



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

April 22, 2025

CENAN-OP-RU

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-2018-00101-ULA.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

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.

Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, 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 1, jurisdictional to Section 404;
 - ii. Wetland A, non-jurisdictional;
 - iii. Wetland B, non-jurisdictional;
 - iv. Wetland C, non-jurisdictional;
 - v. Wetland D, non-jurisdictional;
 - vi. Ephemeral Stream 1, non-jurisdictional;
 - vii. Ephemeral Stream 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)
- d. “Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of ‘Continuous Surface Connection’ Under The Definition Of ‘Waters Of The United States’ Under The Clean Water Act” (March 12, 2025)

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.

3. REVIEW AREA. Review area size 21.12 acres; latitude 42.626011, longitude - 73.803385, Town of Bethlehem, Albany County, New York.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Normans Kill, USACE studies have determined that the Normans Kill, a direct tributary to the Hudson River, is navigable in its entirety where it is located within the Town of Bethlehem, Albany County, New York.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland 1 abuts roadside aquatic features that meet the relatively permanent standard along Rockefeller Road which flows directly into the Normans Kill, which flows directly into the Hudson River. Both the Normans Kill and the Hudson River are TNWs.
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,

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.

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): Wetland 1 is a palustrine forested wetland of approximately 1 acres in size that has a continuous surface connection to a TNW, the Normans Kill, and is therefore jurisdictional to Section 404.
- 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 A is a palustrine forested wetland of approximately 0.01 acres in size with no surface connection to any other waters. It is completely surrounded by uplands. Wetland B is a palustrine forested wetland, of approximately 1.25 acres in size, that is connected to Wetland D, a palustrine forested wetland of approximately 0.66 acres in size, by Ephemeral Stream 2, a non-RPW of approximately 308 linear feet. An additional non-RPW of approximately 239

⁹ 88 FR 3004 (January 18, 2023)

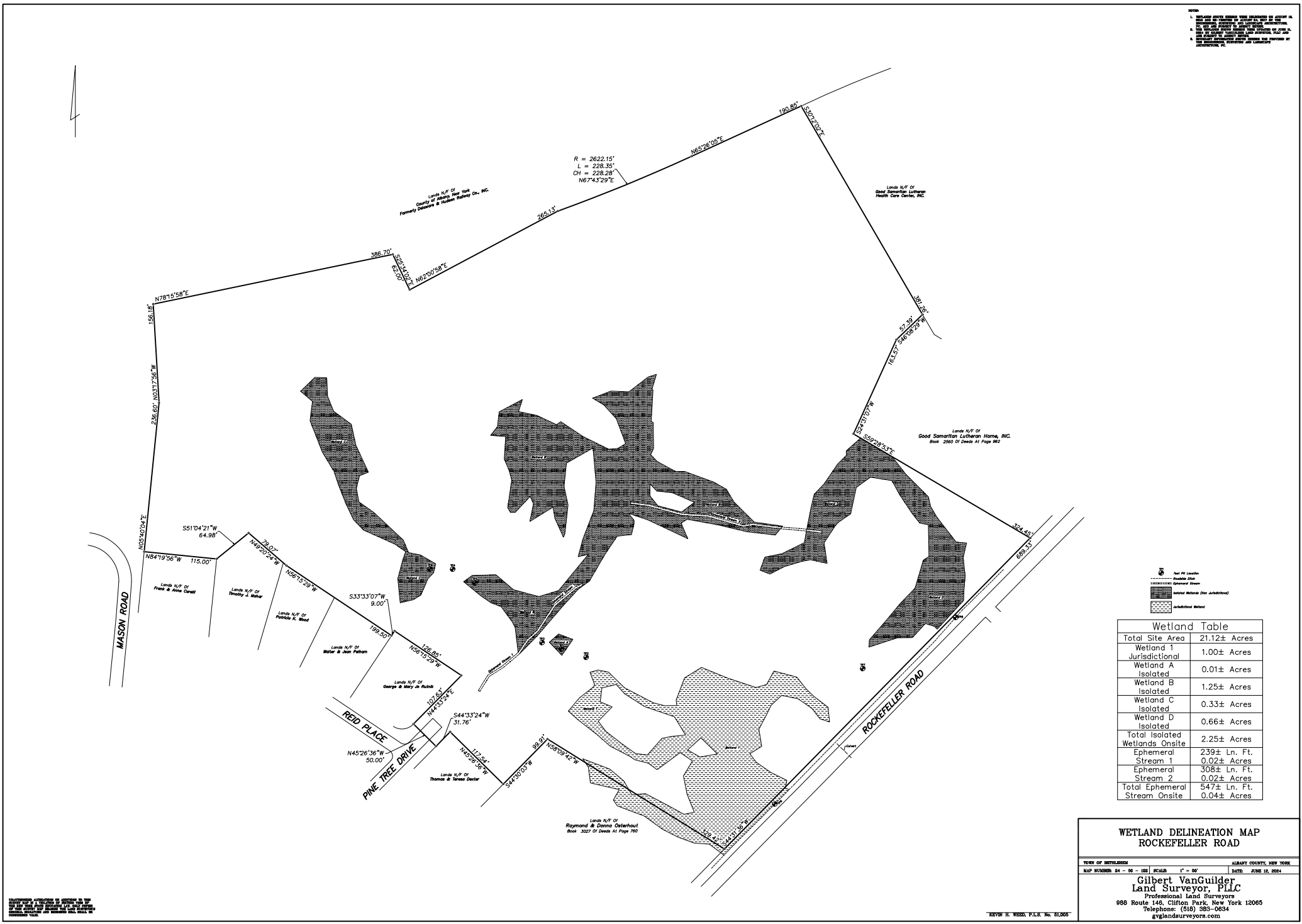
linear feet, Ephemeral Stream 1, extends from the southwest of Wetland B and terminates within uplands. Wetlands B and D are completely surrounded by uplands and do not connect to any other waters. Wetland C is a palustrine forested wetland of approximately 0.33 acres in size. It is surrounded by uplands and is not connected to any other waters. These 4 wetlands and 2 streams do not form a tributary system to any other waters, nor do they have surficial connections to any waters of the United States.

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 Inspection on June 5, 2024, as described in the Site Inspection Report dated June 5, 2024.
 - b. Waters delineation entitled "Wetland Delineation Map Rockefeller Road," prepared by Gilbert VanGuilder Land Surveyor, PLLC, and dated June 12, 2024.
 - c. NRCS Web Soil Survey for Albany County.
 - d. National Wetland Inventory overlayed onto NYSDEC Environmental Resource Mapper.
 - e. NYS Orthos Landcover readout.
 - f. USGS 12 Digit HUC Map.

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.

NOTES:
 1. THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NEW YORK.
 2. I HAVE BEEN ADVISED BY THE PERSONS WHOSE NAMES ARE SHOWN ON THIS MAP THAT THEY ARE THE OWNERS OF THE LANDS SHOWN.
 3. THE INFORMATION ON THIS MAP WAS OBTAINED FROM THE PERSONS WHOSE NAMES ARE SHOWN ON THIS MAP AND FROM OTHER SOURCES AS NOTED.
 4. I HAVE BEEN ADVISED BY THE PERSONS WHOSE NAMES ARE SHOWN ON THIS MAP THAT THEY ARE THE OWNERS OF THE LANDS SHOWN.



THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NEW YORK.

**WETLAND DELINEATION MAP
ROCKEFELLER ROAD**

JOHN OF BETHLEHEM ALBANY COUNTY, NEW YORK

MAP NUMBER 04 - 00 - 100 JCMB 1" = 50' DATE JUNE 15, 2024

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