



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

NAP

January 29, 2024

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- 2024-00798-85²

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. Ditch A: 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)

3. REVIEW AREA. The review area is limited to 34.03 acres of an 84-acre parcel on tax map parcel ED-05-76.00-01-07.00-0001 at 1340 West North Street in Dover, Kent County, Delaware. The center coordinates for the site are 39.147898/-75.550752. The parcel supports an industrial facility, a ditch, forested wetlands and pond features. Based off of historical aerial imagery, a majority of the parcel was farmed prior to 1992.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW to which the aquatic resource is connected is the Puncheon Run where it is identified as a R1UBV on the NWI Mapper, located approximately 2.26 miles downstream from the review area. This area of the Puncheon Run is Tidal near its confluence with the St. Jones River, another TNW that flows directly into the Delaware Bay.⁶

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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Ditch 1 flows into an intermittent channel through a large wetland complex and exits the review area to the upper limits of the Puncheon Run. The lower limits of the Puncheon Run are subject to the ebb and flow of the tide, therefore a TNW.
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

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.

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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).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).

Ditch A is approximately 1,222 linear feet within the review area and surrounded by uplands. Ditch A originates outside of the review area on the north side of West North Street at a NWI Mapper identified forested wetland. Ditch A receives roadside drainage from West North Street and receives stormwater via inlet pipes and overland sheet flow from the industrial area. Ditch A crosses under a 50 feet box culvert as well as a 45 feet box culvert. The channel is lined with riprap exiting the 45 feet box culvert and then enters a 24” by 30’ high density polyethylene (HDPE) pipe. Upon exiting the HDPE pipe, the ditch continues for approximately 30 feet where it transitions into an intermittent channel.

A stream form completed on February 7, 2023 in the downstream portion of Ditch A determined the flow regime to be ephemeral. Based on NOAA records, precipitation in this area was at the wet end of the normal range. Despite the normal to wet conditions, Ditch A did not contain water. Additionally, seasonal high groundwater in this area is estimated to be at elevation 35’. This is the elevation of the nearby wetlands, whereas Ditch A is generally higher in elevation. This indicates that the bottom of Ditch A does not intercept groundwater, which would provide a baseflow. A jurisdictional determination from the Delaware Department of Natural Resources and Environmental Control, Wetlands and Waterways Section (DDNREC) described Ditch A as lacking a

⁹ 88 FR 3004 (January 18, 2023)

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definable thalweg and not holding water. As such, the DDNREC did not take jurisdiction of Ditch A.

Because Ditch A originates in a wetland outside the review area, it cannot be considered to meet the (b)(3) Certain Ditches exclusion. As such Ditch A is being evaluated as an (a)(3) tributary. Because Ditch A does not have an ordinary high-water mark and does not meet the relatively permanent standard, it does not meet the definition of an (a)(3) tributary. As such, Ditch A does not meet the definition of waters of the United States.

