



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
1650 ARCH STREET
PHILADELPHIA, PA 19103-2004

CENAP-OPR

July 21, 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 NAP-2015-01043-85 MFR 1 of 1.²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Wetland A: Section 404 Jurisdictional
 - ii. Wetland B: Non-jurisdictional
 - iii. Wetland C: Non-jurisdictional
 - iv. Tidal Wetland South and West: Section 10/404 Jurisdictional
 - v. Tidal Wetland North: Section 10/404 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area includes approximately 2.48 acres on Tax Map Parcel 134-12.00-327.00 at the terminus of Demarie Drive in Ocean View, Sussex County, Delaware. The center coordinates for the site are 38.55649°N, 75.091214°W. A preliminary jurisdictional determination was previously issued on November 3, 2015, and a Nationwide Permit 18 verified on November 4, 2015. The wetland delineation at that time included 1 small palustrine emergent wetland in the northwest corner of the property and wetlands along the southwest and western border of the parcel. The Nationwide Permit verified a minor discharge to construct a bulkhead for the construction of a single family dwelling. Subsequently, the parcel was utilized as an unauthorized staging area for dredging White Creek, resulting in impacts to wetlands. During the investigation, it was determined that the wetlands impacted were not jurisdictional and the investigation was closed.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is a tidal ditch that connects directly to White Creek. The tidal ditch and White Creek are subject to the ebb and flow of the tide.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland A is directly abutting a tidal ditch outside the review area, which travels approximately 260 feet into White Creek.
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

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.

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.

- 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 A (0.09 acre) is directly abutting a tidal ditch that flows into White Creek. Because Wetland A has a continuous surface connection to a TNW, it meets the definition of an (a)(4)(i) Adjacent Wetland.

Tidal Wetland South and West (0.026 acre) and Tidal Wetland North (0.003 acre) are directly abutting White Creek. Because these wetlands have a continuous surface connection to a TNW, they meet the definition of an (a)(4)(i) Adjacent Wetland.

- 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 B (0.13 acre) is a depressional wetland located in the northern, central portion of the review area. Wetland B is bordered to the north and west by an upland, low berm and to the south and east by an upland field. Wetland B is geographically separated from any other aquatic resources. Because Wetland B lacks a continuous surface connection to an (a)(1) through (a)(3) water, it does

⁹ 88 FR 3004 (January 18, 2023)

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not meet the definition of an (a)(4) Adjacent Wetland, and therefore, does not meet the definition of a Waters of the United States.

Wetland C (0.22 acre) is a depressional wetland located in the northwestern portion of the property. Wetland C is bordered to the north and east by an upland, low berm, a bulkhead to the west and an upland field to the south. Wetland C is geographically separate from any other aquatic resources. Because Wetland C lacks a continuous surface connection to an (a)(1) through (a)(3) water, it does not meet the definition of an (a)(4) Adjacent Wetland, and therefore, does not meet the definition of a Waters of the United States.

