



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

CENAP-OPR

26 August 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-2025-00073-103²

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.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2025-00073-103

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, non-jurisdictional
 - ii. Wetland B/C, jurisdictional, Section 404
 - iii. Wetland D, jurisdictional, Section 404
 - iv. Wetland J, jurisdictional, Section 404
 - v. Wetland H, jurisdictional, Section 404
 - vi. Wetland CA, jurisdictional, Section 404
 - vii. Wetland F, jurisdictional, Section 404
 - viii. Wetland G, jurisdictional, Section 404
 - ix. Agricultural Ditch Network Segments B, B1, B2, B3, B4, C, C1, C2, C3, C4, 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 consists of a single tax map parcel (334-5.00-175.00) totaling approximately 433 acres located in Lewes, Sussex County, Delaware. The review area is shown on the Delineation Plans entitled "Northstar

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2025-00073-103

Lewes and Rehoboth Hundred Sussex County, Delaware”; prepared by Davis Bowen & Friedel, Incorporated; dated May, 2024; unrevised; 6 sheets. The land consists of forested uplands, agricultural fields, forested wetlands, and emergent wetlands. Due to the size of the parcel, there are three watershed that intercept the property. Bundicks Branch, Goslee Mill Pond, and Goslee Creek. These watersheds are associated with specific wetland areas on the southwest portion of the site (Bundicks Branch), central portion of the site (Goslee Mill Pond), and northeast (Goslee Creek). A USACE site visit was conducted on March 12, 2025 to assess the wetlands on the property and the agricultural ditch network.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Love Creek. Love Creek is influenced by the ebb and flow of the tide.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The resources within the review area drain into Bundicks Branch and Goslee Creek, which converge and flow into Love Creek to the south.
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

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.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2025-00073-103

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):

1. Stream D is a 5877 square foot intermittent tributary located entirely within the review area. Stream D receives drainage from the Agricultural Ditch Network Segments and terminates into Wetland D. During the site visit, Stream D exhibited a defined bed and bank, ordinary high water mark, and relatively permanent flow. 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):

1. Wetland B/C is a 2.331 acre non-tidal forested wetland located on the west portion of the review area. Wetland B/C originates outside the review area to the northwest and continues off the review area across Beaver Dam Road to the southwest. Once Wetland B/C crosses Beaver Dam Road it directly abuts Bundicks Branch, a relatively permanent tributary. Since Wetland B/C directly abuts an (a)(3) tributary, it meets the definition of an adjacent wetland.
2. Wetland D and Wetland J total 2.378 acre of non-tidal emergent wetland located entirely within the review area. Wetland D and Wetland J will be treated as one wetland. From viewing historic aerial imagery, these wetlands were once one continuous wetland prior to any road construction

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2025-00073-103

and have retained a hydrologic connection. The Wetland D portion receives drainage runoff from the Agricultural Ditch Network. The Wetland D portion drains south across Beaver Dam Road through a culvert into the Wetland Area J portion. A clear hydrologic connection was observed during the USACE field visit. The Wetland Area J portion continues outside the review area to the south where it directly abuts Goslee Creek, a relatively permanent tributary. In accordance with “EPA MEMORANDUM LRB-2021-01386” for the purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Since Wetland D and Wetland J directly abut an (a)(3) tributary, they meet the definition of an adjacent wetland.

3. Wetland H is a 8.856 acre forested wetland located in the eastern portion of the review area and continues off the review area to the northeast. Reviewing lidar imagery, Wetland H continues off-site to the north, then continues to the east where it flows into Goslee Creek, a relatively permanent tributary. Since Wetland H directly abuts an (a)(3) tributary, it meets the definition of an adjacent wetland.
4. Wetland G and Wetland F, total 3.53 acre of non-tidal forested and emergent wetlands located on the northeast portion of the review area. Wetland G and Wetland F were labeled separately on the delineation plans but are one continuous wetland and will be treated as such. Wetland G receives flow from Wetland CA from the west through a 30” reinforced concrete pipe crossing over Beaver Dam Road. Wetland G continues off the review area to the northeast, then continues into Wetland F within the review area. Wetland F drains outside the review area to the south into an unnamed tributary (visible on Delineation Plan, sheet WL-5, ‘Ditch Detail’) of Goslee Creek, which drains into Goslee Creek, a relatively permanent tributary. Since Wetland G and Wetland F directly abut an (a)(3) tributary, they meet the definition of an adjacent wetland.
5. Wetland CA is a 0.01 acre non tidal emergent wetland located on the north portion of the review area. Wetland CA receives flow from the surrounding agricultural field. This wetland drains offsite to the east into the Graves Rollins Tax Ditch, which has been tied into stormwater drainage on the adjacent property. This portion of the tax ditch is entirely offsite, however relatively permanent flow was observed entering the feature from Wetland CA and exiting the feature across Beaver Dam Road. The drainage flows to the southeast across Beaver Dam Road

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2025-00073-103

through a 30" reinforced concrete pipe. Since Wetland CA directly abuts an (a)(3) tributary, it meets the definition of an 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

1. Agricultural Ditch Network Segments B, B1, B2, B3, B4, C, C1, C2, C3, and C4, total 8157 linear feet of ephemeral agricultural ditches. These ditches were dug in uplands and drain only uplands. During the USACE site visit, these ditches did not exhibit relatively permanent flow. These ditches were excavated wholly in and drain only dry land and do not carry a relatively permanent flow of water, thereby meeting the definition of (b)(3) ditches.