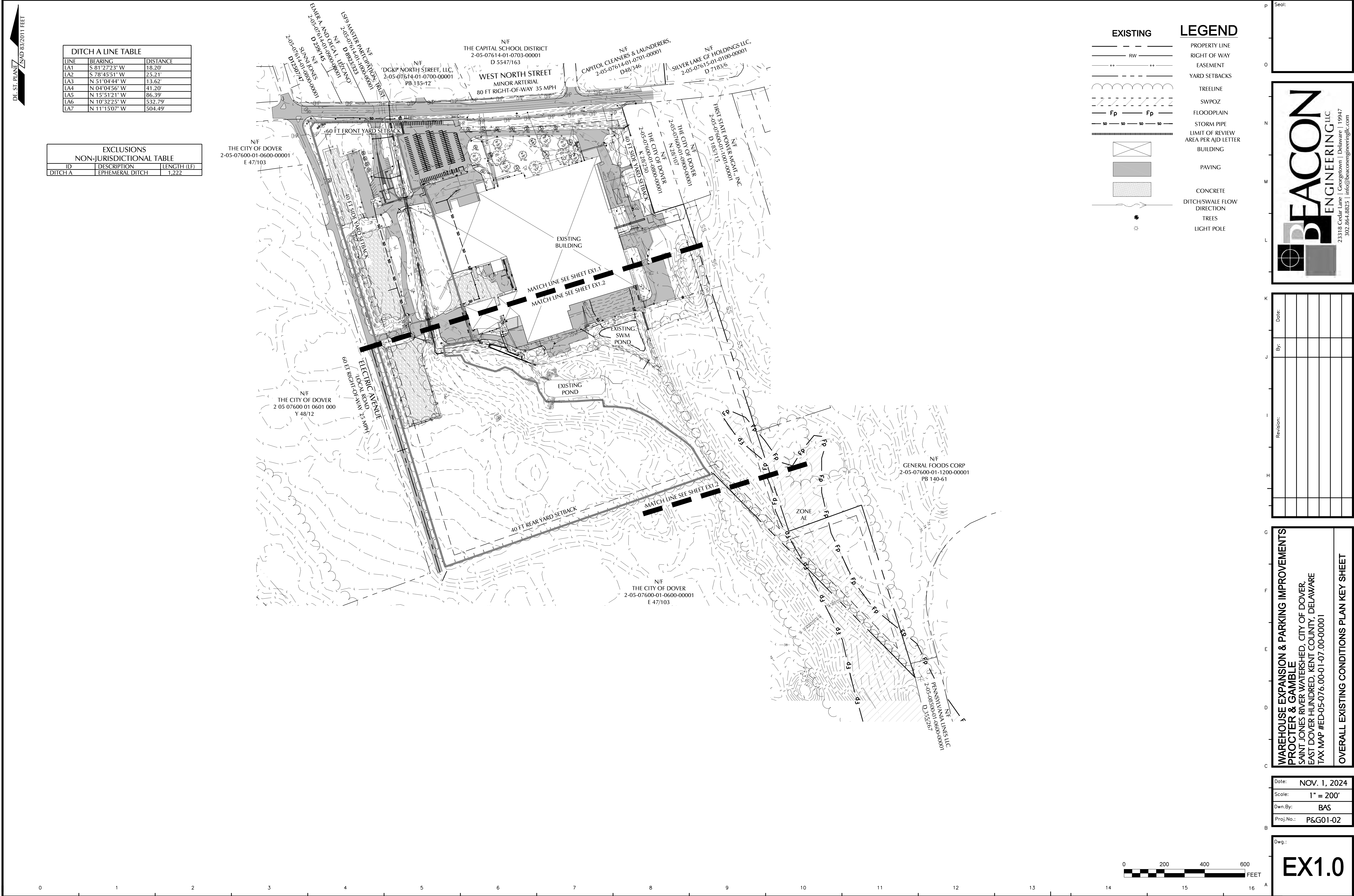
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. U.S. Army Corps of Engineers (USACE) Request for Jurisdictional Determination (JD), dated December 9, 2024.
 - b. Natural Resources Conservation Service Web Soil Survey, Soil Map-Kent County, Delaware (P & G Dover, Delaware), dated September 21, 2024.
 - c. U.S. Fish and Wildlife Service National Wetlands Inventory P & G Dover, Delaware, dated February 6, 2023.
 - d. NOAA Observed Precipitation, dated February 6, 2023 and January 29, 2024.
 - e. Delaware Stream Jurisdictional Determination Field Form Version 1.0, dated February 7, 2023 and February 1, 2024.
 - f. DDNREC, Division of Water Jurisdictional Determination No.: JD-143/23, dated September 25, 2024.
 - g. Wetland Determination Data Form-Atlantic and Gulf Coastal Plain Region, dated February 7, 2023, January 31, 2024 and February 1, 2024.
 - h. Warehouse Expansion & Parking Improvements Procter & Gamble Saint Jones River Watershed, City of Dover East Dover Hundred, Kent County, Delaware Tax Map # ED-05-076.00-01-07.00-00001, prepared by Beacon Engineering, LLC., dated November 1, 2024, 6 Sheets.
 - i. P & G Dover, Kent Co., Delaware ERI Project 4407A001.A01 Photo Log, 8 pictures.

