



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

CENAN-OP-R

19 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-2024-00408-EMI, MFR 1 OF 6²

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.

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 (W01025B) – 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)

3. REVIEW AREA.

The review area is an approximately 6.36 acre lot adjacent to the existing Shore Road substation. The lot is a vacant, mostly deciduous forest surrounded by industrial properties within the National Grid Glenwood Energy Cetner, a country club and golf course and single-family residential development.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

Hempstead Harbor, a tributary of the Long Island Sound is less than 1,000 feet away from the project site.

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.

N/A. The wetland on site does not appear to have a flow path to the TNW. It is a small depression appearing to collect rain and stormwater runoff from adjacent properties. The review area is separated from the TNW by upland development including Shore Road and other facilities.

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

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): 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).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 (W01025B) is an approximately 0.0831 acres palustrine scrub-shrub freshwater wetlands consisting of a concave depression area surrounded by an upland forested area. No surface connection were identified as the area is surrounded by industrial or urban development. No culverts or pipes were identified to drain to the nearest TNW.

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. Figure 2 - USGS Topographic Map – Suffolk, Nassau, Queens, Bronx, and Westchester Counties New York
- b. Figure 3 - NWI/NYSDEC Mapped Wetlands and Waterbodies and FEMA Mapped Floodplains within the Survey Area
- c. Figure 4 – NRCS Soils within Survey Area
- d. Figure 5 – Applicant’s Field Delineated Data within Survey Area

10. OTHER SUPPORTING INFORMATION. N/A

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00408-EMI, MFR 1 OF 6

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.



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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

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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.

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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.

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 (W0135) – non-jurisdictional
 - ii. Wetland 2 (W01028E) – jurisdictional; Section 10 and Section 404
 - iii. Water 1 (unnamed tidal channel) – jurisdictional; Section 10 and 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)

3. REVIEW AREA.

The review area consists of an existing industrial property consisting of medium/high intensity development including an existing electrical substation surrounded by industrial uses, multifamily residential development and a mix of deciduous forest, scrub-shrub, and emergent/woody wetlands. The portion of the site within the review area is approximately 9.22 acres. The review areas is located in Oceanside, Town of Hempstead, Nassau County, New York.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

A tidal tributary of Barnum’s Channel is partially within the site boundary.

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.

There does not appear to be a continuous surface connection from Wetland 1 to a TNW. Wetland 2 is a tidal wetland and is directly influenced by the TNW. There are two (2) pipes identified through the berm that separates Wetland 1 and Wetland 2. The northern pipe (UVP05002) appears to be collapsed in and while the pipe was identified on the tidal wetland side but was not identified in the berm. Water would not be able to flow through this pipe. The southern pipe (CC05001) has an outlet higher in the berm and was observed to be open on both ends and clear of debris or sediment. The pipe has an outlet elevation of 3.36 ft and an inlet elevation of 3.48 feet. The ground in front of the pipe inlet rises to an elevation of 4.05 feet and is the controlling elevation for surface water to reach the pipe inlet. Hydrologic modeling was performed by the applicant to determine if surface waters could discharge from the wetland via the pipe to the TNW. HydroCAD results indicated that 1- or 2- year frequency storms would not accumulate enough water to result in flow. A 5-year storm would allow for flow for approximately 12-hours. Surface water will drain through the pipe during a more intense and less frequent 5-year frequency storm. The discharge from the 5-year storm will allow flow for approximately 12 hours, which suggests that any flow through the pipe is infrequent and ephemeral.

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

An unnamed tributary of Barnum's Channel is located within the review area. Approximately 0.1 mile of the tidal tributary is within the site boundary and is surrounded by Wetland 2 (W01028E).

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

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.