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. Wetland A is a 2.832 acre forested wetland located entirely within the review area. This wetland lacks a continuous surface connection to any other aquatic resources, leaving it geographically separated. Because Wetland 1 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.

⁹ 88 FR 3004 (January 18, 2023)

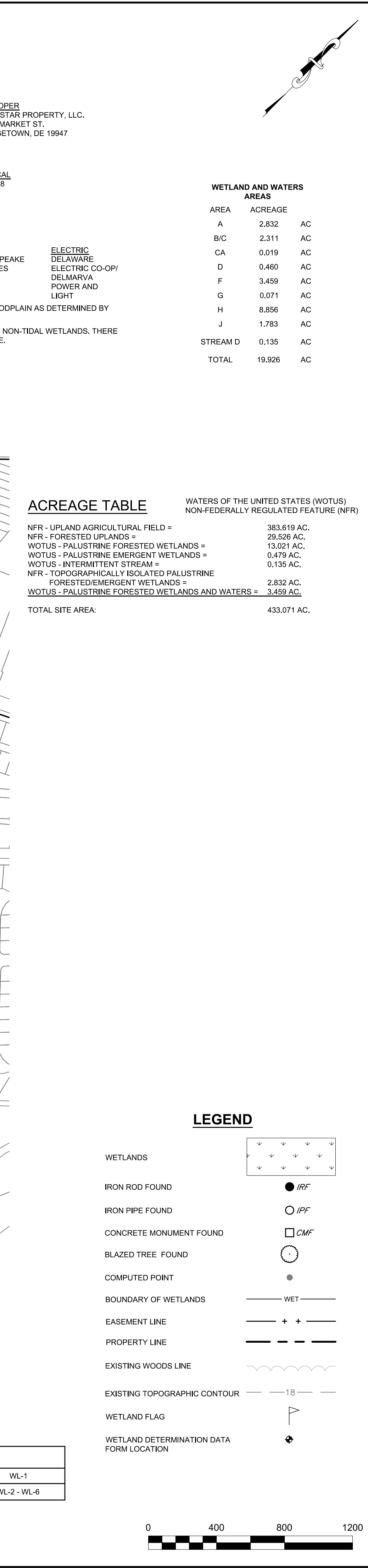
OPR

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- a. USACE Site Visit March 12, 2025.
- b. Delineation Plan entitled “Northstar Lewes and Rehoboth Hundred Sussex County, Delaware”; prepared by Davis Bowen & Friedel, Incorporated; dated May 2024; unrevised; 6 sheets.
- c. Delineation Report entitled “Wetland Delineation Report”; prepared by Environmental Resource Insights; dated January 16, 2025.
- d. Wetland H lidar imagery entitled “2025-00073_Wetland_H_lidar”; prepared by USACE – National Regulatory Viewer.
- e. Flowpath Plan prepared by USACE from approved delineation plans.

10. OTHER SUPPORTING INFORMATION. EPA MEMORANDUM LRB-2021-01386

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.



**NORTHSTAR
LEWES AND REHOBOTH HUNDRED
SUSSEX COUNTY, DELAWARE**

[illegible]

Date:	AUGUST 12, 2023
Scale:	1" = 400'
Dwn.By:	JGA
Proj.No.:	3808C001

WETLAND DELINEATION PLAN OVERVIEW

Dwg.No.:

