



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-R

06 JUNE 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),<sup>1</sup> NAN-2022-00617-USH<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 C – non-jurisdictional
  - ii. Wetland E – non-jurisdictional
  - iii. Wetland F – 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)
- e. “Site Inspection Report, Holiday Lake LLC – NAN-2022-00617-USH (AJD Appeal”, John Short (April 17, 2025)

## 3. REVIEW AREA.

Site is approximately 148.3 acres in size; 41.4460, -74.3539; Tax Lots 60-1-41, 60-1-42, 60-1-43, 60-1-44, 60-1-45.11, 60-1-45.2, 60-1-46.2, 60-1-123, 78-1-17.22 & 78-1-34.22, Town of Wallkill, Orange County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Wallkill River is located along the southeastern portion of the

project site<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Waters on site flow roughly south and east, towards the Wallkill River. Non-jurisdictional waters on site do not have a direct surface connection to the Wallkill River.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

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): 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).<sup>9</sup> 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 E is a palustrine forested wetland (PFO) approximately 9.53 acres in size that encompasses the northeastern corner of the review area and is located approximately 1,240 linear feet from, and 36 feet higher than the Wallkill River, the nearest water of the United States, with no apparent continuous surface connection. This area is dominated by red maple (*Acer rubrum*), swamp white oak (*Quercus bicolor*), American elm (*Ulmus americana*), pin oak (*Quercus palustris*), Japanese barberry (*Berberis thunbergia*), skunk cabbage (*Symplocarpus foetidus*), and sensitive fern (*Onoclea sensibilis*).
- Wetland C is a PFO approximately 0.81 acres in size and is located in the southeast corner of the review area, approximately 650 feet from and 10 feet higher in elevation than the Wallkill River, the nearest waters of the United States, with no apparent continuous surface connection. This area is dominated by American sycamore (*Platanus occidentalis*), pin oak

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

(*Quercus palustris*) and red maple (*Acer rubrum*), red osier (*Cornus alba*) and northern spicebush (*Lindera benzoin*), cottongrass bulrush (*Scirpus cyperinus*), lamp rush (*Juncus effusus*), sensitive fern (*Onoclea sensibilis*) and skunk-cabbage (*Symplocarpus foetidus*).

- Wetland F is a PFO approximately 2.84 acres in size and is located in the center of the review area, approximately 950 feet from and 16 feet higher in elevation than the Wallkill River, the nearest waters of the United States, with no apparent continuous surface connection. This area is dominated by American sycamore (*Platanus occidentalis*), pin oak (*Quercus palustris*) and red maple (*Acer rubrum*), red osier (*Cornus alba*) and northern spicebush (*Lindera benzoin*), cottongrass bulrush (*Scirpus cyperinus*), lamp rush (*Juncus effusus*), sensitive fern (*Onoclea sensibilis*) and skunk-cabbage (*Symplocarpus foetidus*).

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, April 17, 2025
- b. USACE National Regulatory Viewer, NYS Hillshade Map.
- c. "Sullivan Lane, Sheet Reference No. WUS1", Capital Environmental Consultants, Inc., May 8, 2025, Revised May 14, 2025.
- d. "NAN-2022-00617-WOR – 23036 USACE Admin Appeal Letter", Greg Fleischer, Capital Environmental Consultants, Inc., February 18, 2025.

10. OTHER SUPPORTING INFORMATION.

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.



SURVEY NOTES:

1. SUBSURFACE STRUCTURES AND UTILITIES NOT VISIBLE AT THE TIME OF SURVEY HAVE NOT BEEN SHOWN.
2. REFERENCES:

MAP ENTITLED "AMENDED PLAN OF 4 LOT SUBDIVISION, LANDS OF MAYER CRYSTAL RUN, TOWN OF WALLKILL, ORANGE COUNTY, NEW YORK," DATED NOVEMBER 7, 1986, LAST REVISED JUNE 19, 1987, AND FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON JULY 7, 1987, AS FILED MAP NO. 8361.