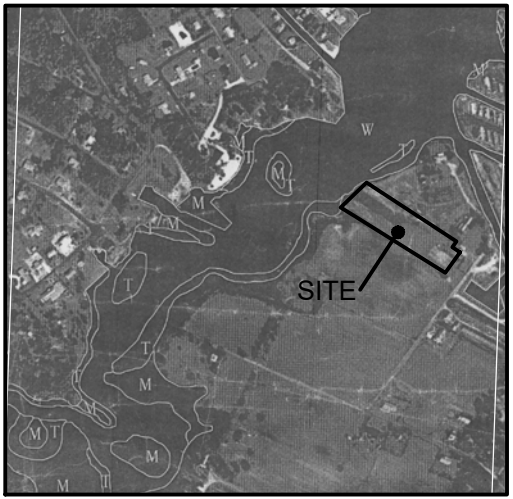
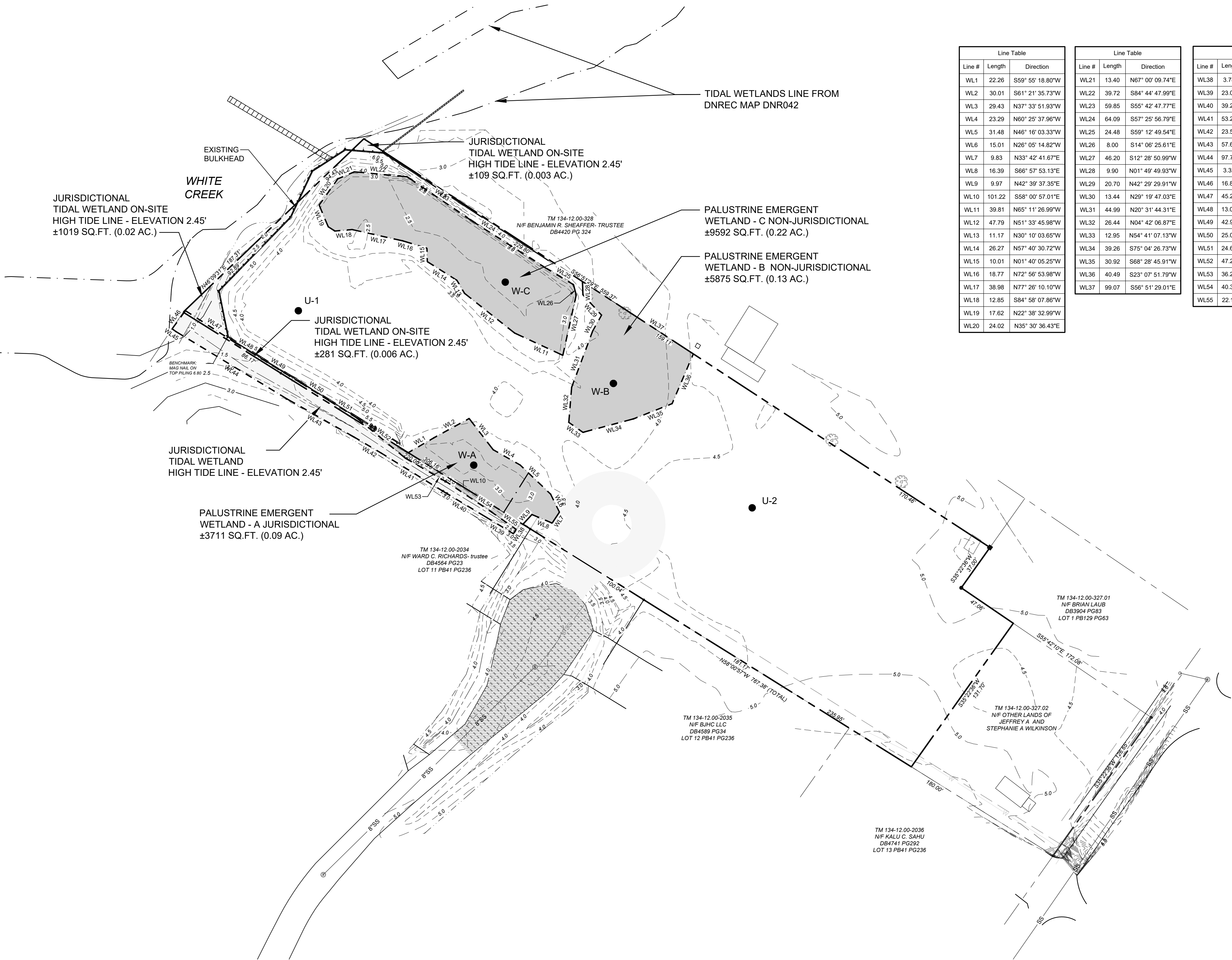
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Corps site visit dated July 26, 2023, and October 19, 2023
 - b. U.S. Army Corps Of Engineers (USACE) Request For Jurisdictional Determination (JD), dated July 16, 2025.
 - c. Letter prepared by Kenneth W. Redinger Environmental Services, dated July 16, 2025.
 - d. Appendix A-Site Maps (8 Total)
 - e. Appendix B-Historical Aerial Photography
 - f. Appendix C-Wetland Determination Forms (5 Total)
 - g. Appendix D-Site Photos (14 Total)
 - h. Appendix E-Preliminary Jurisdictional Determination & Nationwide Permit 18 Issued November 4, 2015 (Expired)
 - i. Appendix F-WETLAND DELINEATION PLAN WILKINSON SUBDIVISION DEMARIE DRIVE, prepared by Plitko, LLC, dated July 3, 2025, 1 sheet.