WL-1

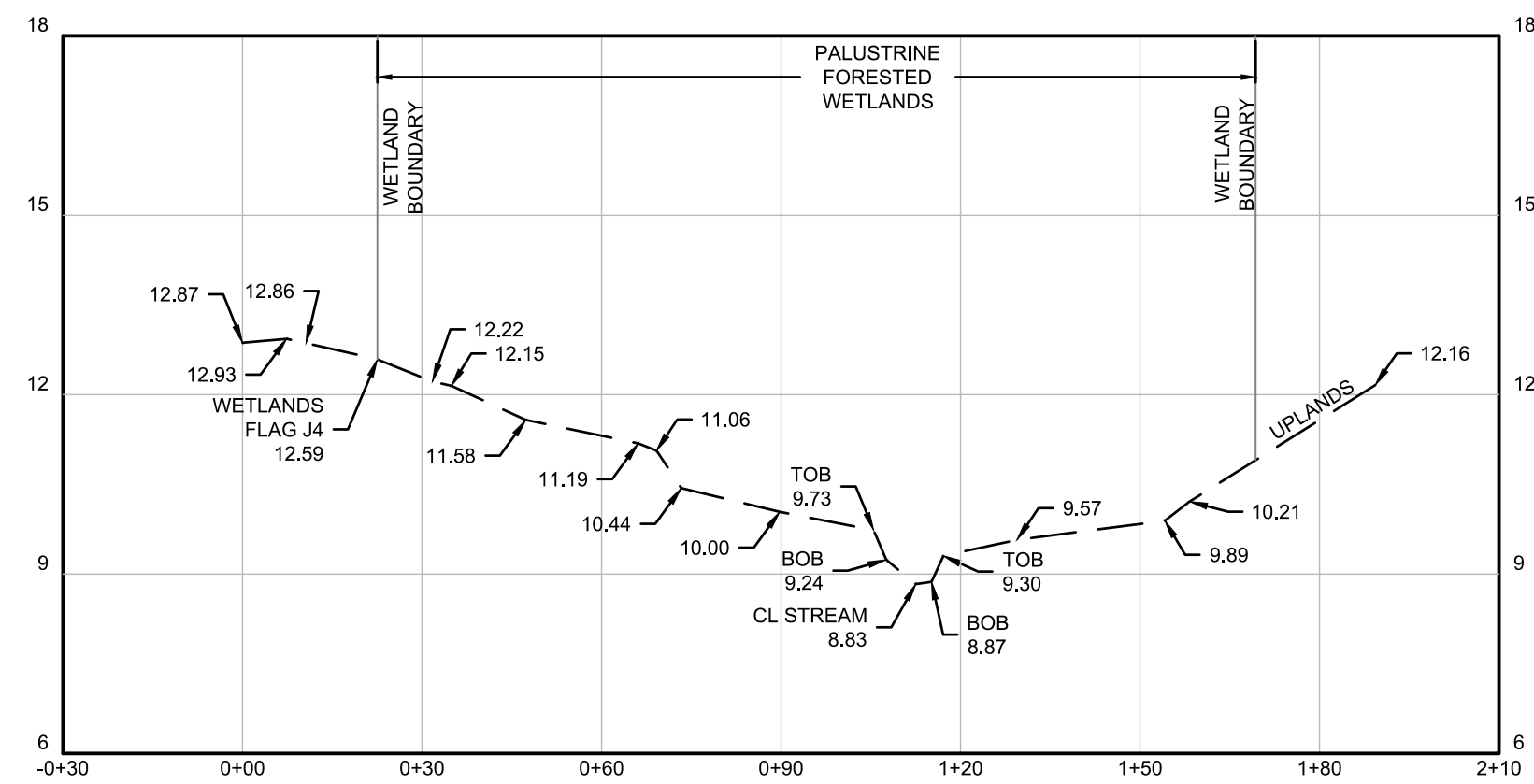


Figure 1 is a line graph showing the variation of water temperature (°C) versus time (h) for the TOB, BOB, and CL STREAM. The x-axis represents time in hours, ranging from -0+30 to 0+60. The y-axis represents temperature in degrees Celsius, ranging from 6 to 15. The TOB line starts at 10.08°C at -0+30h, peaks at 10.37°C at 0+00h, and ends at 9.74°C at 0+60h. The BOB line starts at 9.89°C at -0+30h, peaks at 9.95°C at 0+00h, and ends at 9.45°C at 0+60h. The CL STREAM line starts at 8.31°C at 0+00h, peaks at 8.51°C at 0+30h, and ends at 9.77°C at 0+60h.

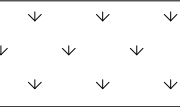
SECTION J-2



INTERMITTENT STREAM D		
LINE	BEARING	DISTANCE
S1	N 24°12'47" W	21.92
S2	N 24°42'18" W	24.22
S3	N 18°41'08" W	27.62
S4	N 01°52'19" W	30.49
S5	N 09°55'24" E	47.56
S6	N 15°12'02" E	52.88
S7	N 19°08'18" E	50.14
S8	N 16°58'18" E	48.98
S9	N 13°36'06" W	28.85
S10	N 38°51'08" E	14.99
S11	S 85°40'52" E	14.83
S12	S 06°43'40" W	42.26
S13	S 12°09'24" W	43.82
S14	S 08°56'06" W	51.84
S15	S 12°51'06" W	43.10
S16	S 13°17'15" W	45.92
S17	S 03°05'13" E	18.31
S18	S 17°13'22" E	23.84
S19	S 28°57'03" E	51.59

