



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

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-2023-00831-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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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 A, non-jurisdictional
 - ii. Wetland B, non-jurisdictional
 - iii. Wetland C, 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))

3. REVIEW AREA. Review area size 47.95 acres, 41.4964, -74.0471, Town of Newburgh, Orange County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Quassaic Creek is located approximately 150 feet north of the project site.⁶

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

The three wetlands mapped on site do not appear to have continuous flow off site. If the wetlands were to overflow during storm conditions, Wetlands A and B would flow roughly north, overland, to Quassaic Creek, the eastern-most portion of which is tidally influenced at its confluence with the Hudson River. If Wetland C were to flow overland, it would flow roughly south, towards a perennial, unnamed tributary to Quassaic Creek.

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

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.

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 located approximately 650 feet south of and 30 feet higher in elevation than Quassaic Creek, the nearest water of the United States, with no apparent hydrologic connection. Wetland B is located approximately 150 feet south of and 30 feet higher in elevation than Quassaic Creek, the nearest water of the United States, with no apparent hydrologic connection. Wetland C is located approximately 750 feet north of and 40 feet higher in elevation than an unnamed tributary to Quassaic Creek, the nearest water of the United States, with no apparent hydrologic connection.

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 November 29, 2023.
- b. Letter from Peter D. Torgersen Environmental Sciences, dated April 19, 2022, including wetland data sheets, color, ground-level photographs and aerial photographs.
- c. USDA Soil Survey map as part of letter from Peter D. Torgersen, dated April 19, 2022.
- d. USGS Cornwall, NY topographic map.

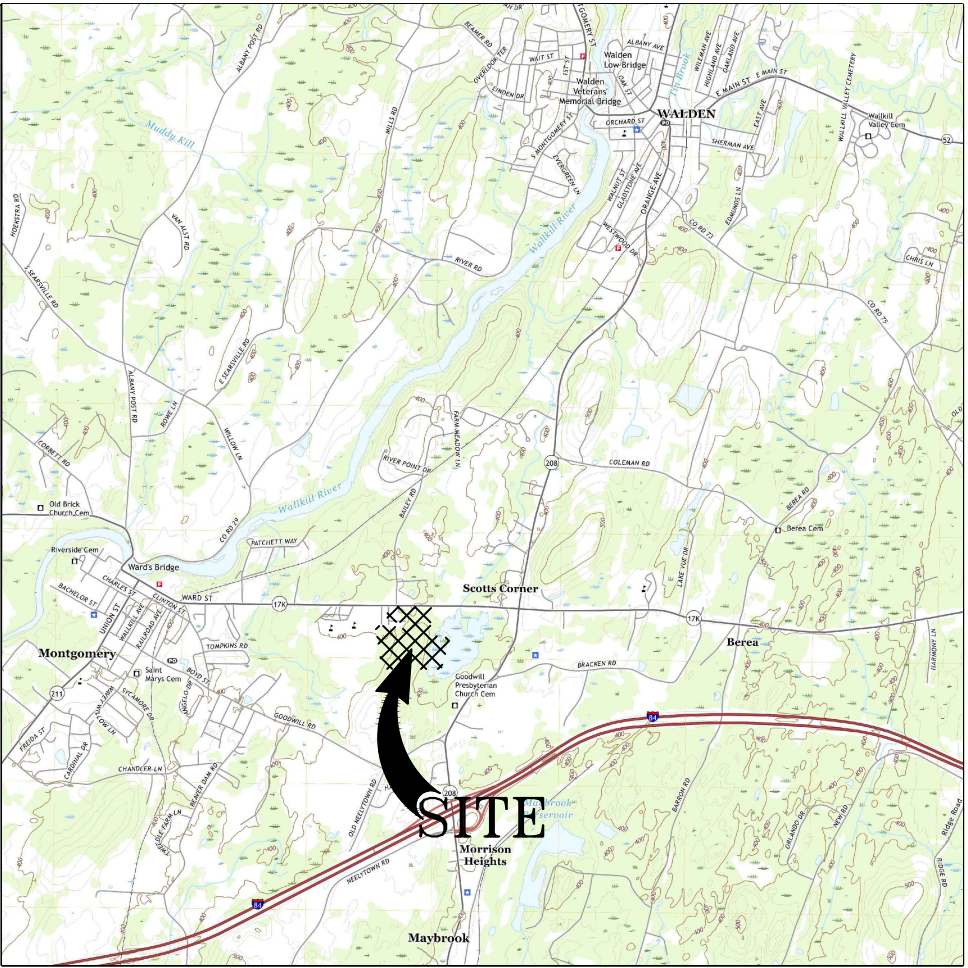
10. OTHER SUPPORTING INFORMATION. N/A

⁹ 88 FR 3004 (January 18, 2023)

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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.



