



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

Regulatory Branch

May 9, 2025

SUBJECT: Permit Application Number NAN-2023-00831-WOR
by Farrell Building Company Inc

Peter Torgersen
Landscape and Environmental Sciences
110 Townline Road
Pearl River, New York 10965

Dear Mr. Torgersen:

On April 19, 2022, the New York District of the U.S. Army Corps of Engineers received a request for a Department of the Army jurisdictional determination for the above referenced project. The site consists of approximately 47.95 acres, in the Hudson River watershed, located at 448 Little Britain Road in the Town of Newburgh, Orange County, New York. The proposed project would involve the construction of a housing development.

In the letter received on April 19, 2022, your office submitted a proposed delineation of the extent of waters of the United States within the subject property. A site inspection was conducted by a representative of this office on November 29, 2023, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On February 29, 2024, this office received the modified delineation.

Based on the material submitted and the enclosed drawing entitled "ACOE Wetlands Delineation Map Britain Woods NYS Route 207 Town of Newburgh & City of Newburgh Orange County, New York", Drawing WL-1, prepared by Engineering & Surveying Properties, dated February 29, 2024, the subject property has been determined to contain no jurisdictional waters of the United States.

It should be noted that, 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 (88 FR 61964, September 8, 2023), the waters shown within the subject property on the above referenced drawing (Wetlands A, B and C) do not meet the current criteria of waters of the United States under Section 404 of the Clean Water Act.

This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a combined Notification of Appeal Process (NAP) and Request For Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Andrew Dangler, Regulatory Appeals Review Officer
U.S. Army Corps of Engineers
North Atlantic Division, Fort Hamilton
301 John Warren Avenue, First Floor
Brooklyn, New York 11252-6700

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by July 8, 2025. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Brian A. Orzel, of my staff, at Brian.A.Orzel@usace.army.mil.

Sincerely,

Rosita Miranda
Chief, Metro NY/NJ Section

Enclosures



LOCATION MAP

SCALE: 1" = 5,000'

GENERAL NOTES

- TAX MAP IDENTIFICATION NUMBER:
TOWN OF NEWBURGH SBL: 97-11-32.1
97-11-32.2
97-11-32.3
97-11-40.1
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, 10995
- 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
- x — x — x — BARBED WIRE FENCE
- OHW — — — — OVERHEAD WIRE
- — — — — REPUTED WATER COURSE
- — — — — ACOE WETLAND LIMIT
- — — — — NYSDEC WETLAND LIMIT
- — — — — NYSDEC ADJACENT AREA LIMIT
- ▲ A-B WETLAND FLAG

| DRAWING STATUS | | ISSUE DATE: |
|---|------------|--------------|
| THIS SHEET IS PART OF THE PLAN SET ISSUED FOR | | SHEET NUMBER |
| <input type="checkbox"/> CONCEPT APPROVAL | N/A OF N/A | |
| <input type="checkbox"/> PLANNING BOARD APPROVAL | N/A OF N/A | |
| <input type="checkbox"/> OCDOH REALTY SUBDIVISION APPROVAL | N/A OF N/A | |
| <input type="checkbox"/> OCDOH WATERMAIN EXTENSION APPROVAL | N/A OF N/A | |
| <input type="checkbox"/> NYSDEC APPROVAL | N/A OF N/A | |
| <input type="checkbox"/> NYSDOT APPROVAL | N/A OF N/A | |
| <input checked="" type="checkbox"/> OTHER | 1 OF 1 | |
| <input type="checkbox"/> FOR BID | N/A OF N/A | |
| <input type="checkbox"/> 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).

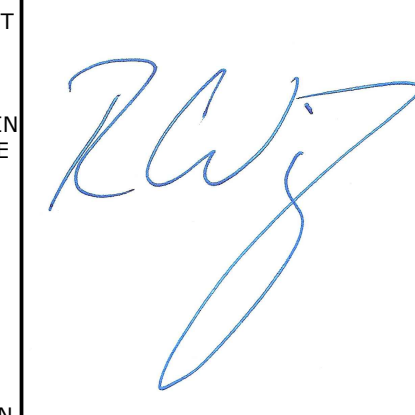

WETLAND AREA CALCULATIONS

| | |
|---|---------------|
| 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 |

COPIES OF THIS DOCUMENT WITHOUT AN ACTUAL OR FACSIMILE OF THE ENGINEER'S SIGNATURE AND AN ORIGINAL STAMP IN RED OR BLUE INK SHALL BE CONSIDERED INVALID.

UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS DOCUMENT BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER IS A VIOLATION OF SECTION 7209 SUBSECTION 2 OF THE NEW YORK STATE EDUCATION LAW.

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

ENGINEERING & SURVEYING PROPERTIES
Achieving Successful Results with Innovative Designs

MONTGOMERY OFFICE
71 CLINTON STREET
MONTGOMERY, NY 12549
Ph: (845) 457-7727
WWW.EP-PC.COM

ACOE WETLANDS DELINEATION MAP

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

JOB #: 1146.01 DRAWN BY: ZS
DATE: 02/29/2024 SCALE: 1" = 100'
REVISION: 0 TAX LOT: VARIOUS

WL-1

© COPYRIGHT 2021 ENGINEERING & SURVEYING PROPERTIES, PC

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| | | |
|---|--|-------------------|
| Applicant: Farrell Building Company Inc | File Number: NAN-2023-00831-WOR | Date: |
| Attached is: | | See Section below |
| | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A |
| | PROFFERED PERMIT (Standard Permit or Letter of permission) | B |
| | PERMIT DENIAL | C |
| X | APPROVED JURISDICTIONAL DETERMINATION | D |
| | PRELIMINARY JURISDICTIONAL DETERMINATION | E |

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Mr. Stephan A. Ryba
Chief, Regulatory Branch (CENAN-OP-R)
NY District, U.S. Army Corps of Engineers
26 Federal Plaza, Room 16-406
New York, NY 10278-0090
Telephone number: 917-790-8512

If you only have questions regarding the appeal process you may also contact:

Mr. Andrew Dangler
Regulatory Appeals Review Officer
U.S. Army Corps of Engineers
North Atlantic Division - Fort Hamilton
301 John Warren Avenue – First Floor
Brooklyn, New York 11252-6700
Telephone number: 518-4870215

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00831-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 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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00831-WOR.

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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00831-WOR.

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)

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2023-00831-WOR.

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.