



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

NAP

June 25, 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) ,<sup>1</sup> NAP-2024-00745-85 MFR 1 of 1.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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. Agricultural Drainage Ditch: Non-jurisdictional
  - ii. St. George's Tax Ditch: Non-jurisdictional
  - iii. Borrow Pit: 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)
- d. January 2023 Rule Preamble at 88 FR 3090.

3. REVIEW AREA. The review area is approximately 71.73 acres located on the north side of Burbage Road on Tax Map Parcels 134-11.00-205.00, 134-11.00-220.00 and 134-11.00-221.00, and 134-11.00-222.00 in Frankford, Sussex County, Delaware. The latitude and longitude center coordinates of the site are 38.540951°N, 75.142531°W.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Clarksville Branch, approximately 1.27 miles from the review area. The determination that Clarksville Branch is a TNW is based



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off review of the National Wetland Inventory Map indicating that this is the area in which Clarksville Branch is subject to the ebb and flow of the tide.<sup>6</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no flowpath to a TNW for the Borrow Pit as it is geographically separated from any other aquatic resources. The Agricultural Drainage Ditch travels south into the St. George's Tax Ditch. The St. George's Tax Ditch begins at Burbage Road and travels north then east, intersecting with the Agricultural Drainage Ditch and travels north again for approximately 1.27 miles once it leaves the review area to the tidal portion of Clarksville Branch.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.



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- 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

## 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).<sup>9</sup>

The aquatic feature identified as Borrow Pit (0.13 acre within the review area) is an active borrow pit. The borrow pit is primarily located on the adjacent parcel which belongs to a sand and gravel company. The sand and gravel company has mistakenly expanded the borrow pit into the review area parcel. The USACE site visit revealed heavy equipment along the borrow pit area and business signs along the road advertising sand and gravel for purchase. Because the active borrow pit is excavated in dry land for the purpose of obtaining fill, sand or gravel and does not have an outlet to any other aquatic resources, the borrow pit meets the (b)(7) Certain Waterfilled Depressions exclusion.

The aquatic feature identified as St. George’s Tax Ditch (2,732 linear feet) and Agricultural Drainage Ditch (274 linear feet) are not a TNW, territorial sea, or interstate water and are therefore, not (a)(1) waters. The ditches support mainly upland vegetation and do not contain hydric soils. The NWI Mapper identifies only a portion of the Agricultural Drainage Ditch as R4SBC, seasonally flooded intermittent streambed. However, the Agricultural Drainage Ditch has lacked

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<sup>9</sup> 88 FR 3004 (January 18, 2023)



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hydrology during multiple site visits by the consultant in 2023 and 2024. Additionally, the ditches lack a bed and bank, wrack deposits and alluvial deposits that would be strong indicators of relatively permanent or standing water.

Because the St. George's Tax Ditch and the Agricultural Drainage Ditch are excavated wholly in dry land, drain only dry land and do not carry a relatively permanent flow of water, the St. George's Tax Ditch and the Agricultural Drainage Ditch meet the (b)(3) Certain Ditches exclusion.

- 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. USACE site visit conducted on November 7, 2024.
- b. Office evaluation conducted on November 6, 2024.
- c. U.S. Army Corps of Engineers (USACE) Request for Jurisdictional Determination (JD) dated October 22, 2024.
- d. Wetland Delineation Report Burbage Road North Properties Sussex County, Delaware, prepared by Geo-Technology Associates, Incorporated, dated September 20, 2024, and revised on May 28, 2025.
- e. Wetland delineation plan identified as JURISDICTIONAL DETERMINATION REVIEW AREA BURBAGE ROAD NORTH PROPERTIES SUSSEX COUNTY, DELAWARE, dated February 26, 2025, and revised on May 28, 2025, and June 6, 2025, prepared by Geo-Technology Associates, Incorporated, 1 sheet.

10. OTHER SUPPORTING INFORMATION. The review area expanded from the date of the original submission, to include an additional parcel to the east. As such, updated plans were provided on May 28, 2025, and June 6, 2025.

