJECT AREA (72.64 AC)

NJ NAD 83 (2011)

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NEW JERSEY TURNPIKE VARIABLE WIDTH R.O.W.

TOWN OF SECAUCUS

TOWNSHIP OF NORTH BERGEN

CROMAKILL CREEK

INSET 1

INSET 2

PARK PLAZA DRIVE

PLAZA DRIVE

PARK PLAZA DRIVE

PATERSON PLANK ROAD (CR 681)

TOTAL SITE = 135.77 AC

WETLAND F

WETLAND B

WETLAND A

WETLAND C

WETLAND D

WETLAND E

WETLAND G

BLOCK 227 LOT 9
n/f MEADOWLANDS LOGISTICS CENTER LLC
DB 9651 PAGE 563
5,914,291 S.F.; 135.7734 AC.

JD PROJECT AREA = 65.91 AC

JD PROJECT AREA = 6.73 AC

TOTAL SITE = 135.77 AC

BLOCK 442 LOT 4 (PER SURVEY)
BLOCK 442.01 LOT 4 (PER TAX MAP)
n/f PSE&G
DB 1806 PG 455
TR. 1
DB 2541 PG 4

BLOCK 442 LOT 5 (PER SURVEY)
BLOCK 442.01 LOT A
(PER TAX MAP)
n/f PSE&G

WEST SIDE AVENUE

43nd STREET
50' WIDE PER N. BERGEN TAX MAP

WEST SIDE AVENUE

150 0 75 150
SCALE IN FEET

Date	Description	No.
01/18/2024	UPDATES PER USACE COMMENTS	2
11/15/2023	UPDATES PER USACE COMMENTS	1

REVISIONS

1/22/24

SIGNATURE DANIEL MIOLA DATE SIGNED
PROFESSIONAL ENGINEER NJ Lic. No. 24GE04676300

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Project
MEADOWLANDS LOGISTICS CENTER
BLOCK No. 227, LOT No. 9
TOWN OF SECAUCUS
HUDSON COUNTY NEW JERSEY

Drawing Title
WETLAND DELINEATION PLAN
(PARTIAL SITE)
(KEY MAP)

Project No. 100891601	Drawing No. WD100A
Date 07/14/2023	
Drawn By BB	
Checked By DM/KMR	Sheet of

Filename: \\langan.com\data\PAR\data5\100891601\Project Data\CADD\1\SheetFiles\USACE Permitting Plans\100891601-WD100-0101.dwg Date: 1/16/2024 Time: 13:41 User: cschum Style Table: Langan.stb Layout: WD100A

LANGAN PROJECT NO. 100891601