



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

CENAN-OP-RU

2 JULY 2025

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-2024-00804-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 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 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.

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 1A, Jurisdictional Section 404
 - ii. Wetland 1B, Jurisdictional Section 404
 - iii. Wetland 1C, Jurisdictional Section 404
 - iv. Wetland 6, Jurisdictional Section 404
 - v. Wetland 7, Jurisdictional Section 404
 - vi. Wetland 8, Jurisdictional Section 404
 - vii. Wetland 9, Jurisdictional Section 404
 - viii. Wetland 10, Jurisdictional Section 404
 - ix. Wetland 11, Jurisdictional Section 404
 - x. Wetland 1, Non-jurisdictional
 - xi. Wetland 1D, Non-jurisdictional
 - xii. Wetland 2, Non-jurisdictional
 - xiii. Wetland 3, Non-jurisdictional
 - xiv. Wetland 4, Non-jurisdictional
 - xv. Wetland 5, Non-jurisdictional
 - xvi. Wetland 5A, Non-jurisdictional
 - xvii. Stream TRIB 1, Jurisdictional Section 404
 - xviii. Stream TRIB 2, Jurisdictional Section 404
 - xix. Stream TRIB 3, Jurisdictional Section 404
 - xx. Stream TRIB 3A, Jurisdictional Section 404
 - xxi. Stream TRIB 4, Jurisdictional Section 404
 - xxii. Stream TRIB 5, Jurisdictional Section 404
 - xxiii. Stream TRIB 5A, Jurisdictional Section 404
 - xxiv. Stream TRIB 5B, Jurisdictional Section 404
 - xxv. Stream TRIB 6, Non-jurisdictional
 - xxvi. Stream TRIB 7, Non-jurisdictional
 - xxvii. Stream TRIB 8, Non-jurisdictional
 - xxviii. Pond Area 6, Jurisdictional Section 404

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

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- 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)
- 3. REVIEW AREA. Review area size of 54.603 located at coordinates 42.84597, -73.90005 along the northern side of Aqueduct Road, in the Town of Niskayuna, Schenectady County, New York, within the Mohawk River watershed.
 - 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Mohawk River⁶
 - 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Jurisdictional aquatic resources found on the subject site are either direct tributaries or abut direct tributaries to the Mohawk 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

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.

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): Streams called TRIB 1 (633 linear feet), TRIB 2 (714 linear feet), TRIB 3 (2,223 linear feet), TRIB 3A (622 linear feet), TRIB 4 (151 linear feet), TRIB 5 (1,048 linear feet), TRIB 5A (143 linear feet), and TRIB 5B (134 linear feet) are relatively permanent waters that flow directly or indirectly into the Mohawk River.
 - f. Adjacent Wetlands (a)(4): Wetlands called 1A (0.019 acres), 1B (0.036 acres), 1C (0.037 acres), 6 (1.451 acres), 7 (1.426 acres), 8 (1.954 acres), 9 (1.601 acres), 10 (0.225 acres), and 11 (0.024 acres) are wetlands that abut relatively permanent waters that directly or indirectly flow into the Mohawk River.
 - g. Additional Waters (a)(5): The pond called Area 6 (1.201 acres) abuts a relatively permanent water that directly or indirectly flows into the Mohawk River.
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). There is 7 wetland areas and 3 streams on site that are non-jurisdictional. These include wetlands called 1 (0.264 acres), 1D (0.273 acres), 2 (1.091 acres), 3 (0.183 acres), 4 (0.057 acres), 5 (0.067 acres) and 5A (0.662) and streams called TRIB 6 (569 linear feet), TRIB 7 (608 linear feet), and TRIB 8 (239 linear feet). Wetland 1 is completely surrounded by uplands and does not have any connection to any other waters. Wetland 1D is also completely surrounded by uplands and does not have any connection to any other waters except for TRIB 8, which is a stream that does not connect to any other waters. Wetland 2 is also completely surrounded by uplands and does not have any connection to any other waters except TRIB 6, which is a stream that does not connect to any other waters. Wetland 3 is completely surrounded by uplands and does not connect to any other waters. Wetland 4 is completely surrounded by uplands and does not connect to any other waters. Wetland 5 and wetland 6 are completely surrounded by uplands and connect only to each other through TRIB 7. These wetlands and TRIB 7 do not connect to any other waters. None of the above wetlands or streams described in this section can be considered jurisdictional because they do not have a continuous surface connection to a jurisdictional water.