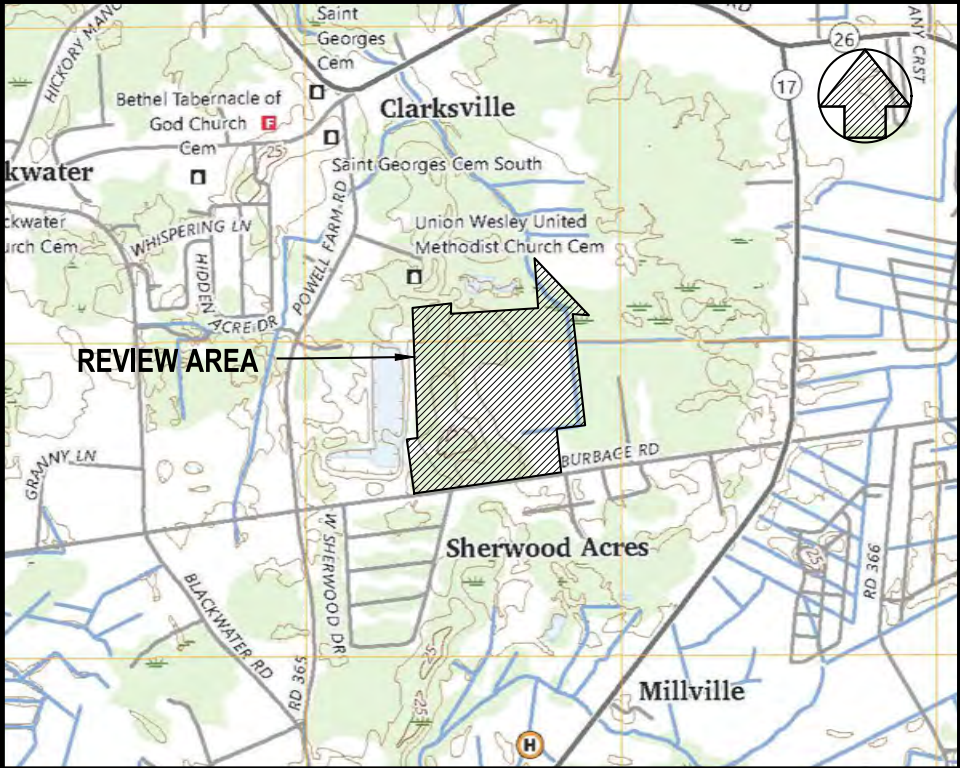


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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance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





#### VICINITY MAP

UNITED STATES GEOLOGICAL SURVEY, FRANKFORD, DE QUADRANGLE, 7.5 MINUTE  
TOPOGRAPHIC MAP SERIES, DATED 2023.

- PLAN PREPARED FOR: THE MCKEE GROUP  
940 WEST SPROLL ROAD, SUITE 301  
SPRINGFIELD, PENNSYLVANIA 19084  
ATTN: MR. MARK MCGONIGAL
- PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)  
3445-A BOX HILL CORPORATE CENTER DRIVE  
ABINGDON, MARYLAND 21009  
ATTN: MR. MATTHEW JENNETTE  
PHONE: 410-515-9446  
EMAIL: MJJENNETTE@GTAENG.COM
- AREA OF REVIEW: 71.73± ACRES
- THE AREA OF REVIEW IS LOCATED NORTH OF BURBAGE ROAD IN THE FRANKFORD AREA OF SUSSEX COUNTY, DELAWARE. THE REVIEW AREA IS IDENTIFIED AS TAX MAP PARCELS 134-11.00-205.00, 134-11.00-220.00, 134-11.00-221.00, AND 134-11.00-222.00.
- THIS PLAN WAS PRODUCED ON A BASE MAP PROVIDED BY MORRIS AND RITCHE ASSOCIATES, INC.
- THERE ARE NO AREAS OF 100-YEAR FLOODPLAIN WITHIN THE SUBJECT SITE PER FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10050C0496K, EFFECTIVE MARCH 16, 2015.
- A WETLAND DELINEATION OF THE SUBJECT SITE WAS PERFORMED BY GTA IN SEPTEMBER 2024.
- AS A RESULT OF THE REVIEW OF THE SUBJECT SITE, IT IS GTA'S PROFESSIONAL OPINION THAT THERE ARE NO JURISDICTIONAL WETLANDS AND WATERBODIES PRESENT WITHIN THE SUBJECT SITE.
- GTA'S CONCLUSIONS REGARDING THIS SITE HAVE BEEN BASED ON OBSERVATIONS OF EXISTING CONDITIONS, PROFESSIONAL EXPERIENCE, AND GENERALLY ACCEPTED PROFESSIONAL ENVIRONMENTAL PRACTICE UNDER SIMILAR CIRCUMSTANCES. SEASONAL VEGETATION CYCLES AND FLUCTUATIONS IN PRECIPITATION OR WEATHER CONDITIONS CAN RESULT IN DIFFERENCES IN THE PERCEPTION OF HYDROLOGIC CONDITIONS AND THE PRESENCE OF PREDOMINANTLY HYDROPHYTIC VEGETATION, WHICH CAN ALTER GTA'S EVALUATION OF WETLANDS/WATERBODIES.
- IT IS IMPORTANT TO NOTE THAT THIS EVALUATION IS GTA'S PROFESSIONAL OPINION. ONLY DECISIONS REGARDING THE OFFICIAL JURISDICTIONAL STATUS OF WETLANDS/WATERBODIES ARE MADE BY FEDERAL, STATE, AND/OR LOCAL REGULATORY AGENCIES.
- THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF THE MCKEE GROUP. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND THE MCKEE GROUP IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.