WETLAND AREA D LINE TABLE		
LINE	BEARING	DISTANCE
D1	S 37°24'48" W	8.39
D2	N 88°44'18" W	13.92
D3	N 88°44'18" W	6.48
D4	N 53°39'54" W	79.99
D5	N 36°32'35" W	72.53
D6	N 03°47'07" W	32.76
D7	N 18°00'43" W	24.59
D8	N 22°55'02" W	33.34
D9	N 12°43'45" W	53.56
D10	N 12°43'45" W	55.59
D11	N 31°06'55" W	83.55
D12	N 64°10'13" E	22.88
D13	S 30°14'14" E	26.27
D14	S 33°29'48" E	59.53
D15	S 25°44'22" E	52.25
D16	S 26°42'51" E	33.33
D17	S 28°02'16" E	50.03
D18	S 28°02'16" E	96.74
D19	S 48°46'40" E	102.98
D20	S 39°24'52" W	19.45
D21	S 23°20'30" W	22.62

LEGEND

WETLANDS	
IRON ROD FOUND	● IRF
IRON PIPE FOUND	○ IPF
CONCRETE MONUMENT FOUND	○ CMF
BLAZED TREE FOUND	
COMPUTED POINT	●
BOUNDARY OF WETLANDS	_____ WET _____
EASEMENT LINE	_____ + + _____
PROPERTY LINE	===== - - =====
EXISTING WOODS LINE	
EXISTING TOPOGRAPHIC CONTOUR	_____ 18 _____
WETLAND FLAG	
WETLAND DETERMINATION DATA FORM LOCATION	

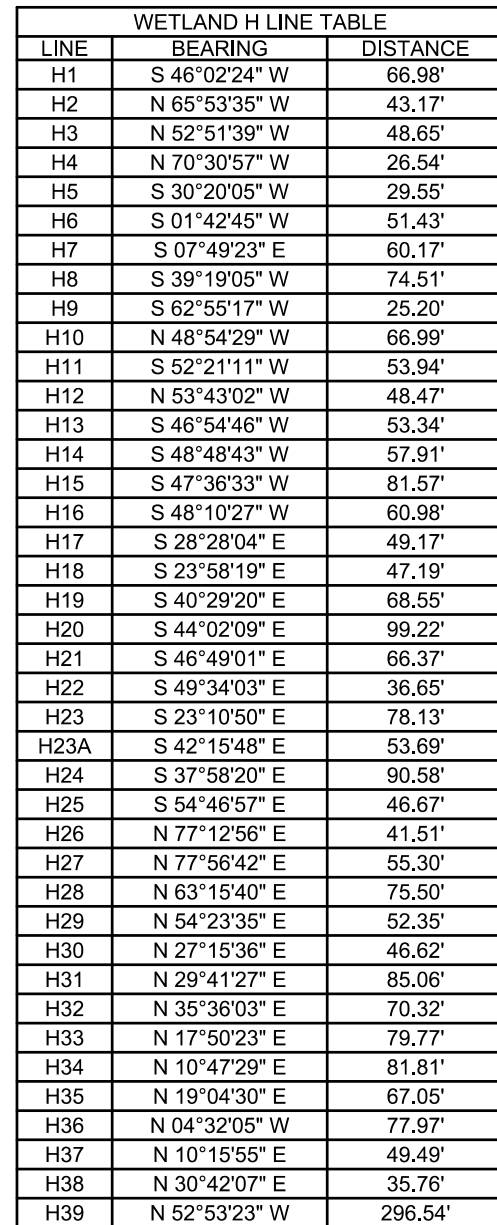
**NORTHSTAR
LEWES AND REHOBOTH HUNDRED
SUSSEX COUNTY, DELAWARE**

[illegible]