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): An unnamed tributary of Barnum’s Channel is located within the review area. Approximately 0.1 mile of the tidal tributary is within the site boundary and is surrounded by Wetland 2 (W01028E).
- 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): Wetland 2 (W01028E) is an approximately 0.757 acre tidal marsh wetland dominated by smooth cordgrass (*Spartina alterniflora*) that transitions to high marsh habitat dominated by smooth cordgrass at lower elevations and salt meadow cordgrass (*Spartina patens*), black grass (*Juncus gerardii*), and small patches of common glasswort (*Salicornia maritima*) at slightly higher elevations. The wetlands are subject to the tidal tributary of Barnum’s Channel.
- 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

⁹ 88 FR 3004 (January 18, 2023)

- 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 (W01035) is an approximately 3.27 acre deciduous scrub-shrub wetland dominated by common reed (*Phragmites australis*) and porcelain berry (*Ampelopsis heterophylla*), in addition to sensitive fern (*Onoclea sensibilis*), poison ivy (*Toxicodendron radicans*), Bebb's willow (*Salix bebbiana*) and bayberry (*Morella carolinensis*). A berm exists between Wetland 1 and Wetland 2/TNW. There are two (2) pipes identified through the berm that separates Wetland 1 and Wetland 2. The northern pipe (UVP05002) appears to be collapsed in and while the pipe was identified on the tidal wetland side but was not identified in the berm. Water would not be able to flow through this pipe. The southern pipe (CC05001) has an outlet higher in the berm and was observed to be open on both ends and clear of debris or sediment. The pipe has an outlet elevation of 3.36 ft and an inlet elevation of 3.48 feet. The ground in front of the pipe inlet rises to an elevation of 4.05 feet and is the controlling elevation for surface water to reach the pipe inlet. Hydrologic modeling was performed by the applicant to determine if surface waters could discharge from the wetland via the pipe to the TNW. HydroCAD results indicated that 1- or 2- year frequency storms would not accumulate enough water to result in flow. A 5-year storm would allow for flow for approximately 12-hours. Surface water will drain through the pipe during a more intense and less frequent 5-year frequency storm. The discharge from the 5-year storm will allow flow for approximately 12 hours, which suggests that any flow through the pipe is infrequent and ephemeral, and would not constitute a continuous surface connection under normal circumstance.

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 on October 15, 2024
 - b. Figure 2 - USGS Topographic Map – Suffolk, Nassau, Queens, Bronx, and Westchester Counties New York
 - c. Figure 3 - NWI/NYSDEC Mapped Wetlands and Waterbodies and FEMA Mapped Floodplains within the Survey Area
 - d. Figure 4 – NRCS Soils within Survey Area
 - e. Figure 5 – Applicant's Field Delineated Data within Survey Area

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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.



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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 1 (W01029A) – 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)

3. REVIEW AREA.

The review area is an approximately 1.92 acre area within the review area referred to as, Alley Pond Park Workspace MP 2-12.5. The review area is surrounded by Alley Pond Park which consists of tidal and other freshwater wetland areas and an existing paved parking lot.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

Alley Creek, a tributary of the Little Neck Bay is less than 1,000 feet away from the project site.

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

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Wetland 1 - The wetland on site does not appear to have a flow path to the TNW or to the wetland areas adjacent to the TNW. It is a small depression appearing to collect rain and stormwater runoff from the upland properties and may also receive hydrology from the surrounding wetland areas. Though the tidal wetland system begins approximately 30 feet to the southwest side of the wetland.

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
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 - d. Impoundments (a)(2): 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.

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- 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

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- 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 (W01029A) is an approximately 0.06 acres palustrine emergent freshwater wetland consisting mostly of herbaceous vegetation. The wetland consists of a concave depressional area surrounded by an upland forested area and a large tidal wetland system surrounding the wetland beginning approximately 30 feet to the southwest. No apparent surface water connections or drainage features were present and there appeared to be no connections to a TNW or RPW. No culverts or pipes were identified to drain to the nearest TNW.

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. Figure 2 - USGS Topographic Map – Suffolk, Nassau, Queens, Bronx, and Westchester Counties New York
 - b. Figure 3 - NWI/NYSDEC Mapped Wetlands and Waterbodies and FEMA Mapped Floodplains within the Survey Area
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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00408-EMI, MFR 3 OF 6

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.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

CENAN-OP-R

19 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-2024-00408-EMI, MFR 4 OF 6²

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.

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 (W01031C) – 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)

3. REVIEW AREA.

The review area is an approximately 1.84 acre area within the review area referred to as, Alley Pond Park Workspace MP 2-12.3. The review area is surrounded by Alley Pond Park which consists of tidal and other freshwater wetland areas and an existing paved parking lot.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

Alley Creek, a tributary of the Little Neck Bay is less than 1,000 feet away from the project site.

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.