- JURISDICTIONAL DETERMINATION REVIEW AREA
- SUBJECT PROPERTY
- EX. PROPERTY BOUNDARY
- EX. TAX DITCH RIGHT-OF-WAY
- EX. 1-FOOT CONTOUR
- EX. 5-FOOT CONTOUR
- EX. TREELINE
- EX. SOIL BOUNDARY
- EX. CENTERLINE OF DRAINAGE DITCH
- EX. BORROW PIT
- DCP-1  
WETLAND DELINEATION DATA  
COLLECTION POINT (DCP)
- 1  
NUMBERED PHOTOGRAPH LOCATION

#### LENGTH OF DITCHES

DITCH	APPROXIMATE LENGTH
ST. GEORGE'S TAX DITCH	2,732 LF
AGRICULTURAL DRAINAGE DITCH 1	274 LF
TOTAL	3,006 LF



#### GEO-TECHNOLOGY ASSOCIATES, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

3445-A BOX HILL CORPORATE CENTER DRIVE  
ABINGDON, MARYLAND 21009  
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#### JURISDICTIONAL DETERMINATION REVIEW AREA BURBAGE ROAD NORTH PROPERTIES

SUSSEX COUNTY, DELAWARE

REVISIONS:  
5/28/25 REVISED BASED ON U.S. ARMY CORPS OF ENGINEERS AID COMMENTS  
6/6/25 REVISED BASED ON U.S. ARMY CORPS OF ENGINEERS AID COMMENTS

JOB NO: 31232449  
SCALE: 1"=100'  
DATE: FEBRUARY 26, 2025  
DRAWN BY: PJM  
DESIGN BY:  
REVIEW BY: MAJTAS  
SHEET: 1 OF 1

SYMBOL <sup>1</sup>	NAME/DESCRIPTION <sup>1</sup>	HYDRIC SOIL <sup>2</sup>	HYDRIC COMPONENT <sup>2</sup>	PERCENTAGE OF MAPPING UNIT <sup>2</sup>	POSITION IN LANDSCAPE <sup>2</sup>
HmA	HAMMONTON LOAMY SAND, 0 TO 2 PERCENT SLOPES	YES	HURLOCK, DRAINED	5	FLATS
HpB	HENLOPEN LOAMY SNAD, 2 TO 5 PERCENT SLOPES	NO	-	-	-
PpA	PEPPERBOX LOAMY SAND, 0 TO 2 PERCENT SLOPES	NO	-	-	-
UdB	UDORTHERNTS, BORROW AREA, 0 TO 5 PERCENT SLOPES	NO	-	-	-

<sup>1</sup> UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, SUSSEX COUNTY, DE. SOIL SURVEY DATA VERSION 20, DATED SEPTEMBER 12, 2023.  
<sup>2</sup> UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, HYDRIC SOILS LIST BY STATE, AVAILABLE AT  
[HTTPS://EFOTG.SC.GOV/USDA/GOV/REFERENCES/PUBLIC/STATE\\_LIST\\_NRCS\\_HYDRIC\\_SOILS\\_REPORT\\_DYNAMIC\\_DATA.HTML](https://efotg.sc.gov/USDA/GOV/REFERENCES/PUBLIC/STATE_LIST_NRCS_HYDRIC_SOILS_REPORT_DYNAMIC_DATA.HTML) AND ACCESSED ON SEPTEMBER 20, 2024.