



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

June 10 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-2024-01190-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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-01190-WOR.

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 Area, 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 Ct. 1322 (2023)

3. REVIEW AREA. Review area size 70.4 acres, 41° 24' 15.18" / 74° 27' 38.89", Town of Wawayanda, 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, a TNW is approximately 2.4 miles from the site.⁶

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

The wetland mapped on site does not appear to have continuous surface connection off site. The wetland is a depression in an agricultural field with drainage tiles located below the ground, and a swale located off site to the east . The area is separated from the TNW by uplands.

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.

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
 - 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): N/A
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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.

- 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 #1 Area is located approximately 508 to 522 feet AMSL, and is surrounded by uplands. No apparent hydrological connection to any waters of the United States.

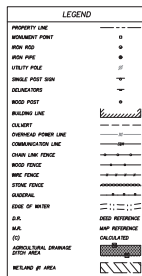
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Site visit conducted on May 28, 2025.
- b. Information package dated September 13, 2024, including wetland data sheets, color, ground-level photographs and aerial photographs.
- c. Additional history of the site’s agricultural use and development in a revised information package received June 2025.
- d. USGS Middletown, NY topographic 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.

⁹ 88 FR 3004 (January 18, 2023)



MAP ENTITLED "TITLE, MINOR SUBDIVISION OF PROPERTY PREPARED FOR ROUTE 4 ASSOCIATED, LANE, ROUTE 6, TOWN OF WAHAIYANDA, COUNTY OF ORANGE, STATE OF NEW YORK", AS PREPARED BY JAMES H. MARSHALL, CIVIL ENGINEER, DATED MAY 19, 1968, AND FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON AUGUST 28, 1989 AS MAP NO. 9515.

MAP ENTITLED "RIGHT-OF-WAY AND TRACK MAP, MIDDLETOWN AND UNIVILLE R.R., STATION FROM STATION 300 TO STATION 305, PREPARED BY OFFICE OF CHIEF ENGINEER, DATED SEPT. 30, 1916 AND SHOWN ON SHEET VI-6.

MAP ENTITLED "LOT LINE EXTENSION & MINOR SUBDIVISION OF THE LANDS OF GONZALES, U.S. ROUTE 10, TOWN OF WAHAIYANDA, COUNTY OF ORANGE, STATE OF NEW YORK", AS PREPARED BY GARRISON W. SCOTT, P.L.S., DATED DECEMBER 10, 1986, LAST REVISED FEBRUARY 12, 1987 AND FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON MARCH 6, 1987 AS MAP NO. 8139.

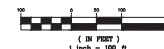
MAPS ENTITLED "NEW YORK STATE DEPARTMENT OF TRANSPORTATION DESCRIPTION AND MAP FOR THE CONSTRUCTION OF A BRIDGE OVER INTERSTATE ROUTE 563, COUNTY ROAD 35 TO ROUTE 7M, ORANGE COUNTY, DATED 1967 AND BEING MAP NOS. 323, 324, 325, 326 AND 339.

MAPS ENTITLED "NEW YORK STATE DEPARTMENT OF PUBLIC WORKS DESCRIPTION AND MAP FOR THE APPROPRIATION OF PROPERTY, MIDDLETOWN-SLAKE HILL, S.S. 159, ORANGE COUNTY, DATED 1961 AND BEING MAP NOS. 327, 328, 329 AND 330.

MAP ENTITLED "LOT LINE CHANGE/CONSOLIDATION MAP SLATE HILL COMMERCE CENTER, TOWN OF WAHAIYANDA, ORANGE COUNTY, NEW YORK", AS PREPARED BY MJ ENGINEERING AND LAND SURVEYING, P.C. DATED MARCH 2, 2003 FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON MARCH 10, 2003 AS MAP NO. 9516.

1. HOWARD SHAPIRO TO ADEN SLATE HILL, LLC, DATED OCTOBER 23, 2019 AND RECORDED NOVEMBER 01, 2019 IN THE ORANGE COUNTY CLERK'S OFFICE IN BOOK 14649, PAGE 904.
2. ADEN BROOK HOLDINGS, LLC TO ADEN SLATE HILL, LLC, DATED MAY 26, 2023 AND RECORDED JUNE 9, 2023 IN THE ORANGE COUNTY CLERK'S OFFICE IN BOOK 15431, PAGE 258.

1. INFORMATION SHOWN HEREON IS FROM DATA COMPILED BY M.J. ENGINEERING, ARCHITECTURE, LANDSCAPE ARCHITECTURE AND LAND SURVEYING, P.C. ON SEPTEMBER 5, 2024.
2. THE HORIZONTAL DATUM IS NORTH YORK STATE PLANE EAST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83).
3. THE NORTH IS ORIENTED TO GRID NORTH FROM GPS OBSERVATION.
4. THE VERTICAL DATUM IS REFERENCED TO NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVDS83), GGD018.
5. CONTOUR INTERVAL = 2 FOOT.
6. UNDERGROUND UTILITIES SHOWN HEREON WERE LOCATED BASED ON VISIBLE EVIDENCE AT GROUND LEVEL ONLY AND DO NOT PURPORT TO SHOW ALL UTILITIES, AND ALL UTILITIES ARE SUBJECT TO VERIFICATION BY EXCAVATION.
7. WETLANDS DELINEATION COMPLETED BY COLLIER'S ENGINEERING & DESIGN IN SEPTEMBER 2021. FLAG LOCATIONS OBTAINED BY M.J. ENGINEERING, ARCHITECTURE, LANDSCAPE ARCHITECTURE AND LAND SURVEYING, P.C. IN SEPTEMBER 2021. UTILITIES RITE GPS, TIED TO HYDRET SPATIAL REFERENCE NETWORK (CRS; REAL TIME NETWORK).
8. WETLAND BOUNDARIES PROVIDED BY COLLIER'S ENGINEERING & DESIGN ON SEPTEMBER 3, 2024.
9. AUTHORIZED ALTERATION OR ADDITION TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 2-209, SUB-DIVISION 4 OF THE NEW YORK STATE ELECTION LAW. COPIES OF THIS SURVEY MAP NOT BEARING THE LAND SURVEYOR'S SEAL AND SIGNATURE SHALL BE VOID.

[illegible]

THE ALTERATION OF THIS MATERIAL IN ANY WAY,
UNLESS DONE UNDER THE DIRECTION OF A
COMPARABLE PROFESSIONAL LAND SURVEYOR FOR A
LAND SURVEYOR, IS A VIOLATION OF THE NEW YORK
STATE EDUCATION LAW AND/OR REGULATIONS AND IS
A CLASS "A" MISDEMEANOR



WETLAND EXHIBIT
**LANDS OWNED BY
ADEN SLATE HILL, LLC**
TAX PARCEL 11-1-41.2
3141 ROUTE 6
TOWN OF WAWAYANDA ORANGE COUNTY, NY

SCALE: 1" = 100'
CONTRACT No.:
MJ PROJ. No.: MJ1590.1
DATE: 9/12/2024

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