10. OTHER SUPPORTING INFORMATION. N/A

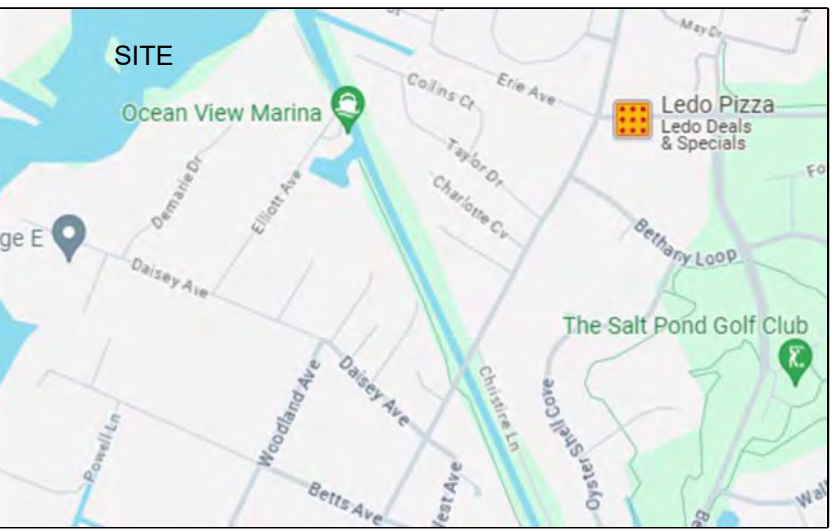
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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



DNR MAP 042
SCALE: 1"=±1000'



VICINITY MAP
SCALE: 1"=±1000'

Line Table		
Line #	Length	Direction
WL1	22.26	S59° 55' 18.80"W
WL2	30.01	S61° 21' 35.73"W
WL3	29.43	N37° 33' 51.93"W
WL4	23.29	N60° 25' 37.96"W
WL5	31.48	N46° 16' 03.33"W
WL6	15.01	N26° 05' 14.82"W
WL7	9.83	N33° 42' 41.67"E
WL8	16.39	S66° 57' 53.13"E
WL9	9.97	N42° 39' 37.35"E
WL10	101.22	S58° 00' 57.01"E
WL11	39.81	N65° 11' 26.99"W
WL12	47.79	N51° 33' 45.98"W
WL13	11.17	N30° 10' 03.65"W
WL14	26.27	N57° 40' 30.72"W
WL15	10.01	N01° 40' 05.25"W
WL16	18.77	N72° 56' 53.98"W
WL17	38.98	N77° 26' 10.10"W
WL18	12.85	S84° 58' 07.86"W
WL19	17.62	N22° 38' 32.99"W
WL20	24.02	N35° 30' 36.43"E

Line Table		
Line #	Length	Direction
WL21	13.40	N67° 00' 09.74"E
WL22	39.72	S84° 44' 47.99"E
WL23	59.85	S55° 42' 47.77"E
WL24	64.09	S57° 25' 56.79"E
WL25	24.48	S59° 12' 49.54"E
WL26	8.00	S14° 06' 25.61"E
WL27	46.20	S12° 28' 50.99"W
WL28	9.90	N01° 49' 49.93"W
WL29	20.70	N42° 29' 29.91"W
WL30	13.44	N29° 19' 47.03"E
WL31	44.99	N20° 31' 44.31"E
WL32	26.44	N04° 42' 06.87"E
WL33	12.95	N54° 41' 07.13"W
WL34	39.26	S75° 04' 26.73"W
WL35	30.92	S68° 28' 45.91"W
WL36	40.49	S23° 07' 51.70"W
WL37	99.07	S56° 51' 29.01"E

Line Table		
Line #	Length	Direction
WL38	3.788	S33° 36' 48.28"W
WL39	23.064	N58° 42' 23.32"W
WL40	39.204	N58° 56' 45.38"W
WL41	53.224	N58° 18' 03.52"W
WL42	23.564	N59° 24' 28.01"W
WL43	57.610	N60° 22' 48.69"W
WL44	97.793	N58° 45' 34.94"W
WL45	3.323	N55° 07' 34.88"W
WL46	16.874	N36° 19' 20.08"E
WL47	45.257	S57° 16' 20.21"E
WL48	13.042	S58° 38' 34.62"E
WL49	42.972	S58° 26' 47.92"E
WL50	25.035	S57° 57' 20.88"E
WL51	24.675	S57° 57' 20.88"E
WL52	47.263	S60° 23' 11.82"E
WL53	36.223	S60° 02' 28.40"E
WL54	40.387	S56° 08' 40.48"E
WL55	22.191	S54° 36' 01.81"E

