



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

CENAP-OPR

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 NAP-2023-01227-103

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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. Perennial Channel, jurisdictional, Section 404
 - ii. Ephemeral Channel, non-jurisdictional
 - iii. Farmed Emergent Wetland, 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area includes a 10.29 acre parcel located in Greenwood, Sussex County, Delaware (38.790355, -75.594246). Tax Parcel Number 530-14.00-17.00. The delineation plans entitled "DEC Headquarters Expansion Site Wetland Delineation Plan"; prepared by Century Engineering; dated February 11, 2025; unrevised; 1 sheet; depicts the review area of the parcel. This project has a verified NWP to place fill within wetlands for an expansion of the Delaware Electric Co-op. Since the verification of the permit, additional guidance on WOTUS was released on March 12, 2025 regarding the proper implementation of continuous surface connection, causing the applicant to request this AJD. In 2023 this property was reviewed extensively for the presence of a wetland within the agricultural field. See "DATA SOURCES(c)" for the additional data collection for the farmed wetland.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Nanticoke River. The Nanticoke River is influenced by the ebb and flow of the tide.⁵

⁵ 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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Perennial Drainage Channel (Grubby Neck Prong) within the review area flows into Bee Branch, which flows into Bee Branch, which flows into a non-tidal portion of the Nanticoke River, which flows into the tidal Nanticoke River.
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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.

e. Tributaries (a)(3):

1. Perennial Channel (Grubby Neck Prong) is a 950 linear foot perennial tributary that originates to the north of the review area and continues off the review area to the south. Grubby Neck Prong contained flowing water, a defined bed and bank, and an ordinary high water mark. Per the agencies' interpretation of relatively permanent tributaries, this tributary meets the relatively permanent standard due to having flowing or standing water year-round or continuously during certain times of the year.

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).⁸ 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).
 1. Roadside Drainage Channel is a 550 linear foot roadside ditch entirely within the review area and terminates into Perennial Drainage Channel (Grubby Neck Prong). This feature did not contain any flowing or standing water. Additionally, this feature did not exhibit a defined bed or bank, and did not have an ordinary high water mark. Roadside Drainage Channel does not exhibit relatively permanent flow, thereby not meeting the definition of an (a)(3) tributary.
 2. Farmed Emergent Wetland is a 0.27 acre isolated wetland located entirely within the review area. This wetland lacks a continuous surface connection to any other aquatic resources, leaving it geographically

⁸ 88 FR 3004 (January 18, 2023)