Date:	AUGUST 12, 2025
Scale:	1" = 50'
Drawn By:	JGA
Proj. No.:	3808C001

WETLAND DELINEATION PLAN

wg.No.:
WL-3

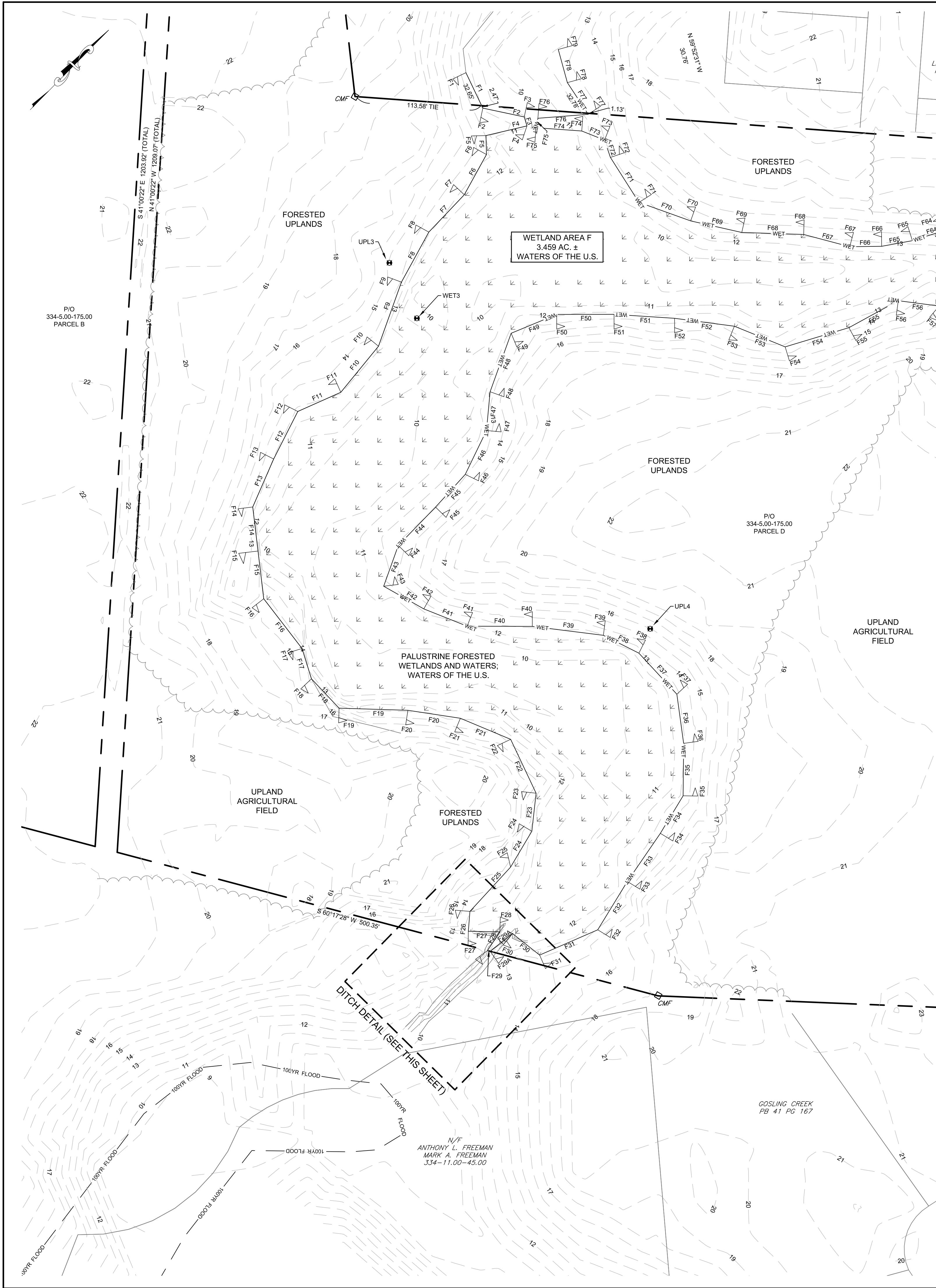
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WETLAND DELINEATION PLAN