Wetland 1 - The wetland is associated with (and has a direct connection to) an unnamed stream feature that is a seasonal RPW. To the west of the forested wetland, discharge from Oakview Lake flows via a culvert beneath Cloverdale Boulevard, passes through the wetland, and crosses beneath the Cross Island Parkway via another culvert and eventually discharges to Alley Creek, 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): 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.

f. Adjacent Wetlands (a)(4):

Wetland 1 (W01031C) is an approximately 0.06 acre palustrine forested, broad-leaved deciduous wetland located south of the Cross Island Parkway on-ramp. The wetland is dominated by woody, deciduous vegetation greater than 20 feet in height. The wetland is associated with (and has a direct connection to) an unnamed stream feature that is a seasonal RPW. To the west of the forested wetland, discharge from Oakview Lake flows via a culvert beneath Cloverdale Boulevard, passes through the wetland, and crosses beneath the Cross Island Parkway via another culvert and eventually discharges to Alley Creek, a TNW.

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). N/A

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. Figure 2 - USGS Topographic Map – Suffolk, Nassau, Queens, Bronx, and Westchester Counties New York
- b. Figure 3 - NWI/NYSDEC Mapped Wetlands and Waterbodies and FEMA Mapped Floodplains within the Survey Area
- c. Figure 4 – NRCS Soils within Survey Area
- d. Figure 5 – Applicant’s Field Delineated Data within Survey Area

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00408-EMI, MFR 4 OF 6

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.



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CENAN-OP-R

19 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-2024-00408-EMI, MFR 5 OF 6²

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

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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.

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. Stream 1 (T01024) – 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)

3. REVIEW AREA.

The review area is an approximately 1.33 acre area within the review area referred to as, Sprain Brook Parkway Trenchless Crossing Workspace MP 6-17.3. The review area is surrounded by adjacent roads within Yonkers, Westchester County, New York. The stream has culverts that connect it to downstream waters eventually the tidal and navigable portion of the Bronx River.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

Bronx River

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.

Stream 1 – Grassy Sprain Brook is a Relatively Permanent Water (RPW) that flows in a southerly direction to the Bronx River, which is tidally influenced to a dam near Starlight Park in the Bronx, NY.

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):

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 1 – Grassy Sprain Brook is a perennial RPW that is approximately 20 feet wide and approximately 445.51 feet in length (within the survey area) flowing in southern direction. The channel is well defined and drains an upstream area of approximately 2.41 square miles.

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).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). N/A

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. Figure 2 - USGS Topographic Map – Suffolk, Nassau, Queens, Bronx, and Westchester Counties New York

b. Figure 3 - NWI/NYSDEC Mapped Wetlands and Waterbodies and FEMA Mapped Floodplains within the Survey Area

c. Figure 4 – NRCS Soils within Survey Area

d. Figure 5 – Applicant’s Field Delineated Data within Survey Area

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

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00408-EMI, MFR 5 OF 6

additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



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CENAN-OP-R

19 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-2024-00408-EMI, MFR 6 OF 6²

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

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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.

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 (W09001) – non-jurisdictional
 - ii. Water 1 – East River – Section 10 and Section 404
 - iii. Water 2 – Westchester Creek – Section 10 and 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)

3. REVIEW AREA.

The review area is an approximately 179.54 acre area within Ferry Point Park in Bronx County, New York. The review area is surrounded by the remainder of Ferry Point Park including upland fields and roads and paths, a golf course to the east, and the East River and Westchester Creek. Tidal wetlands are located along the shoreline of Westchester Creek and the East River but are outside of the review area. This JD is specific to the status of Wetland 1 (W09001A).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

The East River and Westchester Creek are adjacent to Ferry Point Park.

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.

Wetland 1 (W09001) - The wetland a flat depression with a 1% slope appearing to collect rain and stormwater runoff from the upland properties and was observed to have a high water table. A surface storm drain was identified but did not appear to have any direct connect or surface flow was observed to the TNW. The storm drain appears to drain water to the NYC sewer system. There does not appear to be any kind of flow path from the wetland to 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

Water 1 – East River – tidally influenced waterbody

Water 2 – Westchester Creek – tidally influenced waterbody

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):

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.