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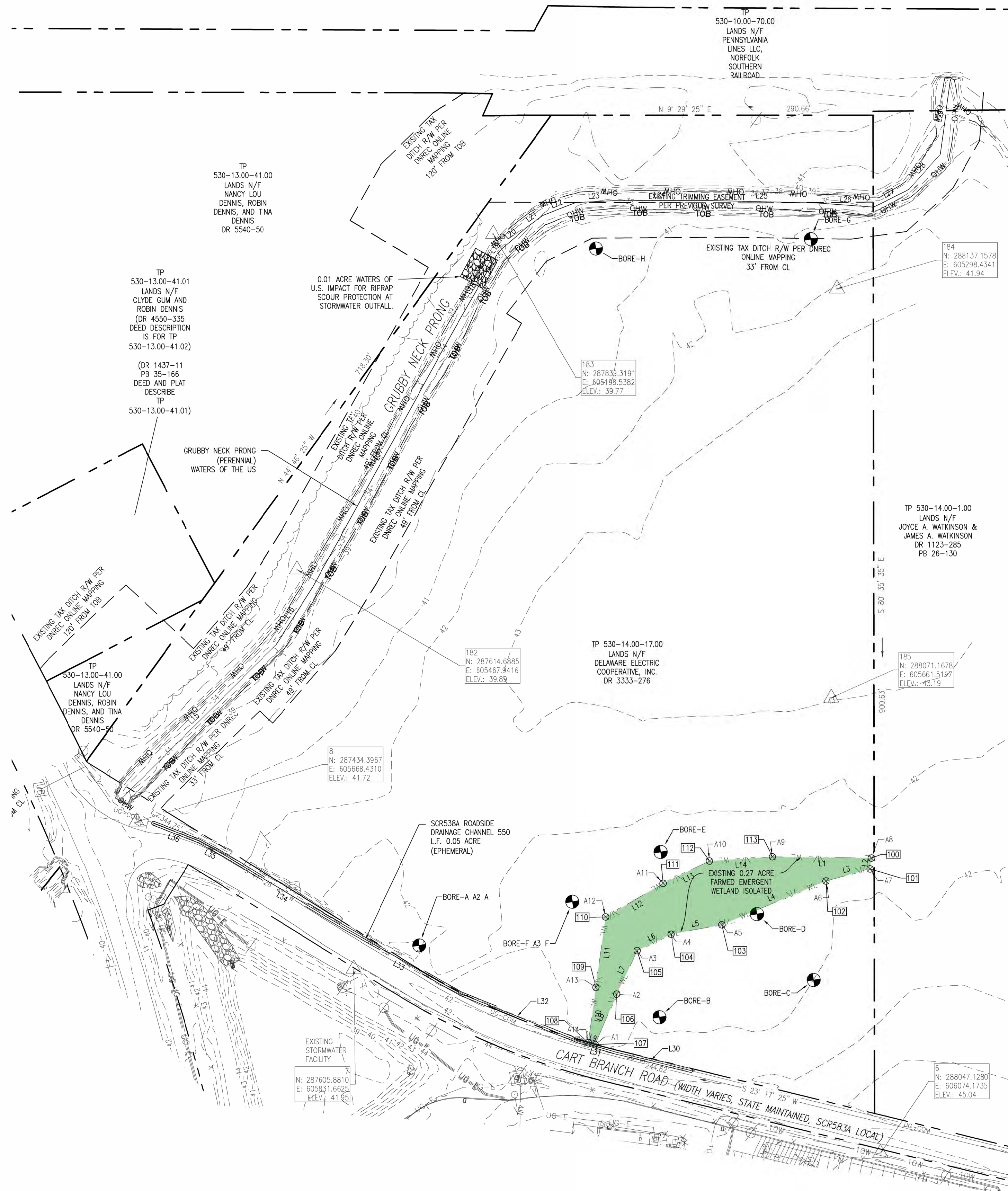
separated. Because Farmed Emergent Wetland does not have a continuous surface connection to an (a)(1) through (a)(3) waters it does not meet the definition of an (a)(4) adjacent wetland.

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. USACE field visit on March 22, 2024.
 - b. Wetland Delineation Plan entitled “DEC Headquarters Expansion Site Wetland Delineation Plan”; prepared by Century Engineering; dated February 11, 2025; unrevised; 1 sheet.
 - c. Wetland Delineation Report entitled “Wetland Delineation Report”; prepared by Environmental Resource Insights; dated April 7, 2025.
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.



C:\Projects\24002715.001A - CSE - DEC - Greenwood Cdn\CDOT\Sheet\Wetland Mitigation\Wetland Area Plan.dwg, 4/20/2023, 4:19 PM

THIS DRAWING IS THE PROPERTY OF CENTURY ENGINEERING AND IS PREPARED FOR THE EXCLUSIVE USE OF ITS CLIENTS AT THE LOCATION INDICATED. NO OTHER USE IS AUTHORIZED OR INTENDED.