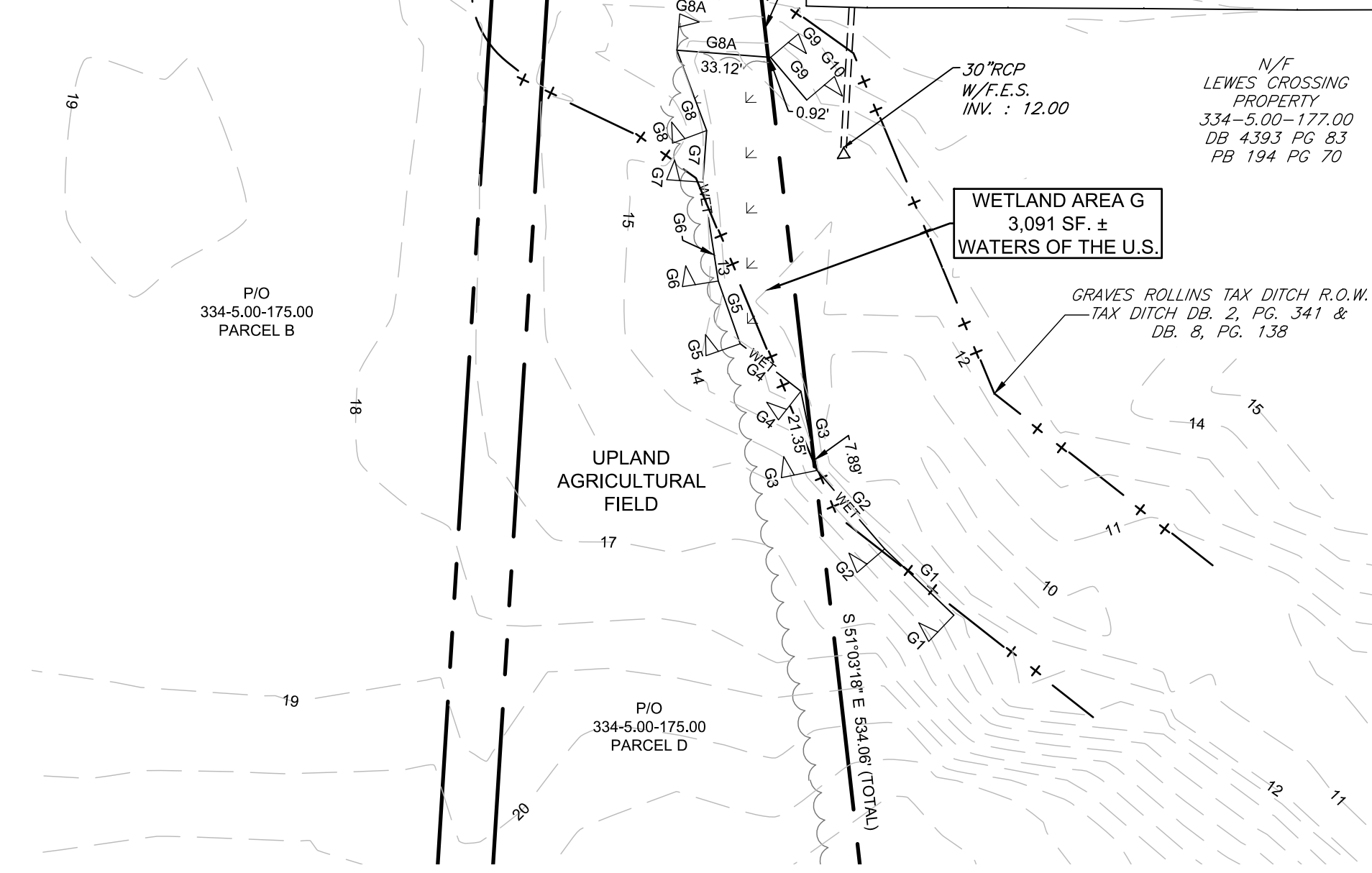
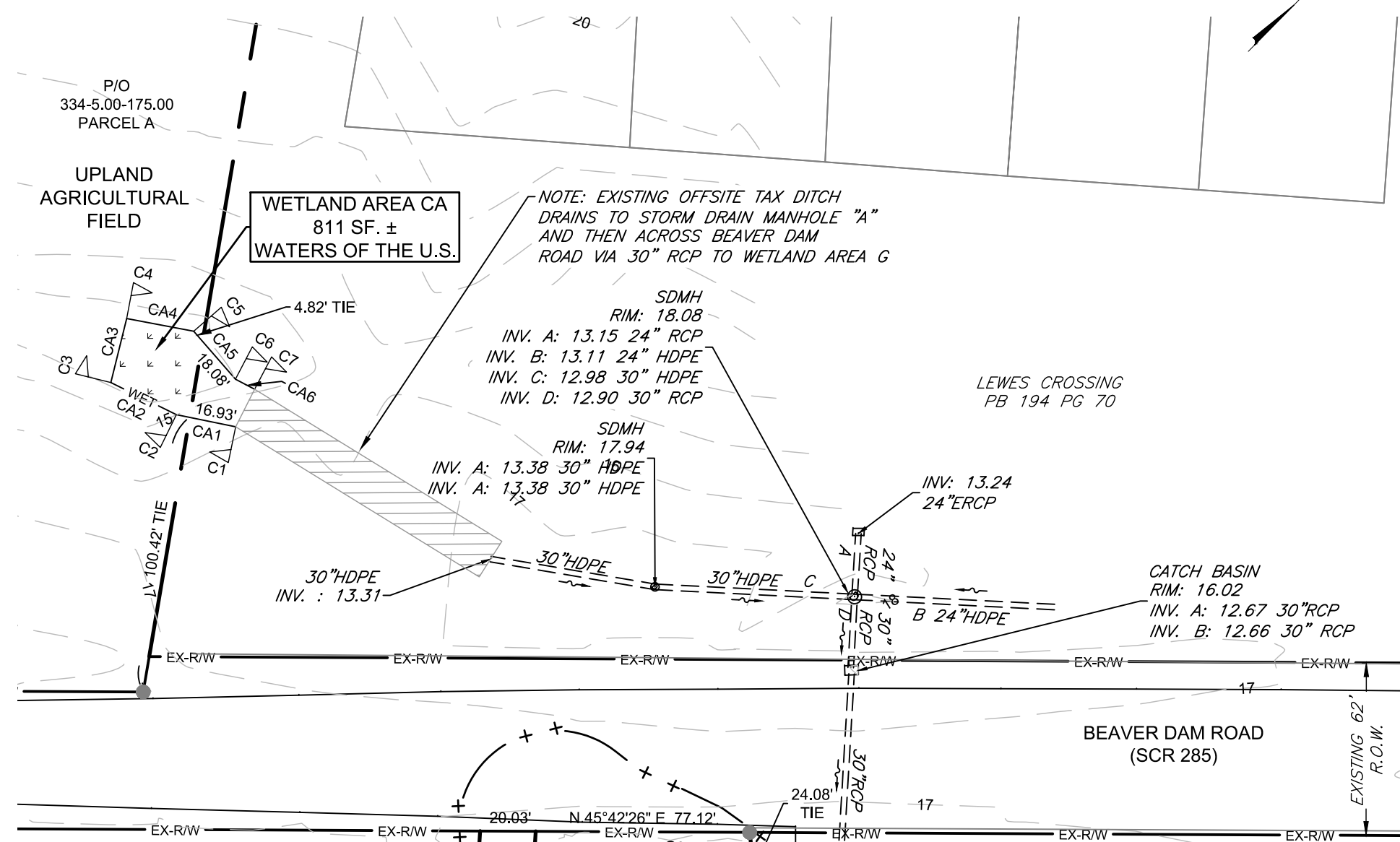
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WL-4

