



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

02 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-2023-00908-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-2023-00908-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 3, non-jurisdictional
 - ii. Wetland 4, jurisdictional, Section 404
 - iii. Wetland 5, jurisdictional, Section 404
 - iv. Wetland 6, jurisdictional, Section 404
 - v. Wetland 7, jurisdictional, Section 404
 - vi. Wetland 15, jurisdictional, Section 404
 - vii. Stream 1, 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))

3. REVIEW AREA. Review area size 12.15 acres, 41.3353, -74.1762, Town of Monroe, Orange County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Ramapo River is located approximately 4,000 feet south of the project site.⁶

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

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.

Waters on site flow roughly north then east, for a distance of approximately 2,500 linear feet within the channel of a seasonal, unnamed tributary to the Ramapo River, then into a perennial unnamed tributary to the Ramapo River, then directly into the Ramapo 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
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): Stream 1 is a seasonal, unnamed tributary to the Ramapo River, flows through Wetland 15, off site, into a perennial, unnamed tributary to the Ramapo River, then directly into the Ramapo River.

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.

- f. Adjacent Wetlands (a)(4): Wetlands 5, 7 and 15 directly abut Stream 1. Wetland 3 flows directly into Wetland 5. Wetland 6 flows directly into Wetland 7.
- 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 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 3 is located approximately 40 feet west of and 2 feet higher in elevation than Wetland 4, 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 December 6, 2023.
- b. “Forest Avenue Substation Project Natural Resources Report”, prepared by Tectonic Engineering Consultants, Geologists & Land Surveyors, D.P.C., dated February 17, 2023, including color, ground-level photographs and aerial photographs.
- c. USDA Web Soil Survey as part of Natural Resources Report dated February 17, 2023.
- d. USGS Monroe, NY topographic map as part of Natural Resources Report dated February 17, 2023.

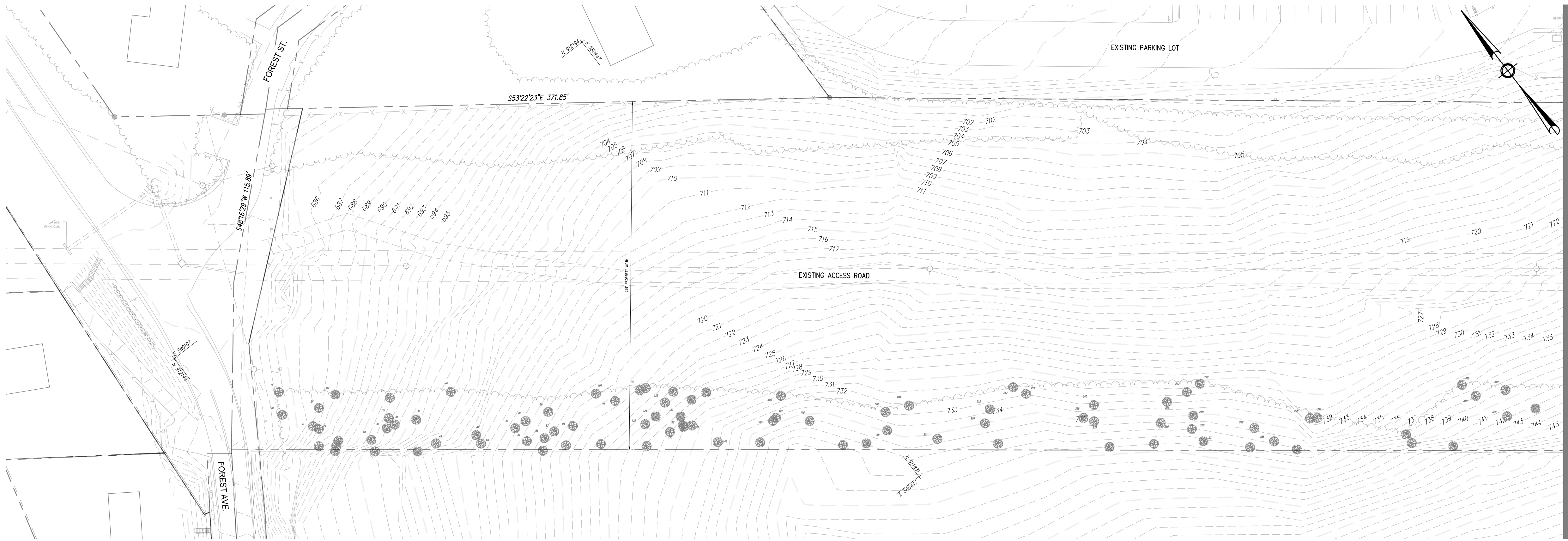
⁹ 88 FR 3004 (January 18, 2023)