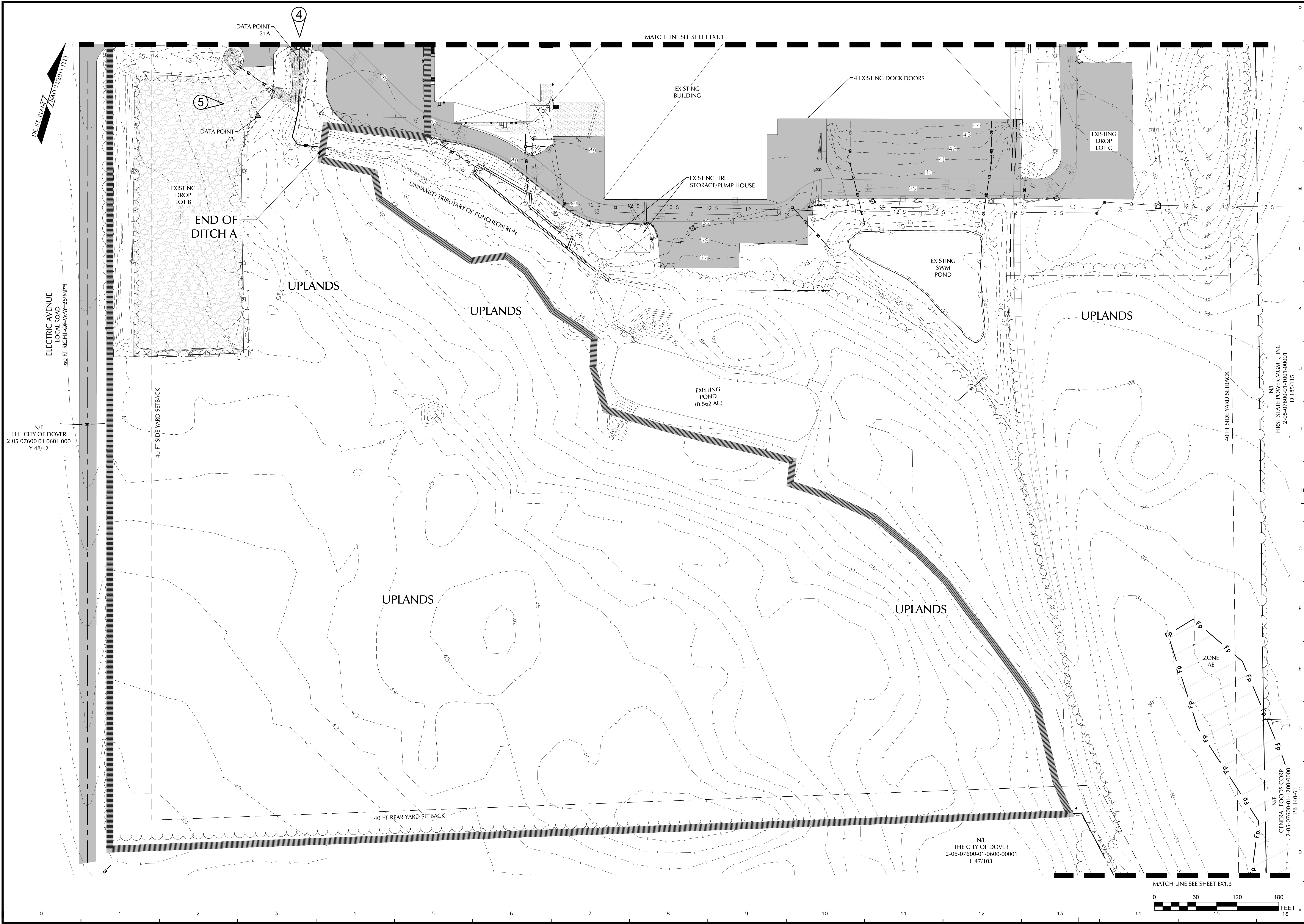
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10. OTHER SUPPORTING INFORMATION. N/A

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.





Seal:

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Revision:	By:	Date:

WAREHOUSE EXPANSION & PARKING IMPROVEMENTS
PROCTER & GAMBLE
SAINT JONES RIVER WATERSHED, CITY OF DOVER,
EAST DOVER HUNDRED, KENT COUNTY, DELAWARE
TAX MAP #ED-05-076.00-01-07.00-00001

EXISTING CONDITIONS PLAN

Date: NOV. 1, 2024
Scale: 1" = 60'
Dwn.By: BAS
Proj.No.: P&G01-02

Dwg.: **EX1.2**



EXISTING	LEGEND	PROPOSED
	PROPERTY LINE	
	RIGHT OF WAY	
	EASEMENT	
	YARD SETBACKS	
	TREELINE	
	FENCE LINE	
	STORM PIPE	
	BUILDING	
	PAVING	
	CONCRETE	
	LIMIT OF DISTURBANCE (LOD)	
	SILT FENCE (SF)	
	LOD & SF	
	SENSITIVE AREA PROTECTION (SAP)	
	LOD, SAP & SF	