LOCATION MAP

SCALE: 1" = 5,000'

GENERAL NOTES

- TAX MAP IDENTIFICATION NUMBER:
TOWN OF NEWBURGH SBL: 97-1-32.1
97-1-32.2
97-1-32.3
97-1-40.1
CITY OF NEWBURGH SBL: 41-1-2
41-1-3
- TOTAL AREA OF SUBJECT PARCEL: 47.95 ± ACRES.
- BOUNDARY AND PLANIMETRIC INFORMATION BASED UPON FIELD SURVEY AS PERFORMED BY ENGINEERING & SURVEYING PROPERTIES, PC ON JULY 6TH, 2021.
- THE TOPOGRAPHY SHOWN HEREON WAS COMPILED BY ENGINEERING & SURVEYING PROPERTIES PC, FROM USGS 1M HYDRO-FLATTENED DIGITAL ELEVATION MODELS (DEMS) AS DERIVED FROM 2012 SOURCE LIDAR. THE DEMS WERE PROVIDED BY NYS GIS.GOV AND CORRESPOND TO ACTUAL SURVEY OBSERVATIONS TAKEN IN THE FIELD. CONTOURS ARE BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988.
- OWNER: BRITAIN WOODS NEWBURGH, LLC
100 SUMMIT LAKE DRIVE, SUITE 235
VALHALLA, NEW YORK, 10595
- APPLICANT: FARRELL BUILDING COMPANY, INC.
2317 MONTAUK HIGHWAY
BRIDGEHAMPTON, NY, 11932
- THE WETLANDS WERE DELINEATED BY PETER TORGENSEN ON SEPTEMBER 9, 2021 & NOVEMBER 30TH, 2023 AND LOCATED UTILIZING GPS BY ENGINEERING & SURVEYING PROPERTIES, PC ON SEPTEMBER 17, 2021 & DECEMBER 7TH, 2023.

LEGEND

- PROPERTY LINE
- ADJOINING PROPERTY LINE
- CONTOUR LINE
- INDEX CONTOUR LINE
- EDGE OF ROAD
- CURB LINE
- STONEWALL
- BARBED WIRE FENCE
- OVERHEAD WIRE
- REPUTED WATER COURSE
- ACOE WETLAND LIMIT
- NYSDEC WETLAND LIMIT
- NYSDEC ADJACENT AREA LIMIT
- WETLAND FLAG

WETLAND AREA CALCULATIONS

NON-JURISDICTIONAL FEDERAL WETLAND AREA "A"	± 0.678 ACRES
NON-JURISDICTIONAL FEDERAL WETLAND AREA "B"	± 0.069 ACRES
NON-JURISDICTIONAL FEDERAL WETLAND AREA "C"	± 0.588 ACRES

DRAWING STATUS	ISSUE DATE:
THIS SHEET IS PART OF THE PLAN SET ISSUED FOR	02/29/2024
	SHEET NUMBER
☐ CONCEPT APPROVAL	N/A OF N/A
☐ PLANNING BOARD APPROVAL	N/A OF N/A
☐ OCDOH REALTY SUBDIVISION APPROVAL	N/A OF N/A
☐ OCDOH WATERMAIN EXTENSION APPROVAL	N/A OF N/A
☐ NYSDEC APPROVAL	N/A OF N/A
☐ NYSDOT APPROVAL	N/A OF N/A
☒ OTHER	1 OF 1
☐ FOR BID	N/A OF N/A
☐ FOR CONSTRUCTION	N/A OF N/A
THIS PLAN SET HAS BEEN ISSUED SPECIFICALLY FOR THE APPROVAL OR ACTION NOTED ABOVE AND SHALL NOT BE USED FOR ANY OTHER PURPOSE. THIS SHEET SHALL BE CONSIDERED INVALID UNLESS ACCOMPANIED BY ALL SHEETS OF THE DENOTED PLAN SET(S).	

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ROSS WINGLOVITZ, P.E.
NEW YORK LICENSE # 071701

100 0 50 100 200
1 inch = 100 ft.

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ACOE WETLANDS DELINEATION MAP

BRITAIN WOODS
NYS ROUTE 207
TOWN OF NEWBURGH & CITY OF NEWBURGH
ORANGE COUNTY, NEW YORK

JOB #: 1146.01
DATE: 02/29/2024
REVISION: 0

DRAWN BY: ZS
SCALE: 1" = 100'
TAX LOT: VARIOUS

WL-1