MAP ENTITLED "PLAN OF SUBDIVISION FOR WALLKILL INDUSTRIAL PARK, TOWN OF WALLKILL, ORANGE COUNTY, NEW YORK," DATED OCTOBER 31, 1988, LAST REVISED MAY 1, 1990 AND FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON JULY 13, 1990 AS MAP NO. 9958.

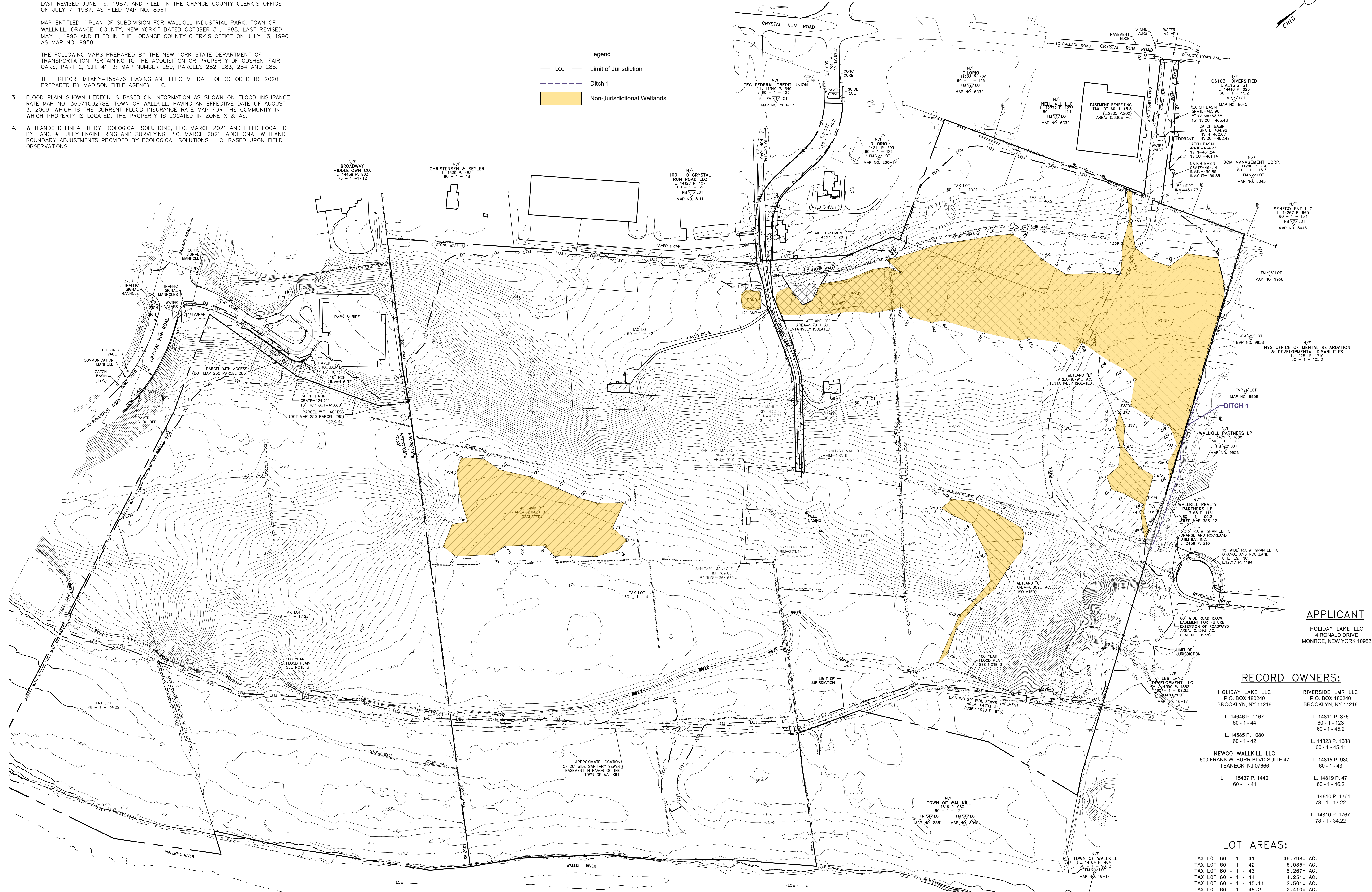
THE FOLLOWING MAPS PREPARED BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION PERTAINING TO THE ACQUISITION OR PROPERTY OF GOSHEN-FAIR OAKS, PART 2, S.H. 41-5: MAP NUMBER 250, PARCELS 282, 283, 284 AND 285.