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 conducted on November 13, 2024.
- b. Delineation drawing entitled "Wetland Map, Niskayuna Harbor LLC, Niskayuna Harbor," Sheet 1 of 1, prepared by Steenburgh Consulting Engineering, PLLC, dated December 11, 2024, and last revised May 14, 2025.
- c. Aquatic resource delineation report entitled "Delineation of Waters of the United States including Freshwater Wetlands, Lands of DiSarro, Aqueduct Road, Town of Niskayuna, Schenectady County New York" prepared by North County

⁹ 88 FR 3004 (January 18, 2023)

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Ecological Services, Inc., dated December 13, 2023, and tables, figures and appendices therein.

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.

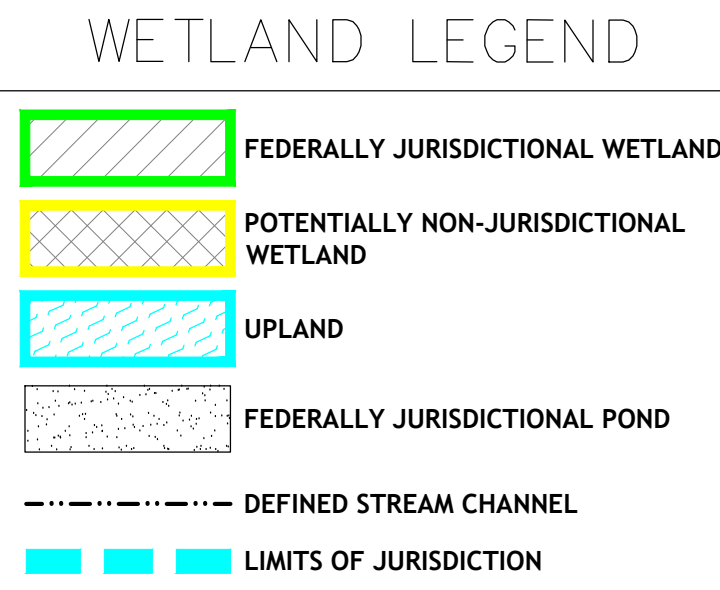
JURISDICTIONAL WETLAND AREAS	
WETLAND NO.	AREA ACRES
1A	0.019
1B	0.036
1C	0.037
6	1.451
7	1.426
8	1.954
9	1.601
10	0.225
11	0.024
TOTAL=	6.773

JURISDICTIONAL STREAM SUMMARY TABLE			
TRIB DESIGNATION	LENGTH	WIDTH	FLOW REGIME
TRIB 1	633± L.F.	4'-6"	PERENNIAL
TRIB 2	714± L.F.	3'-5"	INTERMITTENT
TRIB 3	2,223± L.F.	2'-3"	INTERMITTENT
TRIB 3A	622± L.F.	1'-2"	EPHEMERAL
TRIB 4	151± L.F.	1'-2"	INTERMITTENT
TRIB 5	1,048± L.F.	2'-4"	INTERMITTENT
TRIB 5A	143± L.F.	1'-2"	EPHEMERAL
TRIB 5B	134± L.F.	1'-2"	EPHEMERAL

NON-JURISDICTIONAL STREAM SUMMARY TABLE			
TRIB DESIGNATION	LENGTH	WIDTH	FLOW REGIME
TRIB 6	569± L.F.	2'-4"	INTERMITTENT
TRIB 7	608± L.F.	2'-4"	INTERMITTENT
TRIB 8	239± L.F.	1'-2"	INTERMITTENT

NON-JURISDICTIONAL WETLAND AREAS	
WETLAND NO.	AREA ACRES
1	0.264
1D	0.273
2	1.091
3	0.183
4	0.057
5	0.067
5A	0.662
TOTAL =	2.597

OTHER WATERS OF THE US	
POND	AREA ACRES
AREA 6	1.201
TOTAL =	1.201



NOTE:

WETLAND BOUNDARIES WERE DELINEATED BY NORTH COUNTRY ECOLOGICAL SERVICES, INC. ON APRIL 1, 2020 AND LOCATED BY FIELD SURVEY BY NORTHEAST LAND SURVEY DURING MAY OF 2020.