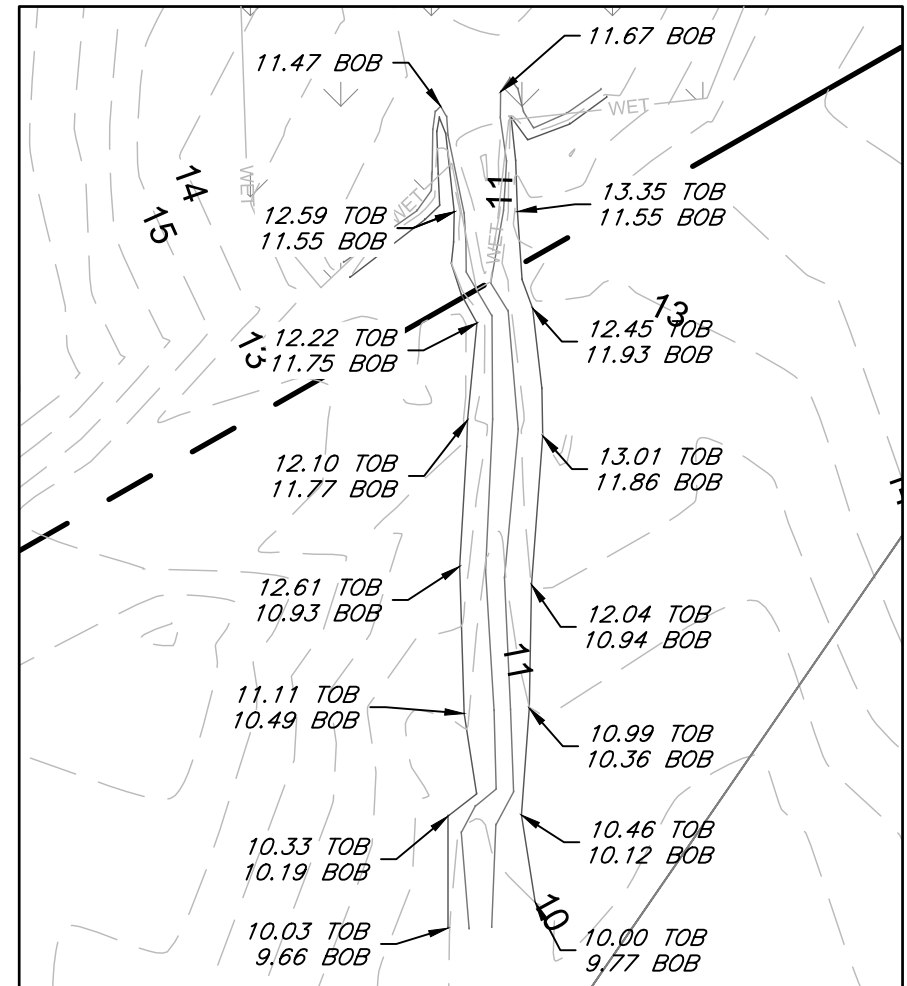


WETLAND F LINE TABLE		
LINE	BEARING	DISTANCE
F1	S 70°07'03\"	35.12'
F2	N 57°26'31\"	37.84'
F3	S 61°09'41\"	4.38'
F4	S 32°11'37\"	37.64'
F5	S 46°01'38\"	16.98'
F6	S 15°40'42\"	41.09'
F7	S 01°02'51\"	46.00'
F8	S 15°35'35\"	51.03'
F9	S 24°53'49\"	60.88'
F10	S 05°16'41\"	53.25'
F11	S 21°24'24\"	42.11'
F12	S 17°40'45\"	47.65'
F13	S 20°59'39\"	46.81'
F14	S 11°26'30\"	41.31'
F15	S 51°25'30\"	41.31'
F16	S 82°09'29\"	56.09'
F17	S 61°49'45\"	28.41'
F18	S 87°52'27\"	36.04'
F19	N 47°12'50\"	61.58'
F20	N 54°04'14\"	47.45'
F21	N 68°07'32\"	48.72'
F22	S 69°52'29\"	53.31'
F23	S 38°12'05\"	34.21'
F24	S 13°52'40\"	37.23'
F25	S 02°01'42\"	53.78'
F26	S 39°53'52\"	17.83'
F27	N 46°29'44\"	28.20'
F28	S 18°00'02\"	15.97'
F29	N 60°17'28\"	2.55'
F29A	N 10°13'03\"	22.32'
F30	N 83°43'10\"	31.17'
F31	N 21°56'42\"	56.65'
F32	N 13°04'34\"	50.66'
F33	N 10°07'00\"	52.19'
F34	N 13°29'42\"	39.22'
F35	N 43°57'33\"	46.91'
F36	N 52°25'34\"	44.36'
F37	N 87°22'41\"	50.00'
F38	S 72°09'02\"	35.53'
F39	S 52°34'40\"	64.09'
F40	S 45°36'03\"	58.25'
F41	S 67°10'06\"	41.72'
F42	S 74°53'10\"	41.18'
F43	N 24°50'38\"	38.72'
F44	S 02°25'02\"	47.80'
F45	N 02°10'44\"	36.52'
F46	N 18°44'29\"	43.58'
F47	N 39°15'02\"	34.79'
F48	N 24°47'25\"	55.57'
F49	N 22°55'17\"	44.07'
F50	N 45°22'33\"	61.30'
F51	N 49°07'57\"	54.25'
F52	N 52°58'57\"	53.91'
F53	N 67°32'40\"	49.04'
F54	N 28°39'00\"	55.50'