TITLE REPORT MTANY-155476, HAVING AN EFFECTIVE DATE OF OCTOBER 10, 2020, PREPARED BY MADISON TITLE AGENCY, LLC.

3. FLOOD PLAIN SHOWN HEREON IS BASED ON INFORMATION AS SHOWN ON FLOOD INSURANCE RATE MAP NO. 36071C0278E, TOWN OF WALLKILL, HAVING AN EFFECTIVE DATE OF AUGUST 3, 2009, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH PROPERTY IS LOCATED. THE PROPERTY IS LOCATED IN ZONE X & AE.
4. WETLANDS DELINEATED BY ECOLOGICAL SOLUTIONS, LLC, MARCH 2021 AND FIELD LOCATED BY LANC & TULLY ENGINEERING AND SURVEYING, P.C. MARCH 2021. ADDITIONAL WETLAND BOUNDARY ADJUSTMENTS PROVIDED BY ECOLOGICAL SOLUTIONS, LLC, BASED UPON FIELD OBSERVATIONS.

5. PROPOSED LIMITS OF DISTURBANCE BOUNDARY SHOWN HEREON REPRESENTS PROPOSED LIMITS OF GROUND DISTURBANCE TAKEN FROM PROPOSED SITE PLANS PREPARED FOR RIVERSIDE CORPORATE PARK. LIMITS OF DISTURBANCE BOUNDARY SUBJECT TO REVISION BASED UPON ADDITIONAL SITE PLAN DEVELOPMENT AND APPROVALS.

\*THE PROPOSED LIMIT OF JURISDICTION REPRESENTS THE PROPOSED LIMIT OF DISTURBANCE DISCUSSED IN SURVEY NOTE #5.



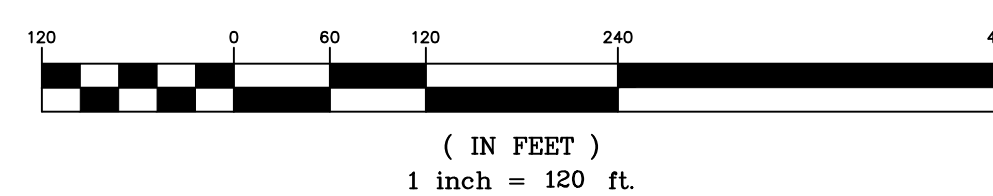
AREA OF WETLANDS WITHIN PROPOSED LIMITS OF JURISDICTION

| WETLAND I.D. | AREA WITHIN LIMITS OF JURISDICTION | JURISDICTION                    |
|--------------|------------------------------------|---------------------------------|
| WETLAND "C"  | 35,225± S.F.                       | 0.809± AC. ISOLATED             |
| WETLAND "E"  | 415,113± S.F.                      | 9.530± AC. TENTATIVELY ISOLATED |
| WETLAND "F"  | 123,807± S.F.                      | 2.842± AC. ISOLATED             |
| TOTAL        | 574,145± S.F.                      | 13.181± AC.                     |

PROJECT AREA TABLE

| TOTAL ACRES OF THE PROPERTY | TOTAL ACRES OF THE LIMITS OF JURISDICTION |
|-----------------------------|-------------------------------------------|
| 148.259± AC.                | 112.848± AC.                              |

GRAPHIC SCALE



APPLICANT

HOLIDAY LAKE LLC  
4 RONALD DRIVE  
MONROE, NEW YORK 10952

RECORD OWNERS:

