



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

23 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),¹ NAN-2023-00798-WOR.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. Wetland CT, jurisdictional, Section 404
 - ii. Wetland DL-1, jurisdictional, Section 404
 - iii. Wetland DL-2, jurisdictional, Section 404
 - iv. Wetland E2, non-jurisdictional
 - v. Wetland E3, non-jurisdictional
 - vi. Wetland EA, non-jurisdictional
 - vii. Wetland EB, non-jurisdictional
 - viii. Wetland EC, non-jurisdictional
 - ix. Wetland ED, non-jurisdictional
 - x. Wetland EE, non-jurisdictional
 - xi. Wetland EF, non-jurisdictional
 - xii. Wetland EG, non-jurisdictional
 - xiii. Wetland EH, non-jurisdictional
 - xiv. Wetland EI, non-jurisdictional
 - xv. Wetland EJ, non-jurisdictional
 - xvi. Wetland EK, non-jurisdictional
 - xvii. Wetland EL, jurisdictional, Section 404
 - xviii. Wetland EM, jurisdictional, Section 404
 - xix. Wetland R2, 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 28.58 acres, 41.3077, -73.9409, Town of Cortlandt, Westchester County, New York.

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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 2,700 feet south of the project site.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.
Waters on site flow to the perennial, unnamed stream that flows through Dickiebusch Lake, roughly south, off site, then directly into the Hudson River.
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

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.

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.

- 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): Wetlands DL-1, DL-2 and EM directly abut the perennial, unnamed tributary that flows through Dickiebusch Lake. Wetlands CT, EL and R2 flow directly into the perennial, unnamed tributary that flows through Dickiebusch Lake.
- 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): Wetland E2 is located approximately 60 feet from Wetland CT, the nearest waters of the United States, separated from it by a 20-foot-high berm, with no apparent continuous surface connection. Wetland E3 is located approximately 160 feet from and 3 feet higher in elevation than Wetland EL, the nearest waters of the United States, with no apparent continuous surface connection. Wetlands EA, EB and EC are located approximately 260 feet from Wetland DL-1, the nearest waters of the United States, with no apparent continuous surface connection. Wetlands ED and EE are located approximately 120 feet from Wetland DL-1, the nearest waters of the United States, with no apparent continuous surface connection. Wetlands EF and EG are located approximately 120 feet from and 1

⁹ 88 FR 3004 (January 18, 2023)