Water 1 – East River
Water 2 – Westchester Creek

- 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

- 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 (W09001) - The wetland is an approximately 4.46 acre palustrine emergent wetland with some palustrine forested wetlands along the western and southern margins. The wetland is dominated mostly by invasive *Phragmites australis*. The wetland does not appear to have a flow path to either of the TNWs. It is a flat depression with a 1% slope appearing to collect rain and stormwater runoff from the upland properties and was observed to have a high water table. A surface storm drain was identified but did not appear to have any direct connection or surface flow to a TNW.

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00408-EMI, MFR 6 OF 6

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. Figure 2 - USGS Topographic Map – City of New York, Bronx, & Queens Counties
- b. Figure 3 - NYSDEC Mapped Wetlands
- c. Figure 4 – NWI Wetlands Map
- d. Figure 5 – NRCS Soils within Survey Area
- e. Figure 6 – Applicant’s Field Delineated Data within Survey Area

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.



↑ Photo Direction

W Wetland Data Point

U Upland Data Point

V Upland Verification

• Wetland Flag

Field Identified/Delineated Wetland Type

Palustrine Scrub Shrub

Jurisdictional Determination Study Area

6.36 acres, Center coordinates: 40.832941, -73.647739

2-foot Contour

Parcel

Proposed Workspace

0 50 100 Feet

North Arrow

Sources: FEMA 2019; NYS Geospatial Services 2023, 2024; Maxar 2024

Figure 6a

Wetland Delineation Plan

New Shore Road Substation

Propel NY Energy Project

Nassau County, New York

Map Date: 12/6/2024

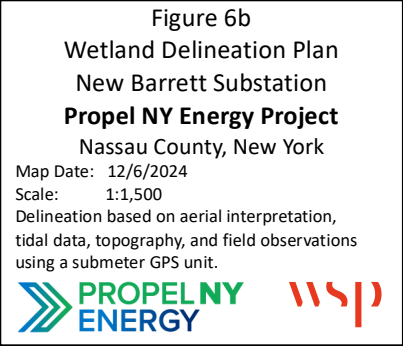
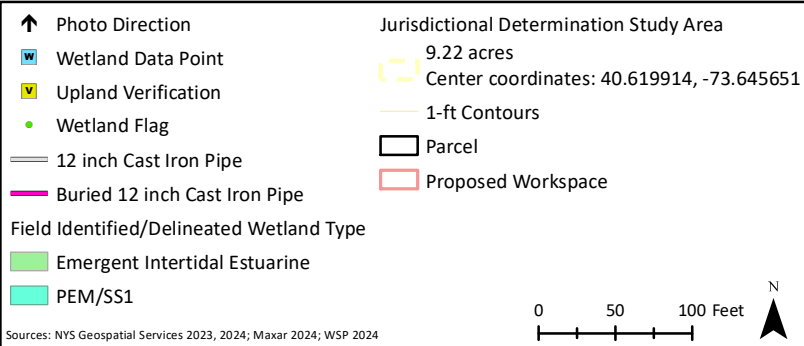
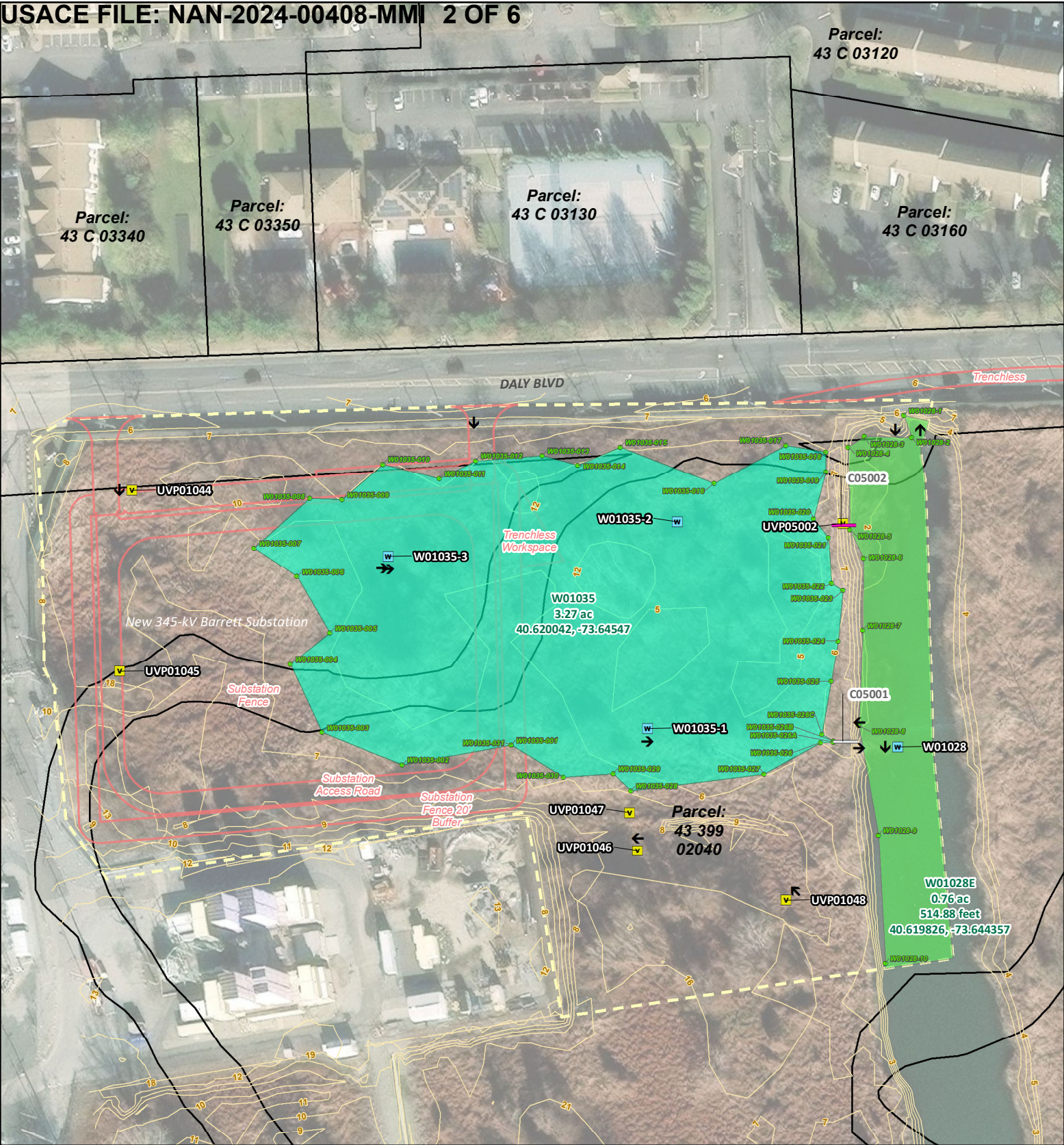
Scale: 1:1,500

