



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

CENAP-OPR

September 17, 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-2025-00035-85 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. Isolated Stormwater Ditch: Non-jurisdictional.
 - ii. Freshwater Wetlands: 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 is a 5-acre site within an agriculture field at the Bay City Mobile Home Park at 34677 Long Neck Road in Millsboro, Sussex County, Delaware on tax map parcel 234-24.00-34.00. The center coordinates for the site are 38.624181/-75.13626.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The aquatic resources do not connect to a TNW. However, the nearest TNW is Lee Joseph Creek approximately 1,000 feet from the review area.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. 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.

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
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): 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.

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).

The Isolated Stormwater Ditch is approximately 470 linear feet along the eastern boundary of the review area. The ditch continues northward off-site for another approximately 350 feet to a topographic break. The ditch receives overland sheet flow from the community, which is the source of the hydrology for the freshwater wetland. A USACE site visit conducted on September 4, 2025, occurred following a significant rain event. Observations at that site visit revealed inundation within the ditch and within the wetland. A follow up USACE site visit on September 12, 2025, included observations of no inundation within the ditch and wetland. Because the ditch is abutting a non-tidal freshwater wetland, it does not meet the (b)(3) Ditch exclusion and therefore analyzed as an (a)(3) Tributary. The ditch does not intercept groundwater, nor does it have an ordinary high water mark, failing to meet the Relatively Permanent Standard of an (a)(3) Tributary. Furthermore, the ditch does not have a continuous surface connection to an (a)(1) TNW and drains only uplands. For these reasons, the Isolated Stormwater Ditch is non-jurisdictional.

The Freshwater Wetlands is approximately 1.5 acres along the central eastern portion of the review area and is abutting the Isolated Stormwater Ditch. Because the wetland is not adjacent to an (a)(1) through (a)(3) water and lacks a continuous surface connection to a TNW, the Freshwater Wetlands fails to meet the definition of an (a)(4) Adjacent Wetland and is therefore, non-jurisdictional.

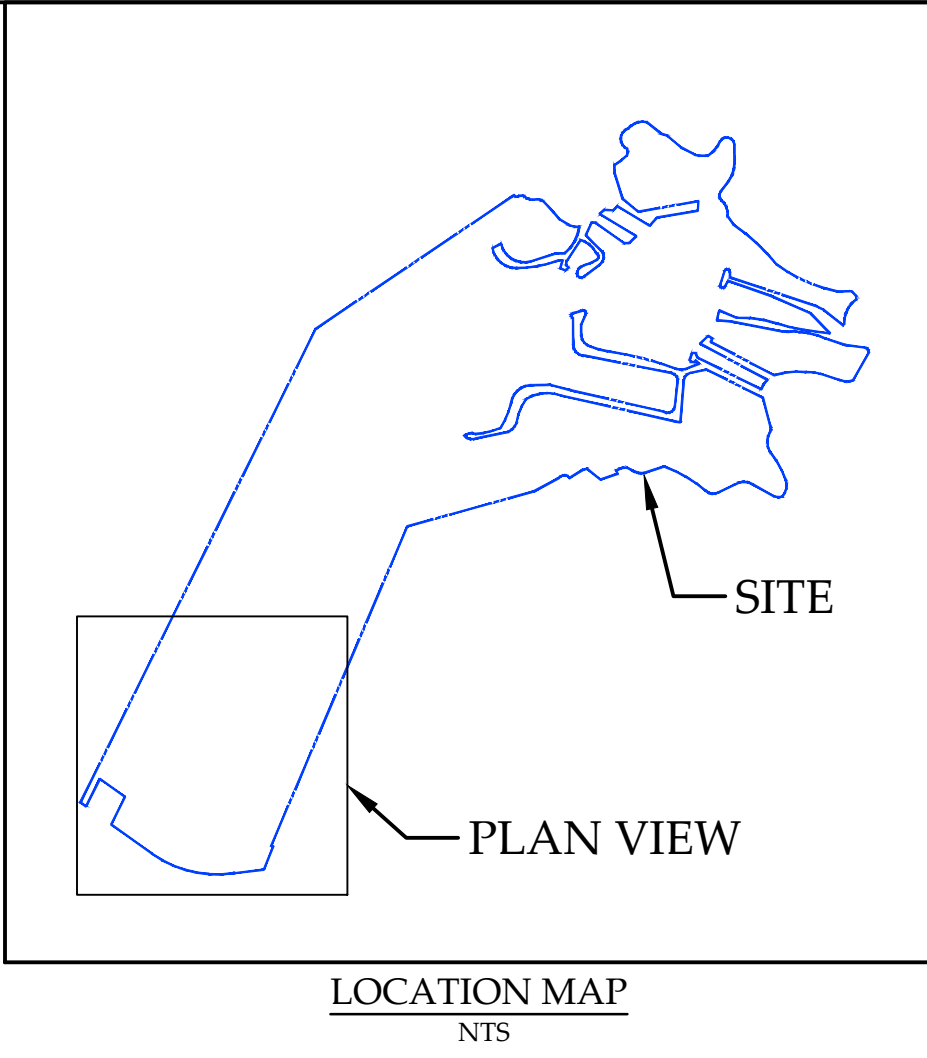
⁹ 88 FR 3004 (January 18, 2023)

