



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

09 May 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-2022-00700-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.

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2022-00700-ULA

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 Section 404
 - ii. Wetland 2, Jurisdictional Section 404
 - iii. Wetland 3, Jurisdictional Section 404
 - iv. Isolated Wetland, Non-jurisdictional
 - v. Perennial Stream 1, Jurisdictional Section 404
 - vi. Perennial Stream 2, Jurisdictional Section 404
 - vii. Perennial Stream 3, 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))
 - 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 size area of 6.18 acres, 42.726945, -73.736174, Town of Colonie, Albany County, New York.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hudson River.⁶

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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Those jurisdictional wetlands abut perennial streams that flow offsite and directly into the Hudson River, a TNW.
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): The RPWs called Perennial Stream 1, Perennial Stream 2, and Perennial Stream 3, convey perennial flow. Perennial Stream 1 and Perennial

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.

Stream 3 flow directly into Perennial Stream 2, which flows directly into the Hudson River after flowing approximately 2.9 river miles to the southeast.

- f. Adjacent Wetlands (a)(4): Wetland 1 and Wetland 3 are palustrine forested wetlands that abut Perennial Stream 1, an (a)(3) water. Wetland 2 is a palustrine forested wetland that abuts Perennial Stream 2, an (a)(3) water.

- 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
- 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). The wetland called “Isolated Wetland” is a palustrine scrub-shrub wetland that is completely surrounded by uplands. It is at least 285 feet from the nearest jurisdictional water and approximately 30 feet higher in elevation than all other waters. This wetland has no surface connection to any other 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 carried out on August 30, 2022, as described in the Site Inspection Report, dated August 30, 2022.
- b. Delineation Drawing entitled “Wetland Delineation Map, 358 Watervliet Shaker Road,” prepared by Gilbert VanGuilder Land Surveyor, PLLC, dated April 8, 2022, and last revised August 30, 2022.

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-RU

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2022-00700-ULA

- c. U.S. Fish and Wildlife Service National Wetland Inventory map generated April 11, 2022.
- d. New York State Department of Environmental Conservation Wetland Mapping, provided with Delineation Report dated May 2, 2022.
- e. U.S. Geologic Survey Troy South, NY Quadrangle.
- f. National Resource Conservation Service Web Soil Survey for Albany County, New York generated on April 18, 2022.
- g. Federal Emergency Management Agency National Flood Hazard Layer FIRMette.
- h. Ground level site photographs provided with Delineation Report dated May 2, 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.

- NOTES:
1. WETLANDS SHOWN HEREON WERE DELINEATED ON APRIL 8, 2022 BY GILBERT VANGUILDER LAND SURVEYOR, PLLC AND ARE SUBJECT TO A.C.O.E. REVIEW
 2. ANY CONSTRUCTION ACTIVITIES WITHIN THE WETLANDS AND OR STREAMS WILL REQUIRE A.C.O.E. DISTURBANCE PERMITS.
 3. PROPERTY LINES SHOWN HEREON AS PER ALBANY COUNTY TAX MAPING.
 4. TOPOGRAPHIC INFORMATION SHOWN HEREON AS PER MAP ENTITLED "SURVEY & MAP OF LANDS KNOWN AS ST. NO. 358 WATERVLIET SHAKER ROAD AND ST. NO. 1 EAST HILLS BOULEVARD" PREPARED BY ADVANCE ENGINEERING & SURVEYING, PLLC DATED MAY 2022.

UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS SURVEY MAP IS A VIOLATION OF SECTION 7200 OF THE NEW YORK STATE EDUCATION LAW. ONLY COPIES OF THIS SURVEY MAP BEARING THE LAND SURVEYOR'S ORIGINAL SIGNATURE AND EMBOSSED SEAL SHALL BE CONSIDERED VALID.

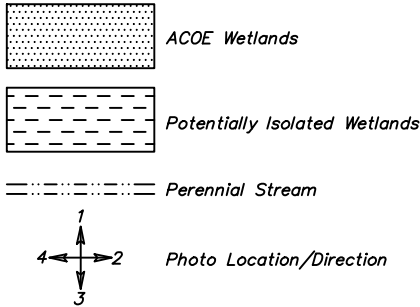
KEVIN H. WEED, P.L.S. No. 51,005

WETLAND DELINEATION MAP
358 WATERVLIET SHAKER ROAD

TOWN OF COLONIE	ALBANY COUNTY, NEW YORK
MAP NUMBER: 22 - 22 - 64	SCALE: 1" = 40'
DATE: APRIL 8, 2022	

Gilbert VanGuilder
Land Surveyor, PLLC
Professional Land Surveyors
988 Route 146, Clifton Park, New York 12065
Telephone: (518) 383-0634
gvglandsurveyors.com

Wetland Table	
Total Site Area	6.18± Acres
Wetland 1	0.66± Acres
Wetland 2	0.14± Acres
Wetland 3	0.005± Acres
Total Wetlands	0.815± Acres
Isolated Wetland	0.26± Acres
	0.24± Acres Onsite
Perennial Stream 1	0.13± Acres
	395± Ln. Ft.
Perennial Stream 2	0.05± Acres
	248± Ln. Ft.
Perennial Stream 3	0.01± Acres
	102± Ln. Ft.
Total Perennial Stream Onsite	0.19± Acres
	745± Ln. Ft.



Revisions Per ACOE Site Visit - 8/30/22