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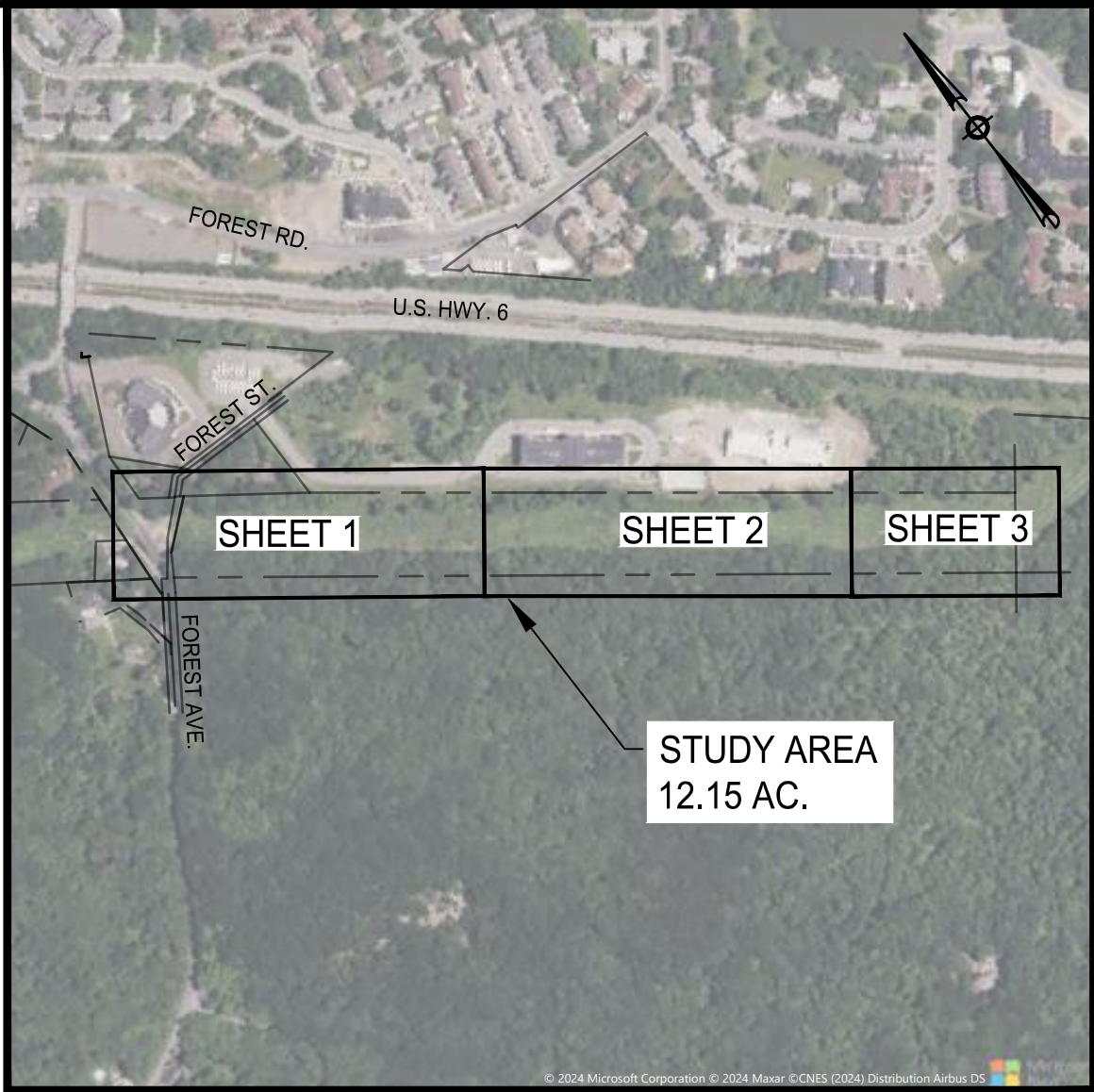
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10. OTHER SUPPORTING INFORMATION. N/A

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.