SITE DATA:
1. TAX PARCEL/ OWNER/DEVELOPER: 134-12.00-327.00 JEFFREY A AND STEPHANIE A WILKINSON P.O. BOX 967 OCEAN VIEW, DE 19970
LOCATION: 6 ELLIOTT AVENUE OCEAN VIEW, DE 19970
2. PRESENT ZONING: R-1
PRESENT LAND USE: RESIDENTIAL

AREA TABLE:
TOTAL PARCEL AREA: 107,953 SQ.FT. 2.48 AC.
TOTAL UPLAND AREA: 87,366 SQ.FT. 2.01 AC.
TOTAL WETLAND AREA: 20,587 SQ.FT. 0.47 AC.
WETLAND AREA A (JURISDICTIONAL): 3,711 SQ.FT. 0.09 AC.
WETLAND AREA B (NON-JURISDICTIONAL): 5,875 SQ.FT. 0.13 AC.
WETLAND AREA C (NON-JURISDICTIONAL): 9,592 SQ.FT. 0.22 AC.
JURISDICTIONAL TIDAL WETLAND AREA: 1409 SQ.FT. 0.03 AC.

NOTES:
1. SURVEY SOURCE: AXIOM ENGINEERING, LLC. FROM A DRAWING TITLED "TOPOGRAPHIC SURVEY, 6 ELLIOTT AVENUE", DATED 1/31/19.
2. SITE IS IN FLOOD ZONE AE-7 AS SHOWN PER FEMA MAP #10005C0512K DATED MARCH 16, 2015.

- LEGEND:**
- PROJECT BOUNDARY
 - EXISTING CONTOURS
 - WETLAND AREAS
 - DNREC MAP LINES
 - JURISDICTIONAL TIDAL WETLAND
 - PALUSTRINE EMERGENT WETLAND

Wetlands Certification:
THIS PROPERTY, TAX MAP #134-12.00-327.00, HAS BEEN EXAMINED BY KENNETH W. REDINGER, PWS #2126, FOR THE PRESENCE OF WATERS OF THE UNITED STATES, INCLUDING WETLANDS (SECTION 404 AND SECTION 10), STATE SUBAQUEOUS LANDS AND STATE REGULATED WETLANDS AS ESTABLISHED BY THE REVIEWING AGENCIES IN THE FORM OF MANUALS, POLICIES AND PROCEDURES IN PLACE AT THE TIME THAT THE INVESTIGATION WAS CONDUCTED. THE WETLAND INFORMATION CONTAINED IN THIS PLAN SET IS IN ACCORDANCE WITH THIS CRITERIA, PER ARMY CORPS JD #CENAP-OP-R-2015-1043-85

Kenneth W. Redinger
KENNETH W. REDINGER, PWS No. 2126
P.O. BOX 479 HORNTOWN, VA 23395
PHONE 757-894-7032
kredinger@yahoo.com

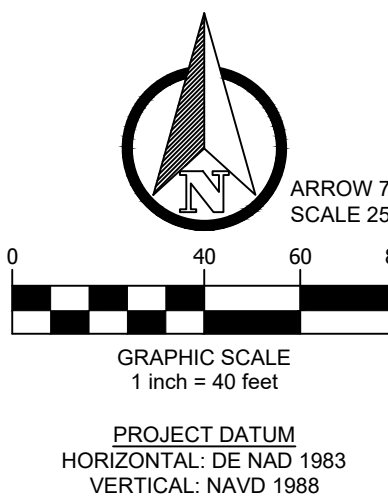
1/21/25
DATE

REVISIONS



ENGINEER - SURVEY - HYDROGRAPHIC
53 ATLANTIC AVE., STE 3
OCEAN VIEW, DE 19970
Phone (302)-537-1919

WETLAND DELINEATION PLAN
WILKINSON SUBDIVISION
DEMARIE DRIVE
TAX PARCEL 134-12.00-327.00
TOWN OF OCEAN VIEW SUSSEX COUNTY DELAWARE



SITE PLAN:
DRAWING: RWB
REVIEW: RP

DATE
7/03/25

SHEET
WL-100

WETLAND DELINEATION PLAN