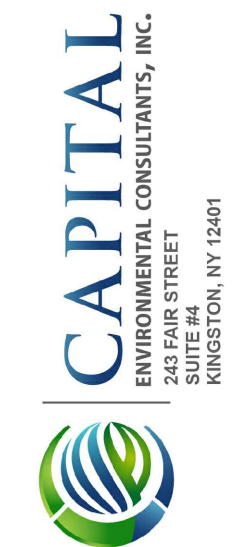
|                                                                            |                                                            |
|----------------------------------------------------------------------------|------------------------------------------------------------|
| HOLIDAY LAKE LLC<br>P.O. BOX 180240<br>BROOKLYN, NY 11218                  | RIVERSIDE LMR LLC<br>P.O. BOX 180240<br>BROOKLYN, NY 11218 |
| L. 14646 P. 1167<br>60 - 1 - 44                                            | L. 14811 P. 375<br>60 - 1 - 123                            |
| L. 14585 P. 1080<br>60 - 1 - 42                                            | L. 14823 P. 1688<br>60 - 1 - 45.2                          |
| NEWCO WALLKILL LLC<br>500 FRANK W. BURR BLVD SUITE 47<br>TEANECK, NJ 07666 | L. 14815 P. 930<br>60 - 1 - 43                             |
| L. 15437 P. 1440<br>60 - 1 - 41                                            | L. 14819 P. 47<br>60 - 1 - 46.2                            |
|                                                                            | L. 14810 P. 1761<br>78 - 1 - 17.22                         |
|                                                                            | L. 14810 P. 1767<br>78 - 1 - 34.22                         |

LOT AREAS:

|                        |              |
|------------------------|--------------|
| TAX LOT 60 - 1 - 41    | 46.798± AC.  |
| TAX LOT 60 - 1 - 42    | 6.085± AC.   |
| TAX LOT 60 - 1 - 43    | 5.267± AC.   |
| TAX LOT 60 - 1 - 44    | 4.251± AC.   |
| TAX LOT 60 - 1 - 45.11 | 2.501± AC.   |
| TAX LOT 60 - 1 - 45.2  | 2.410± AC.   |
| TAX LOT 60 - 1 - 46.2  | 0.744± AC.   |
| TAX LOT 60 - 1 - 123   | 38.532± AC.  |
| TAX LOT 78 - 1 - 17.22 | 32.382± AC.  |
| TAX LOT 78 - 1 - 34.22 | 9.289± AC.   |
| TOTAL:                 | 148.259± AC. |

COPIES FROM THE ORIGINAL OF THIS DOCUMENT NOT MARKED WITH AN ORIGINAL OF THE PROFESSIONAL ENGINEER'S AND/OR LAND SURVEYOR'S STAMP OR EMBOSSED SEAL SHALL NOT BE CONSIDERED VALID, TRUE COPIES.

UNAUTHORIZED ALTERATION OR ADDITION TO THIS DOCUMENT IS A VIOLATION OF SECTION 7209-2 OF THE NEW YORK STATE EDUCATION LAW.



SULLIVAN LANE

SBL: 60-1-41, 60-1-42, 60-1-43, 60-1-44, 60-1-45.11, 60-1-45.2, 60-1-46.2, 60-1-123, 78-1-17.22, 78-1-34.22; WALLKILL, ORANGE COUNTY, NY 10941  
LATITUDE AND LONGITUDE: 41°28'49.4"N 74°21'15.5"W

| NO. | DATE      | REVISION                   | BY |
|-----|-----------|----------------------------|----|
| 1   | 5/13/2025 | Revised per USACE comments |    |

WATERS OF THE U.S.

|                     |             |
|---------------------|-------------|
| Date                | 5/8/2025    |
| Scale               | AS NOTED    |
| Sheet No.           | 1 OF 1      |
| File No.            | 23036 WOTUS |
| Sheet Reference No. | WUS1        |