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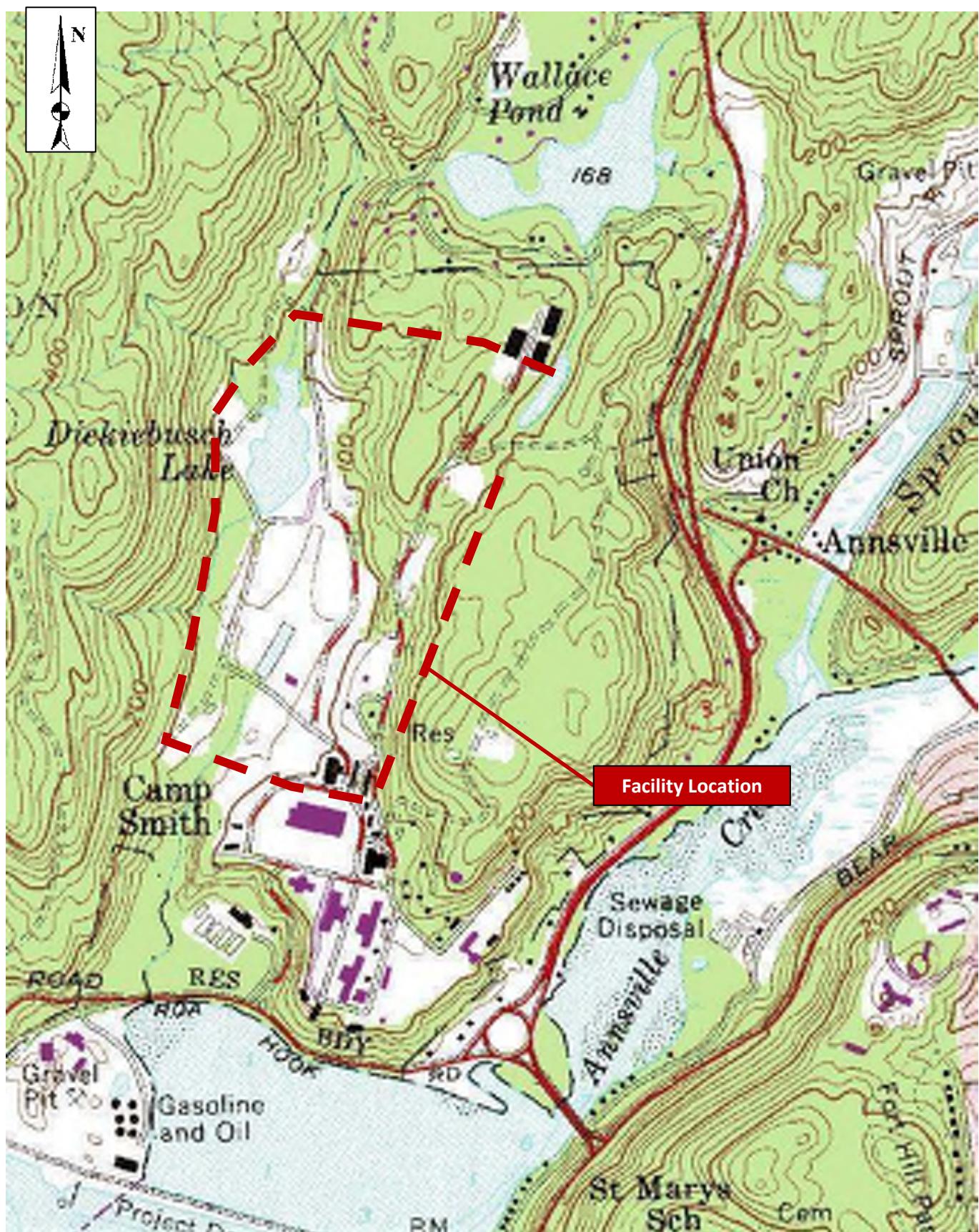
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foot higher in elevation than Wetland EL, with no apparent continuous surface connection. Wetlands EH and EJ are located approximately 50 feet from and 1 foot higher in elevation than Wetland EL, the nearest waters of the United States, with no apparent continuous surface connection. Wetland EI is 22 feet from and 2 feet higher in elevation than Wetland R2, the nearest waters of the United States, with no apparent continuous surface connection. Wetland EK is located approximately 40 feet from and 2 feet higher in elevation than Wetland EL, the nearest waters of the United States, with no apparent continuous surface connection.

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 November 15, 2023.
 - b. "Wetland Delineation Report Camp Smith-Firing Range Town of Cortlandt Westchester County, New York", prepared by OSPA Engineering Services, PC, dated December, 2022, including color, ground-level photographs and aerial photographs.
 - c. USDA Web Soil Survey as part of Wetland Delineation Report dated December, 2022.
 - d. USGS Peekskill, NY topographic map as part of Wetland Delineation Report dated December, 2022.