SITE INFORMATION:

TOTAL PROPERTY ACREAGE = 40.58± ACRES

ACREAGE OF LIMITS OF JURISDICTION = 54.603± ACRES
INCLUDES LAND OWNED BY NEW YORK STATE AND NIAGARA MOHAWK POWER CORPORATION THAT BISECT THE SUBJECT PROPERTY

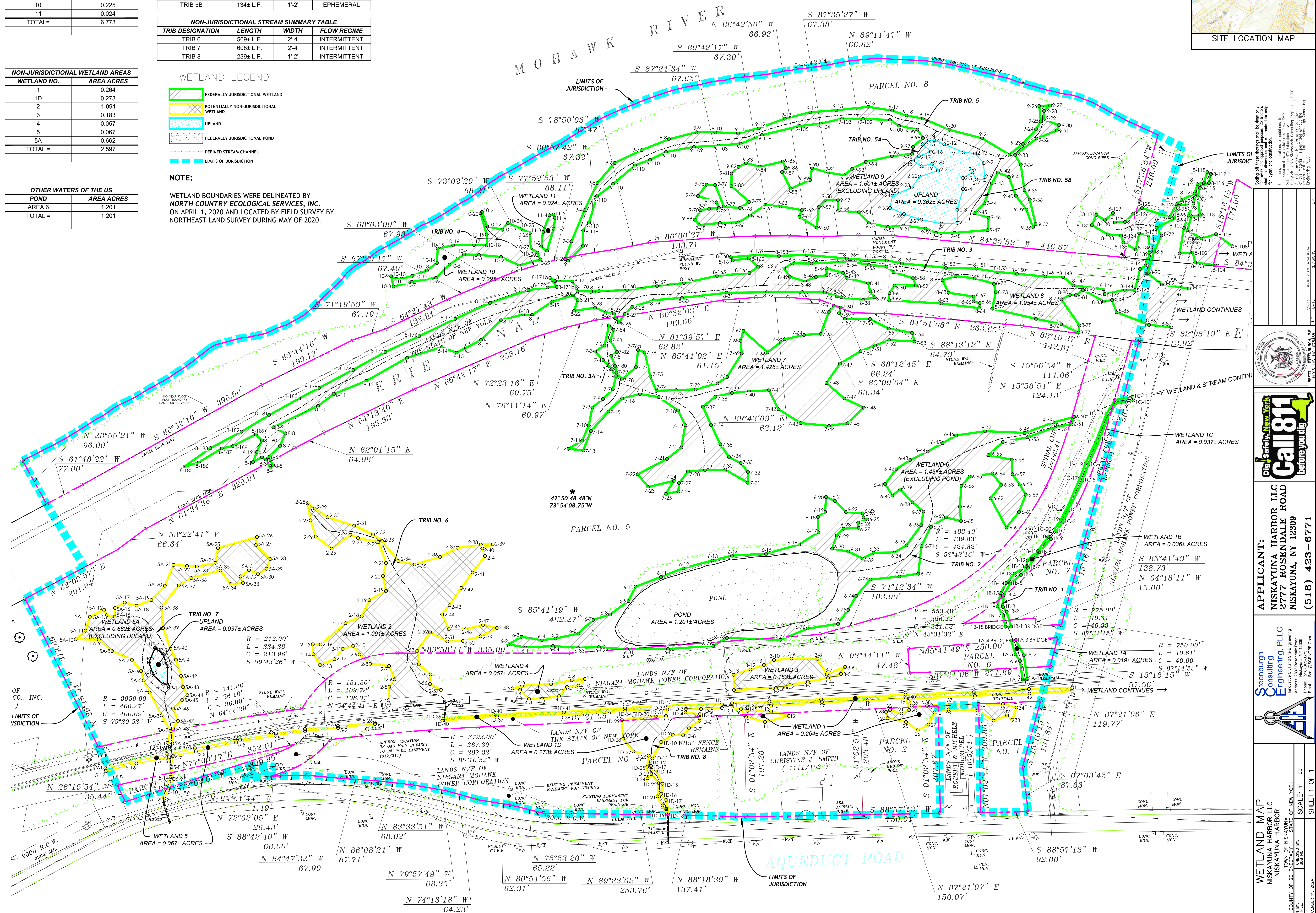
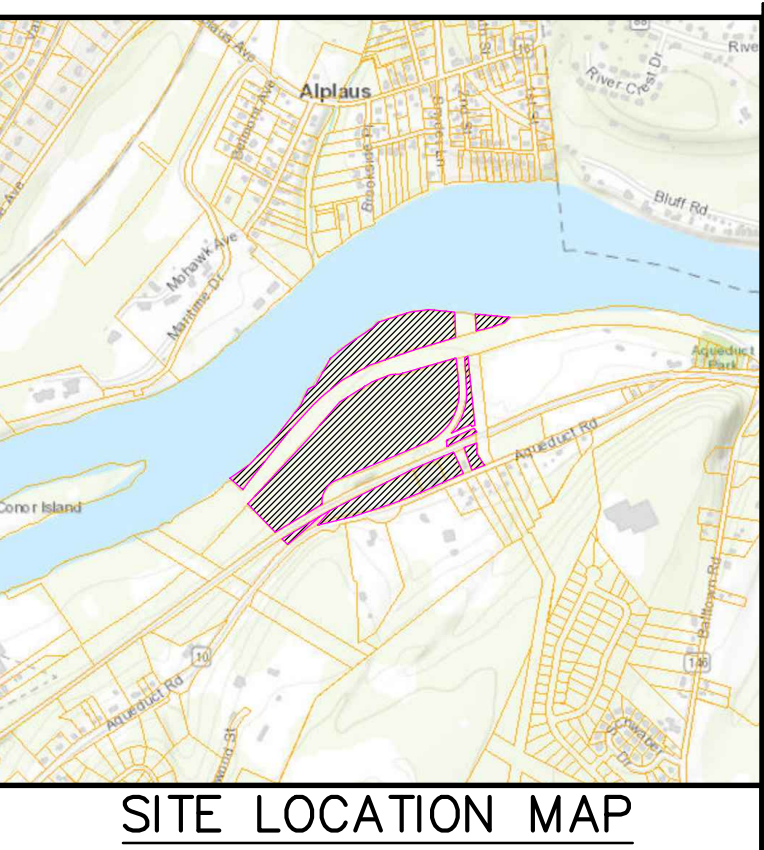
SITE COORDINATES ~ 42°50'48.48"N 73°54'08.75"W

PROPERTY OWNER

RICHARD A. DISARRO
2777 ROSENDALE ROAD
NISKAYUNA, N.Y. 12309
(518) 423-6771

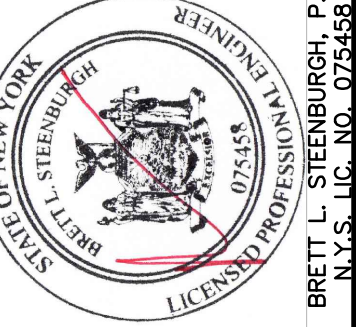
PROPERTY APPLICANT

RICHARD A. DISARRO
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APPLICANT:
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(518) 423-6771

Steenburgh Consulting Engineering, PLLC
2000 R.O.W.
NISKAYUNA, NY 12309
Brett L. Steenburgh, P.E.
Brett@STEENBURGH.COM

WETLAND MAP
NISKAYUNA HARBOR LLC
NISKAYUNA HARBOR
TOWN OF NISKAYUNA
COUNTY OF SCHOENHARTEN
STATE OF NEW YORK
DATE: 11/20/24
SCALE: 1" = 60'
SHEET 1 OF 1