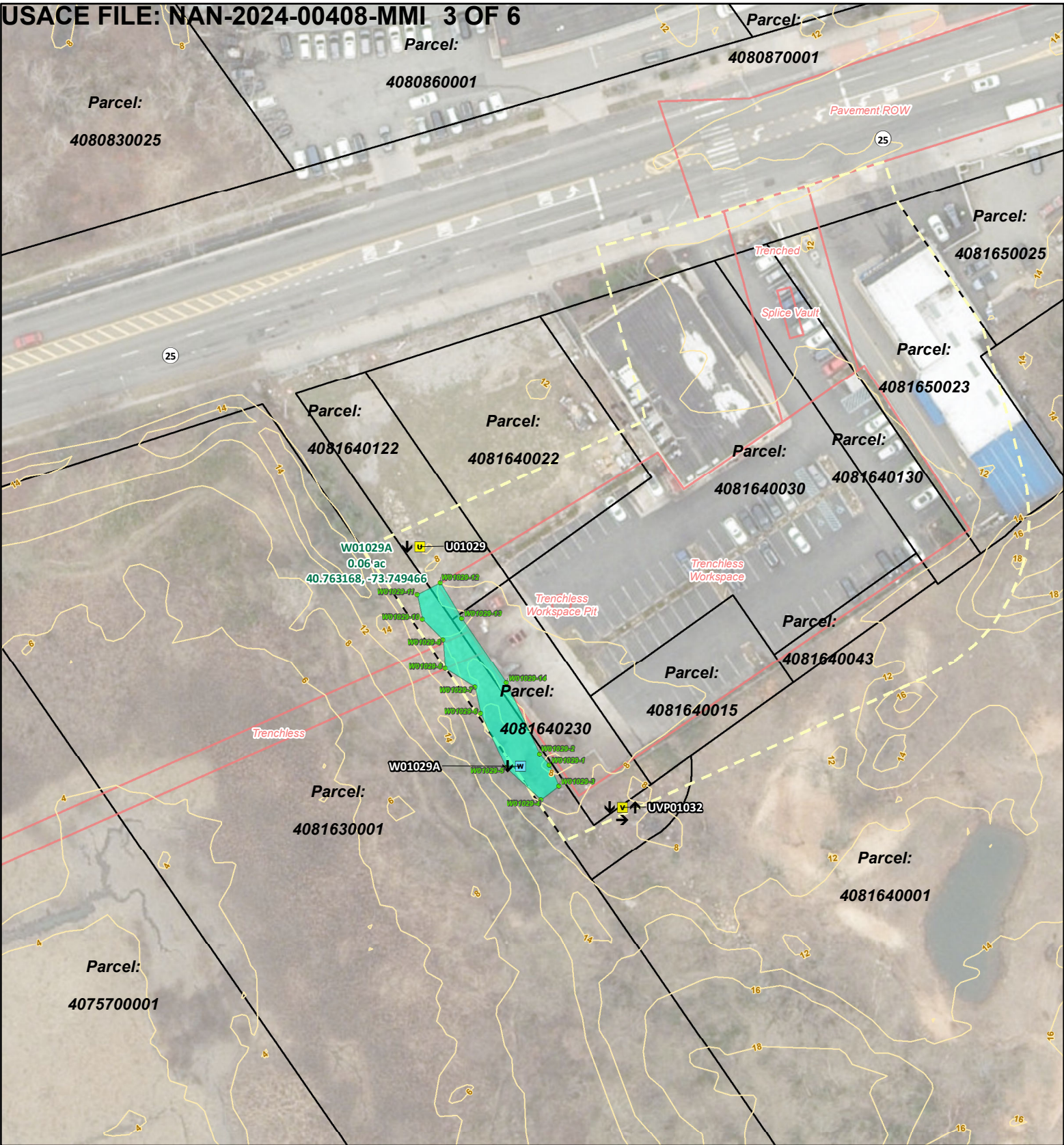
Delineation based on aerial interpretation, tidal data, topography, and field observations using a submeter GPS unit.