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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 visits conducted on September 4, 2025, and September 12, 2025.
 - b. USACE JURISDICTION DETERMINATION APPLICATION FOR POTENTIALLY REGULATED WATERS AND FRESH WATER WETLANDS FOR BAY CITY MOBILE HOME PARK 34677 LONG NECK ROAD MILLSBORO SUSSEX COUNTY, DELAWARE, prepared by Nautilus Environmental Group, LLC, dated July 25, 2025.
 - c. EXHIBIT FOR ISOLATED STORM WATER DITCH AND POTENTIALLY REGULATED FRESHWATER WETLANDS FOR USACE JURISDICTIONAL DETERMINATION FOR BAY CITY MOBILE HOME PARK 34677 LONG NECK ROAD SUSSEX COUNTY, DELAWARE, prepared Independence Engineering LLC, dated July 21, 2025, and revised on September 15, 2025, 1 sheet.
 - d. Soils wetland delineation data sheet prepared by the USACE, dated September 12, 2025.
 - e. Delaware Department of Natural Resources and Environmental Control Division of Water Jurisdictional Determination No.: JD-060/25, dated July 31, 2025.
10. OTHER SUPPORTING INFORMATION. On July 31, 2025, the Delaware Department of Natural Resources and Environmental Control, Division of Water provided a jurisdictional determination stating that the Isolated Stormwater Ditch is an ephemeral feature and is non-jurisdictional.
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.

NU028 LAKESHORE MANAGEMENT016 BAY CITY DE PROJECT ENGINEERINGRAWINGSEXHIBITSWETLANDS02000016-EX-AWTLD - JAN JOCHIMS-2025-09-15



NOTE:

1. A1 - A29 & B1 - B29 FLAGS PROVIDED BY NAUTILUS ENVIRONMENTAL GROUP, LLC FOR AUGUST 11TH, 2024 SITE INVESTIGATION.

ISOLATED STORMWATER DITCH
(NON-JURISDICTIONAL):

FLAG NUMBER	NORTHING	EASTING
A1	227792.0374	737049.2681
A2	227750.2000	737032.6894
A3	227708.5644	737015.5851
A4	227665.6663	737001.7678
A5	227624.1320	736984.3999
A6	227587.0976	736969.2610
A7	227549.8920	736954.5682
A8	227512.6863	736939.8753
A9	227475.3702	736925.4699
A10	227437.9463	736911.3453
A11	227400.5403	736897.1742
A12	227363.4898	736882.0774
A13	227328.0163	736867.0842
A14	227286.8803	736851.7089
A15	227274.9178	736850.7660
A16	227286.4766	736859.4652
A17	227323.3825	736874.9387
A18	227358.8560	736889.9319
A19	227397.5607	736904.9312
A20	227434.5761	736920.1194
A21	227471.5915	736935.3075
A22	227508.5712	736950.5886
A23	227545.4557	736966.1176
A24	227582.3481	736981.6258
A25	227619.5277	736996.3865
A26	227661.3548	737012.9922
A27	227703.0344	737029.9817
A28	227744.6583	737047.1165
A29	227784.6163	737064.3789

FRESHWATER WETLANDS
(NON-JURISDICTIONAL):

FLAG NUMBER	NORTHING	EASTING
B1	227286.8803	736851.7089
B2	227328.0163	736867.0842
B3	227363.4898	736882.0774
B4	227392.6061	736887.9477
B5	227442.0535	736896.1533
B6	227483.8722	736914.6480
B7	227472.0365	736857.8685
B8	227485.9624	736854.1009
B9	227510.0011	736857.5962
B10	227517.2125	736838.3856
B11	227497.9397	736814.5600
B12	227512.7534	736793.2189
B13	227548.4061	736797.5820
B14	227558.8671	736779.3971
B15	227548.5716	736754.8858
B16	227513.1223	736707.6841
B17	227472.7015	736703.2170
B18	227442.5801	736668.0975
B19	227430.6465	736635.2722
B20	227407.3254	736620.5380
B21	227380.2543	736581.4276
B22	227364.8132	736578.3497
B23	227342.8470	736587.4276
B24	227305.8105	736618.1475
B25	227268.7740	736648.8673
B26	227237.4697	736728.1900
B27	227226.7042	736753.2653
B28	227222.9095	736803.2912
B29	227254.2640	736835.1438

DATA COLLECTION POINTS:

FLAG NUMBER	NORTHING	EASTING
DP1	227888.6230	736159.6436
DP2	227528.0102	736841.8844
DP3	227335.2693	736729.0617

BY
JWJ

DESCRIPTION
USACE PLAN REVIEW COMMENTS

DATE
09/15/2025

REV
1.

1777 SENTRY PARKWAY WEST
BUILDING 12, SUITE 103
BLUE BELL, PENNSYLVANIA 19422
INDEPENDENCE ENGINEERING
NEW JERSEY * PENNSYLVANIA * MASSACHUSETTS

FOR
BAY CITY MOBILE HOME PARK
34677 LONG NECK ROAD
SUSSEX COUNTY, DELAWARE

PROJECT
029-015
DATE
07/21/2025
SCALE
1" = 80'
DESIGNED
RSK

CHECKED
MAS
JWJ

C9000
SHEET
1

OF
1