F55	N 16°45'42\"	50.28'
F56	N 52°55'30\"	36.84'
F57	N 85°29'48\"	42.16'
F57A	N 67°35'14\"	39.14'
F58	N 69°16'23\"	30.40'
F59	N 07°45'19\"	34.20'
F60	N 51°52'03\"	46.13'
F61	N 79°36'43\"	39.36'
F62	S 74°29'21\"	35.67'
F63	S 44°25'43\"	52.18'
F64	S 27°54'01\"	30.30'
F65	S 35°02'08\"	27.80'
F66	S 44°43'19\"	28.55'
F67	S 60°15'24\"	42.62'
F68	S 47°18'28\"	55.37'
F69	S 58°09'34\"	46.88'
F70	S 65°06'23\"	40.08'
F71	N 77°01'04\"	47.60'
F72	N 63°14'39\"	16.38'
F73	S 67°07'00\"	21.93'
F74	S 49°34'58\"	41.03'
F75	N 33°05'18\"	5.61'
F76	N 40°55'57\"	45.12'
F77	N 77°56'10\"	33.90'
F78	N 59°52'31\"	30.76'

WETLAND CA LINE TABLE		
LINE	BEARING	DISTANCE
CA1	S 57°02'41\"	21.80'
CA2	S 71°30'53\"	26.32'
CA3	N 30°40'34\"	23.80'
CA4	N 56°09'13\"	24.61'
CA5	S 85°30'01\"	22.91'
CA6	N 73°01'02\"	7.84'



WETLAND G LINE TABLE		
LINE	BEARING	DISTANCE
G1	S 89°09'18\"	34.72'
G2	N 85°19'13\"	37.53'
G3	N 56°02'21\"	29.24'
G4	S 83°33'55\"	27.89'
G5	N 63°56'47\"	24.05'
G6	N 53°26'07\"	36.21'
G7	N 40°26'35\"	18.76'
G8	N 64°51'27\"	31.04'
G8A	N 49°49'50\"	34.04'
G9	S 84°51'14\"	20.22'



DITCH DETAIL
SCALE: 1" = 30'

LEGEND

- WETLANDS
- IRON ROD FOUND
- IRON PIPE FOUND
- CONCRETE MONUMENT FOUND
- BLAZED TREE FOUND
- COMPUTED POINT
- BOUNDARY OF WETLANDS
- EASEMENT LINE
- PROPERTY LINE
- EXISTING WOODS LINE
- EXISTING TOPOGRAPHIC CONTOUR
- WETLAND FLAG
- WETLAND DETERMINATION DATA FORM LOCATION