PROPEL NY ENERGY

wsp

LOCATION





↑ Photo Direction

W Wetland Data Point

U Upland Data Point

V Upland Verification

• Wetland Flag

Field Identified/Delineated Wetland Type

Palustrine Emergent

Jurisdictional Determination Study Area

1.92 acres

Center Coordinates: 40.763448, -73.748948

2-foot Contour

Parcel

Proposed Workspace

0 25 50 Feet

N

Sources: FEMA 2019; NYS Geospatial Services 2023, 2024; Maxar 2024

Figure 6c

Wetland Delineation Plan

Alley Pond Park Workspace MP 2-12.5

Propel NY Energy Project

Queens, New York

Map Date: 12/23/2024

Scale: 900

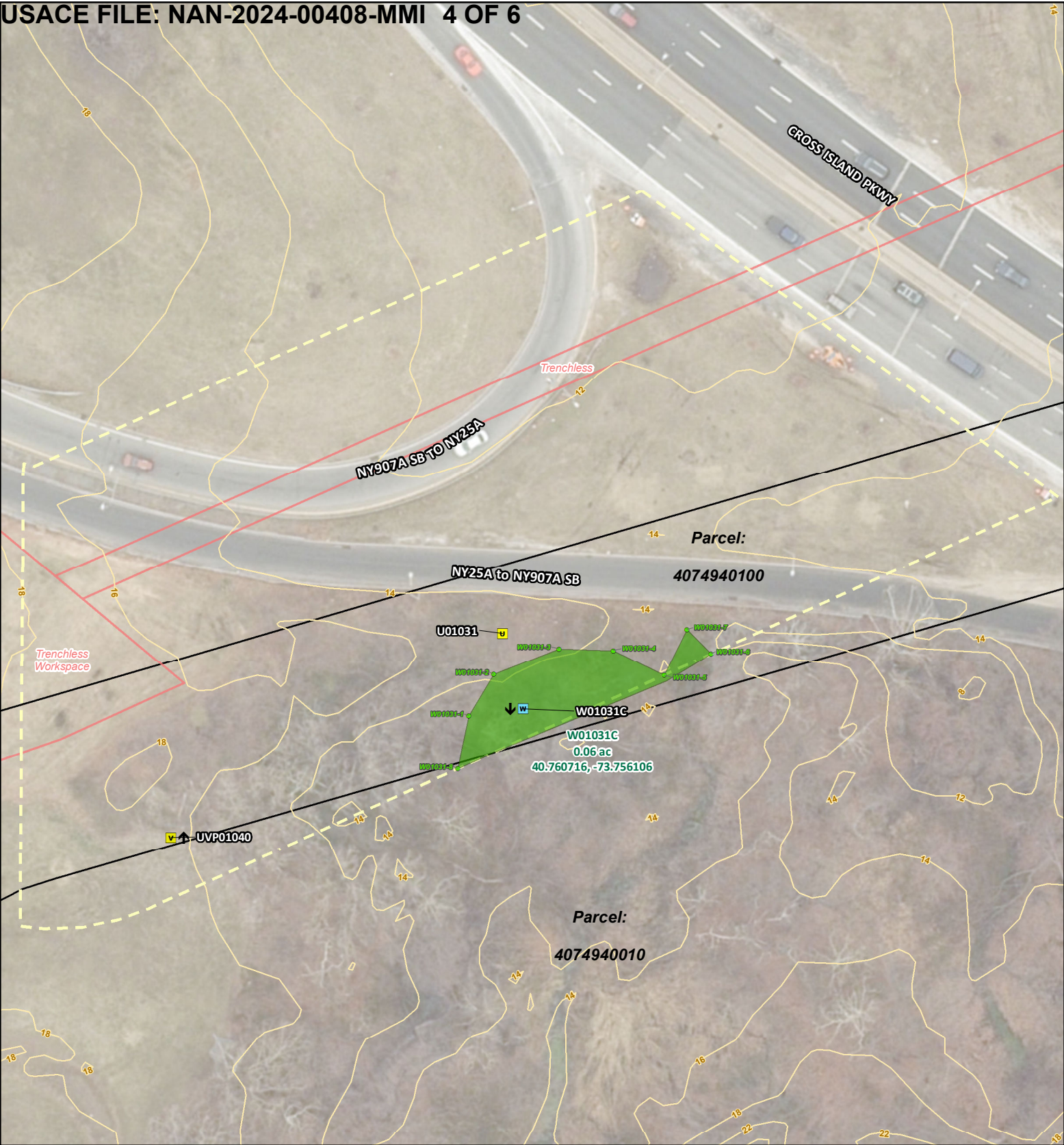
Delineation based on aerial interpretation, tidal data, topography, and field observations using a submeter GPS unit.

PROPEL NY ENERGY

wsp

LOCATION

NY



↑ Photo Direction

W Wetland Data Point

U Upland Data Point

UV Upland Verification

• Wetland Flag

Field Identified/Delineated Wetland Type

Palustrine Forested

Jurisdictional Determination Study Area

1.84 acres

Center coordinates: 40.760897, -73.756285

2-foot Contour

Parcel

Proposed Workspace

0 25 50 Feet

N

Sources: FEMA 2019; NYS Geospatial Services 2023, 2024; Maxar 2024

Figure 6d

Wetland Delineation Plan

Alley Pond Park Workspace MP 2-12.3

Propel NY Energy Project

Queens, New York

Map Date: 12/6/2024

Scale: 700

Delineation based on aerial interpretation, tidal data, topography, and field observations using a submeter GPS unit.

PROPEL NY ENERGY

wsp

LOCATION

4 OF 7



↑ Photo Direction

UVP01028

• Tributary Flag

⬢ Culvert ID

Field Identified Stream

Jurisdictional Determination Study Area

1.33 acres

Center coordinates: 40.95286, -73.853991

Parcel

Proposed Workspace

02550 Feet

N

Sources: FEMA 219; NYS Geospatial Services 2023, 2024; Maxar 2024

Figure 6e

Wetland Delineation Plan

Sprain Brook Parkway Trenchless Crossing Workspace MP 6-17.3

Propel NY Energy Project

Westchester County, New York

Map Date: 12/6/2024

Scale: 525

Delineation based on aerial interpretation, tidal data, topography, and field observations using a submeter GPS unit.

PROPEL NY ENERGY

wsp

LOCATION

5 OF 7