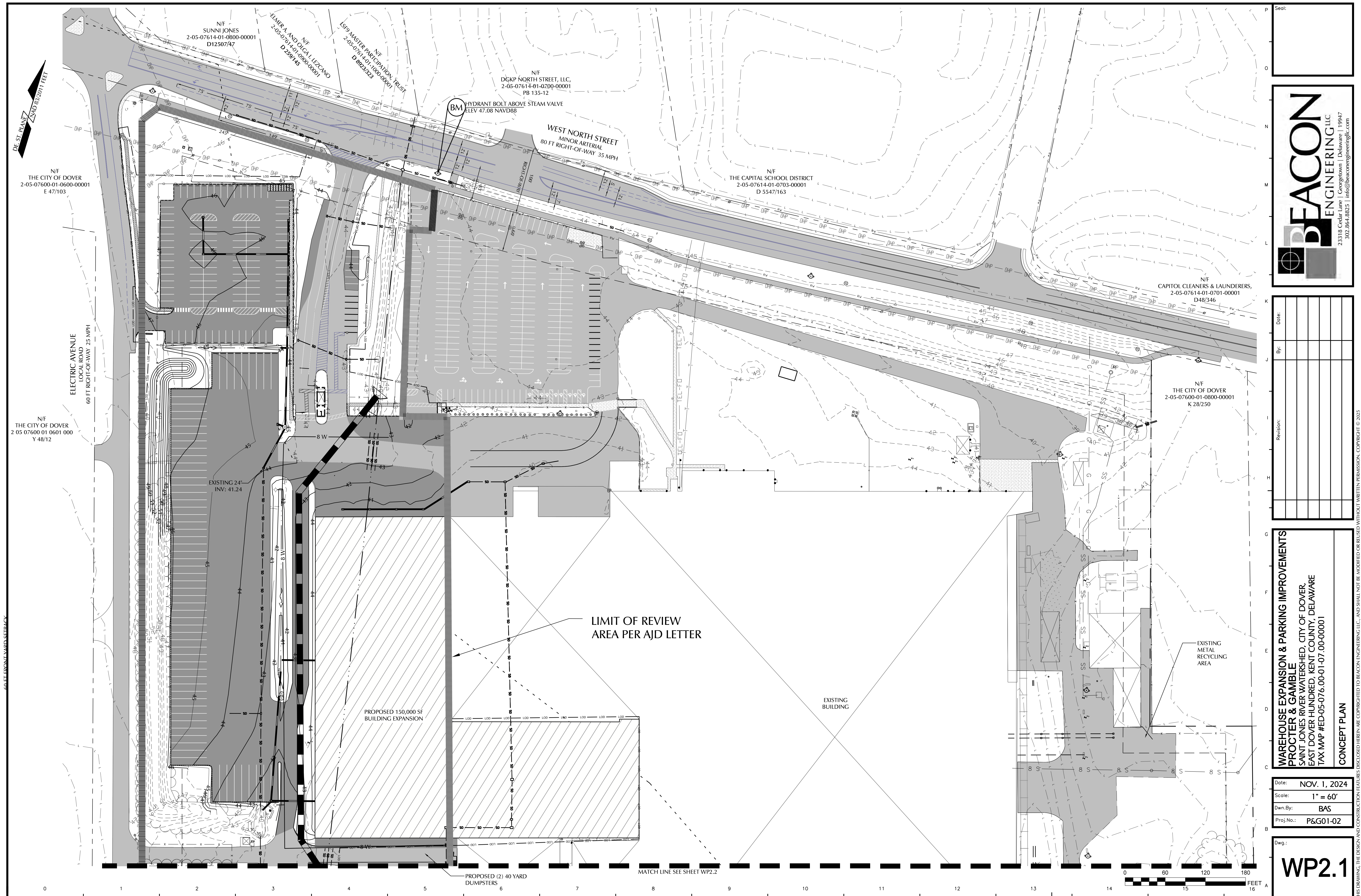
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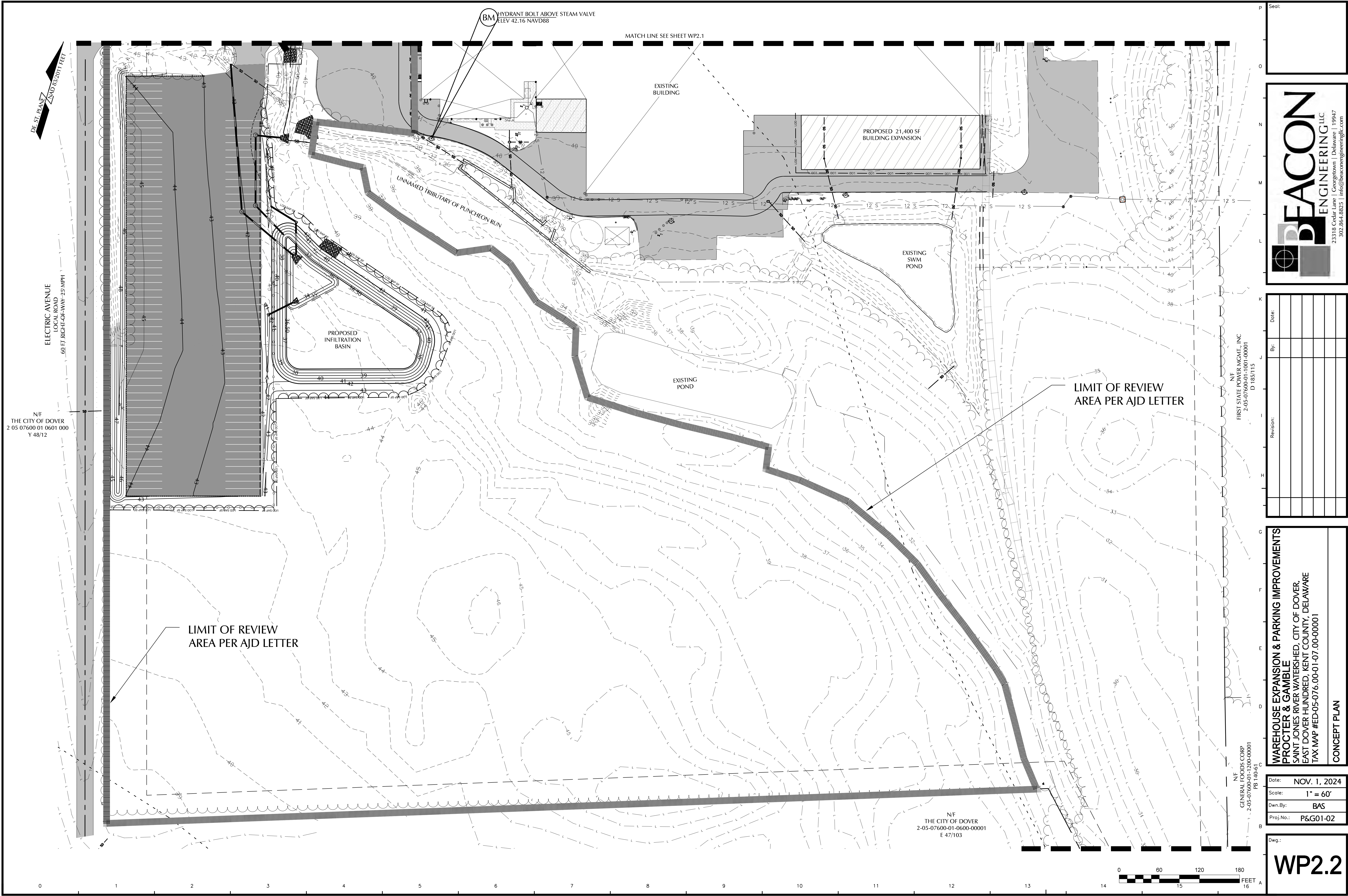
		Revision:	By:	Date:

<p>WAREHOUSE EXPANSION & PARKING IMPROVEMENTS PROCTER & GAMBLE</p> <p>SAINT JONES RIVER WATERSHED, CITY OF DOVER, EAST DOVER HUNDRED, KENT COUNTY, DELAWARE TAX MAP #ED-05-076.00-01-07.00-00001</p>	<p>CONCEPT PLAN</p>
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Date:	NOV. 1, 2024
Scale:	1" = 200'
Dwn.By:	BAS
Proj.No.:	P&G01-02

Dwg.: **WP2.0**





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Revision:	By:	Date:

WAREHOUSE EXPANSION & PARKING IMPROVEMENTS
PROCTER & GAMBLE
SAINT JONES RIVER WATERSHED, CITY OF DOVER,
EAST DOVER HUNDRED, KENT COUNTY, DELAWARE
TAX MAP #ED-05-076.00-01-07.00-00001

CONCEPT PLAN

Date:	NOV. 1, 2024
Scale:	1" = 60'
Dwn. By:	BAS
Proj. No.:	P&G01-02

Dwg.:

WP2.2