SITE PLAN
SCALE: 1"=40'



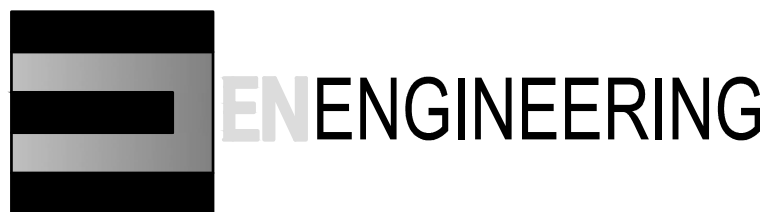
VICINITY MAP
SCALE: 1"=500'



SITE PLAN
SCALE: 1"=40'

LEGEND

- EXISTING PROPERTY BOUNDARY
- EXISTING FENCE
- EXISTING STONEWALL
- EXISTING WETLANDS
- EXISTING WETLAND BUFFER
- EXISTING OVERHEAD UTILITY STRUCTURE
- EXISTING OVERHEAD WIRES
- EXISTING 5' CONTOUR
- EXISTING 1' CONTOUR
- EXISTING GRAVEL TRAIL
- EXISTING TREELINE
- EXISTING TREE



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ORANGE AND ROCKLAND UTILITIES, INC.
PEARL RIVER NEW YORK

138-69/13.2KV FOREST AVENUE SUBSTATION

U.S. ARMY CORPS OF ENGINEERS
APPROVED JURISDICTIONAL
DETERMINATION MAP

ENGINEERING REVIEW			APPROVED	
DEPT.	SIGNATURE	DATE	DATE	
CIVIL/SURVEY			☐ PERMIT	
TELECOM/MET.			☐ BID	
SUBSTATION			☐ CONSTRUCTION	
TRANSMISSION			☐ RECORD	
DISTRIBUTION				
OWN	DES	DRD	SCALE	
SRS	SRS	KLS	1" = 40'	
DESIGN REVIEW		DATE	STATION NO.	DRAWING NUMBER
JW			0129	M D 8466

SHEET	REV.
1 OF 2	1

0 1 2 3
ARCH
0 1 2 3
ENGRG: 1" = 40'

WARNING: IT IS A VIOLATION OF THE N.Y.S. EDUCATION LAW, ARTICLE 145, FOR ANY PERSON, UNLESS HE IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS ITEM IN ANY WAY



SITE PLAN
SCALE: 1"=40'

AJD AQUATIC RESOURCE INVENTORY (TOTAL PARCEL AREA: 12.15 AC.)								
WETLANDS								
AQUATIC RESOURCE ID	LOCATION		WETLAND ACREAGE BY TYPE WITHIN PARCEL			STREAM TYPE	LINEAR FEET OF STREAM WITHIN PARCEL	REGULATORY DESCRIPTION
	LATITUDE	LONGITUDE	PEM	PFO	TOTAL			
WETLAND 3	41.333654	-74.173660	0.04	0.01	0.05	-	-	ISOLATED WETLAND - NOT USAGE JURISDICTIONAL
WETLAND 4	41.333517	-74.173448	0.05	0.04	0.09	-	-	WETLANDS ADJACENT TO RPW
WETLAND 5	41.333745	-74.173152	0.15	-	0.15	-	-	WETLANDS ADJACENT TO RPW
WETLAND 6	41.333171	-74.172871	0.09	0.04	0.15	-	-	WETLANDS ADJACENT TO RPW
WETLAND 7	41.333505	-74.172652	0.15	-	0.15	-	-	WETLANDS ADJACENT TO RPW
WETLAND 15	41.333400	-74.173248	0.02	0.02	0.04	-	-	WETLANDS ADJACENT TO RPW
WATERWAYS								
STREAM 1	41.3337080	-74.1729290	-	-	-	INTERMITTENT	85	RPW

LEGEND

- EXISTING PROPERTY BOUNDARY
- EXISTING FENCE
- EXISTING STONEWALL
- EXISTING WETLANDS
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U.S. ARMY CORPS OF ENGINEERS
APPROVED JURISDICTIONAL
DETERMINATION MAP

SCALE	STATION NO.	DRAWING NUMBER	SHEET	REV.
1" = 40'	0129	M D 8466	2 OF 2	1

ENGINEERING REVIEW			APPROVED	
DEPT.	SIGNATURE	DATE	DATE	
CIVIL/SURVEY			☐ PERMIT	
TELECOM/MET.			☐ BID	
SUBSTATION			☐ CONSTRUCTION	
TRANSMISSION			☐ RECORD	
DISTRIBUTION			☐	
DWN SRS	DES SRS	CHKD KLS	SCALE	
DESIGN REVIEW JW		DATE	1" = 40'	