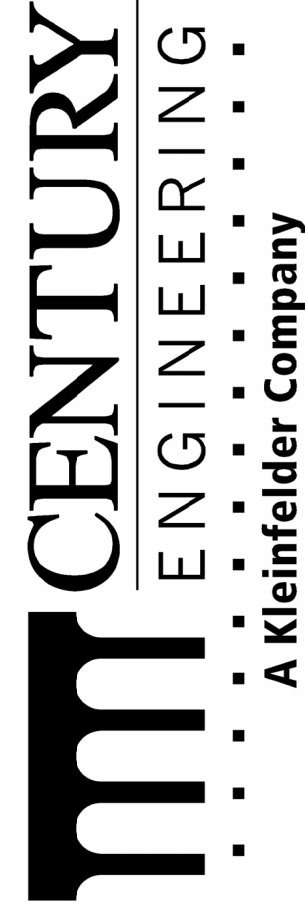
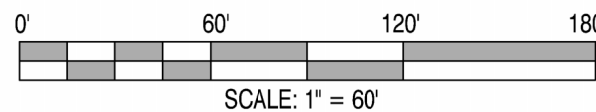
LEGEND
GROUNDWATER OBSERVATION BORINGS:
ORDINARY HIGH WATER LINE GRUBBY NECK PRONG ± ELEV. 37.0': — OHW —
BOUNDARY OF EXISTING FARMED EMERGENT WETLANDS: — WL —

FARMED EMERGENT WETLAND		
LINE#	BEARING	DISTANCE
L1	S10° 15' 27"W	89.54'
L2	N72° 59' 25"W	9.91'
L3	N5° 49' 33"W	41.49'
L5	N1° 09' 45"W	46.52'
L6	N16° 07' 05"W	34.16'
L7	N55° 26' 12"W	43.34'
L8	N57° 25' 31"W	49.46'
L9	N24° 58' 56"E	6.64'
L10	S72° 32' 44"E	50.30'
L11	S72° 36' 07"E	64.24'
L12	S20° 48' 12"E	60.04'
L13	S16° 09' 47"E	46.38'
L14	S5° 31' 42"W	57.01'

EPHEMERAL CHANNEL		
LINE#	BEARING	DISTANCE
L30	S23° 13' 17"W	70.56'
L31	S25° 57' 25"W	34.35'
L32	S31° 25' 04"W	114.64'
L33	S39° 07' 29"W	121.89'
L34	S40° 40' 41"W	121.80'
L35	S38° 26' 28"W	30.10'
L36	S30° 39' 27"W	43.68'

PERENNIAL CHANNEL		
LINE#	BEARING	DISTANCE
L15	N35° 25' 54"W	199.01'
L16	N47° 59' 26"W	61.61'
L17	N51° 44' 56"W	266.73'
L18	N50° 44' 02"W	75.72'
L19	N39° 25' 05"W	7.80'
L20	N31° 44' 50"W	28.38'
L21	N26° 34' 21"W	18.64'
L22	N12° 06' 40"W	31.47'
L23	N6° 25' 48"E	34.46'
L24	N9° 19' 03"E	84.06'
L25	N10° 49' 01"E	99.78'
L28	N13° 39' 50"E	51.41'
L27	N17° 13' 16"W	35.78'
L28	N38° 52' 51"W	42.05'
L29	N72° 46' 31"W	68.60'

WETLAND POINT LAYOUT		
POINT NO.	NORTHING	EASTING
100	288083.2974	605810.1299
101	288080.3979	605819.6087
102	288039.1195	605823.8204
103	287940.0456	605847.2208
104	287893.5362	605848.1645
105	287860.7189	605857.6479
106	287836.1304	605893.3399
107	287809.5024	605935.0172
108	287803.4810	605932.2117
109	287818.5675	605884.2303
110	287837.7771	605822.9248
111	287893.8988	605801.6025
112	287938.4420	605788.6926
113	287995.1862	605794.1848



REVISIONS

ADDENDUM

DESCRIPTION DATE

SEAL

PROJECT: DEC HEADQUARTERS EXPANSION SITE
WETLAND DELINEATION PLAN

FOR
T.P. 530-14.00-17.00
DELAWARE ELECTRIC CO-OP
GREENWOOD, 19950

NORTHWEST FORK HUNDRED SUSSEX COUNTY, STATE OF DELAWARE

SHEET TITLE

EXISTING CONDITIONS
PLAN

AGENCY
SUBMISSION
FEBRUARY 11, 2025

DRAWN: CRK
SCALE: AS SHOWN
PROJECT NO.: 24002715.001A

CHK'D/DESIGNER: AES/DLD
SHEET NO.: WP001