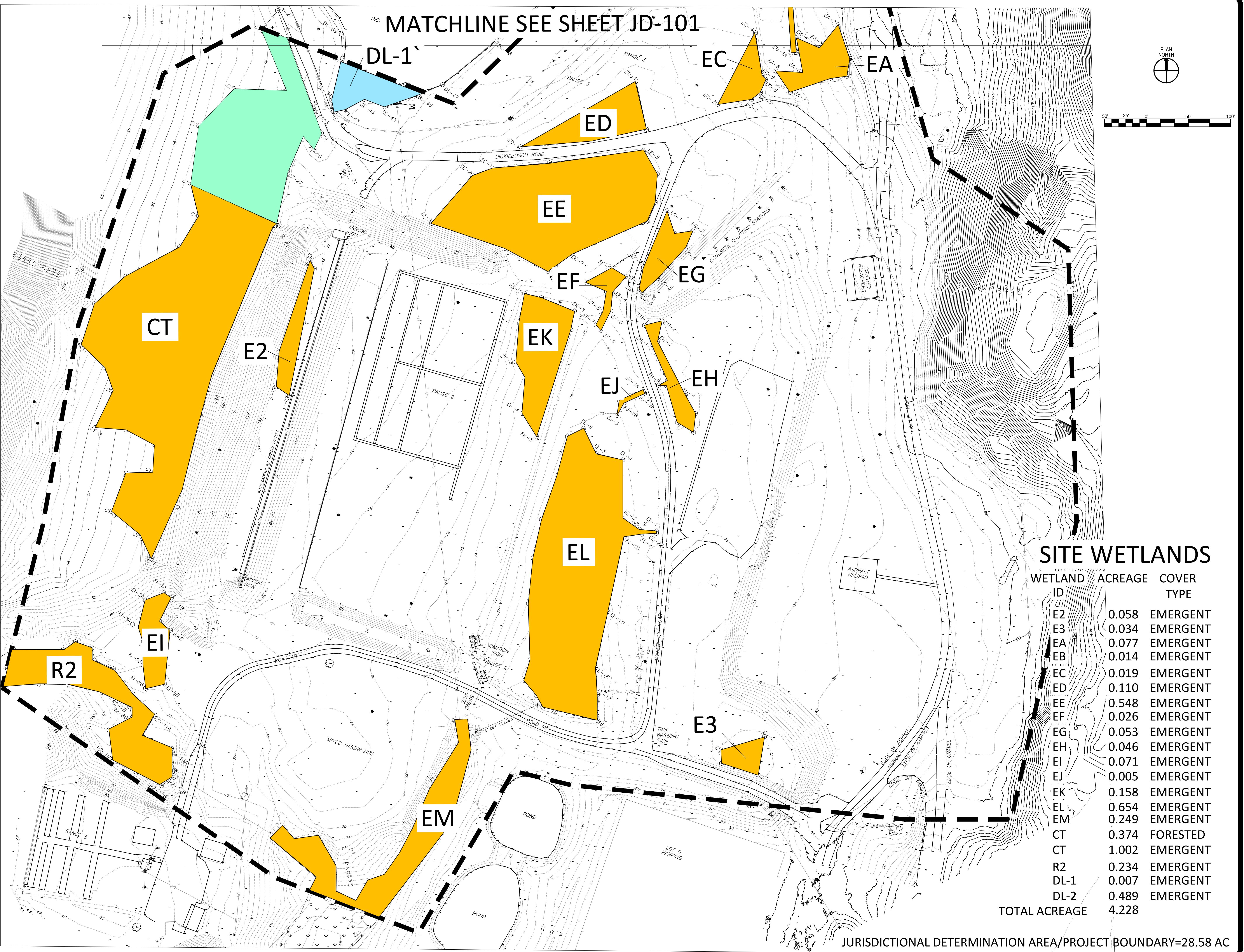
10. OTHER SUPPORTING INFORMATION. N/A

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

Camp Smith Firing Range
Peekskill Quadrangle
Westchester County, NY
NOT TO SCALE



NEW YORK STATE OF GOVERNMENT | Office of General Services
DESIGN & CONSTRUCTION
CONSULTANT: ENVIRONMENTAL DESIGN PARTNERSHIP, LLP
CONSULTANT: OSPA ENGINEERING SERVICES, P.C.

edp ENVIRONMENTAL DESIGN PARTNERSHIP, LLP.



WARNING:
THE ALTERATION OF THIS MATERIAL IN ANY WAY,
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PROFESSIONAL, I.E. ARCHITECT FOR AN ARCHITECT,
ENGINEER FOR AN ENGINEER OR LANDSCAPE ARCHITECT
FOR A LANDSCAPE ARCHITECT, IS A VIOLATION OF THE
NEW YORK STATE EDUCATION LAW AND/OR REGULATIONS
AND IS A CLASS "A" MISDEMEANOR.

REGISTRATION EXPIRES:
06/30/2024

CONTRACT:

