January 5, 2026

U.S. Environmental Protection Agency
Office of Water Mailstop 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Updated Definition of "Waters of the United States"— Proposed Rule Docket No. EPA-HQ-OW-2025-0322

The National Multifamily Housing Council (NMHC) and National Apartment Association (NAA) support clear, predictable and well-tailored environmental protections that support housing affordability and availability. Along with many industry sectors, housing providers have long-raised concerns about the scope of federal jurisdiction under the Clean Water Act (CWA) and uncertainty created by shifting definitions of "Waters of the United States" (WOTUS). We therefore applaud the Trump Administration's efforts to ensure WOTUS aligns with statutory authority and Supreme Court decisions and believe the proposed rule promotes a much-needed, consistent regulatory framework for CWA compliance.

For over 26 years, NMHC and NAA have worked on behalf of the nation's apartment industry, serving our combined members who represent all aspects of the multifamily sector including development, construction, ownership, management and finance. NMHC is where rental housers and suppliers come together to help meet America's housing needs by creating resilient and inclusive communities where people build their lives. As a federation of over 140 state and local affiliates, NAA represents 95,000 members representing more than 13 million Apartment homes. One-third of all Americans rent their housing, and our industry plays a critical role in meeting the nation's housing needs by providing apartment homes for 40 million residents and contributing $3.4 trillion annually to the economy.

NMHC and NAA have long-cautioned that an overly expansive WOTUS definition and inconsistent jurisdictional determinations create barriers to new housing construction and redevelopment. We are deeply committed to addressing the nation's housing needs, helping bridge the gap between the demand for apartment homes and an insufficient supply. It is critical to establish a regulatory environment that helps contain rising housing costs, promotes greater availability of housing at all income levels and removes roadblocks to new housing development.

Uncertainty in federal water permit requirements drives costs and delays that undermine housing affordability goals. Instead, we have worked to establish a WOTUS definition that provides permit seekers with transparent criteria and predictability about the jurisdiction of the CWA. The proposed rule addresses key questions over the scope of the CWA and WOTUS and resolves numerous issues of concern inherent in previous editions of WOTUS.

Importantly, the proposed rule restores the significance of the term "navigable" to WOTUS and establishes a sustainable permitting framework that was lacking in previous versions of the rule. Property owners have long-faced unpredictable regulatory conditions related to CWA compliance obligations. Overly broad WOTUS standards, coupled with vague, conflicting or incomplete guidance and rule language frustrated efforts to reliably anticipate permit needs. At the same time, missing definitions for key terminology and shifting implementation standards

have resulted in uneven jurisdictional determinations. The resulting jurisdictional overreach undermined the CWA's express intent that states are primarily responsible for managing the land and water resources within their boundaries. The proposed rule aligns WOTUS with statutory intent, properly preserves the role of states and provides much-needed regulatory certainty for property owners.

Further, the proposed rule aligns WOTUS with Supreme Court caselaw that narrowed federal jurisdiction under the CWA. NMHC and NAA have joined with a broad range of industry partners in efforts to ensure the WOTUS rule reflects recent court outcomes and meets constitutional and other legal standards. The Supreme Court established limits to federal reach over waterways in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (*SWANCC*), 531 U.S. 159, 177 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). These cases emphasized the importance of the term "navigable" in the CWA and set out guidelines for determining federal jurisdiction over non-navigable waters. Then in *Sackett v. EPA,* 598 U.S. 651 (2023), the Court provided a clear standard that narrowly construes federal authority to regulate certain types of waterways. Specifically, *Sackett* reaffirms the "relatively permanent" test in *Rapanos* and holds that WOTUS only encompasses a wetland that is adjacent to a "relatively permanent water body connected to traditional interstate navigable waters" and must maintain a "continuous surface connection with that water, making it difficult to determine where 'water' ends and the 'wetland' begins." Compliance with these rulings demands regulatory action that is supported by the proposed rule.

Earlier this year, the Trump Administration took steps to ensure that the WOTUS definition aligned with the *Sackett* decision with its March Field Memorandum on "continuous surface connection," providing important guidance on implementation of the CWA in light of Supreme Court decisions. While an important first step in the direction of establishing a valid, usable WOTUS definition, the proposed rule provides long-awaited clarity and consistency.

We look forward to working with you on efforts to protect water resources, while breaking down barriers to housing development and supporting the affordability and availability of the nation's housing.

Sincerely,

National Multifamily Housing Council
National Apartment Association