TITLE: CAMP SMITH AUTOMATED RECORD FIRE FIRING RANGE

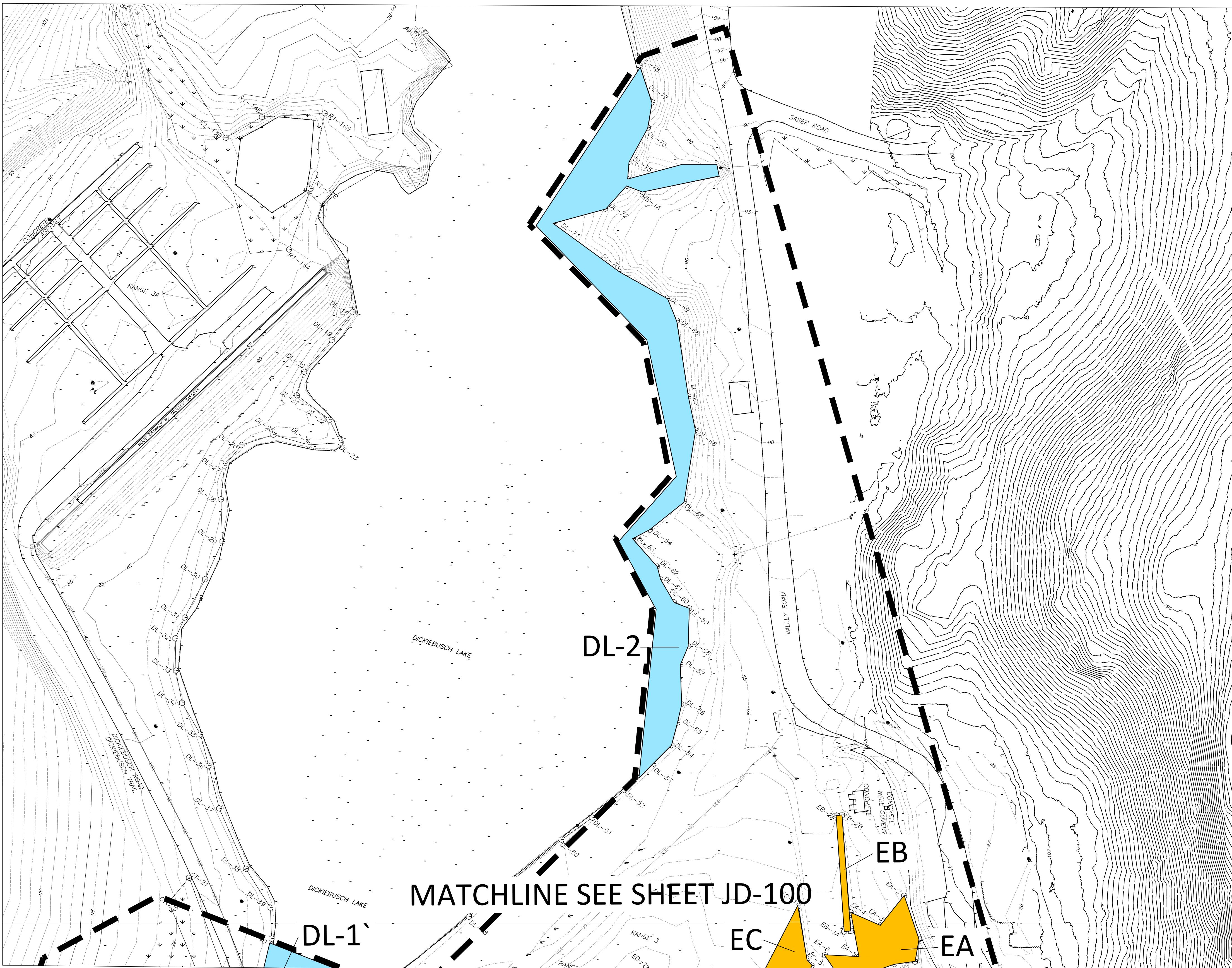
LOCATION: CAMP SMITH TRAINING SITE
11 BEAR MOUNTAIN BRIDGE RD
CORTLAND MANOR, NY 10567

CLIENT:
NEW YORK STATE DIVISION OF
MILITARY AND NAVAL AFFAIRS

MCO	12/22/2023	100% SUBMISSION
MARK	DATE	DESCRIPTION
PROJECT NUMBER:	47574	C
DESIGNED BY:	MCO	
DRAWN BY:	JKS	
FIELD CHECK:		
APPROVED:	MCO	

JURISDICTIONAL DETERMINATION PLAN

DRAWING NUMBER:
JD-100



SITE WETLANDS

WETLAND ID	ACREAGE	COVER TYPE
E2	0.058	EMERGENT
E3	0.034	EMERGENT
EA	0.077	EMERGENT
EB	0.014	EMERGENT
EC	0.019	EMERGENT
ED	0.110	EMERGENT
EE	0.548	EMERGENT
EF	0.026	EMERGENT
EG	0.053	EMERGENT
EH	0.046	EMERGENT
EI	0.007	EMERGENT
EJ	0.005	EMERGENT
EK	0.158	EMERGENT
EL	0.654	EMERGENT
EM	0.249	EMERGENT
CT	0.374	FORESTED
CT	1.002	EMERGENT
R2	0.234	EMERGENT
DL-1	0.007	EMERGENT
DL-2	0.489	EMERGENT
TOTAL ACREAGE	4.228	

JURISDICTIONAL DETERMINATION AREA/PROJECT BOUNDARY=28.58 AC

