



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

CENAP-OPR

22 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) ,<sup>1</sup> NAP-2025-00125-103

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.<sup>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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- 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. Blockhouse Pond, 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 14.14-acre review area is the entirety of the George H.P. Smith Park at Blockhouse Pond, located in Lewes, Sussex County, Delaware (38.771568, -75.14635). The property is a public park consisting of a parking area, walking trails, a man-made pond, and uplands. From viewing historic aerials, the pond was excavated between 1973 and 1981. A site visit was conducted on April 23, 2025. The goal of the site visit was to determine if Blockhouse Pond had a continuous surface connection to any other waters. See Section 8(b)(1) for additional discussion on Blockhouse Pond.

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The aquatic resources within the review area do not have a direct flowpath to the Lewes and Rehoboth Canal. The review area is approximately 0.44 miles southwest from the Lewes and Rehoboth Canal.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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<sup>5</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.

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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>6</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.

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

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<sup>6</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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>7</sup> 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. Blockhouse Pond is an approximately 3.4-acre man-made freshwater pond. From viewing historic aerials, the pond was excavated between 1973 and 1981. During the USACE site visit, two stormwater outfalls were observed within the pond. One of the outfalls drains an offsite stormwater basin into the pond, and the other outfall drains stormwater runoff from the adjacent housing community into the pond. There were no direct surface connections to any other aquatic resources. Blockhouse Pond does not have a continuous surface connection to any (a)(1) through (a)(3) waters, thereby not meeting the definition of an (a)(5) waters.

- 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.

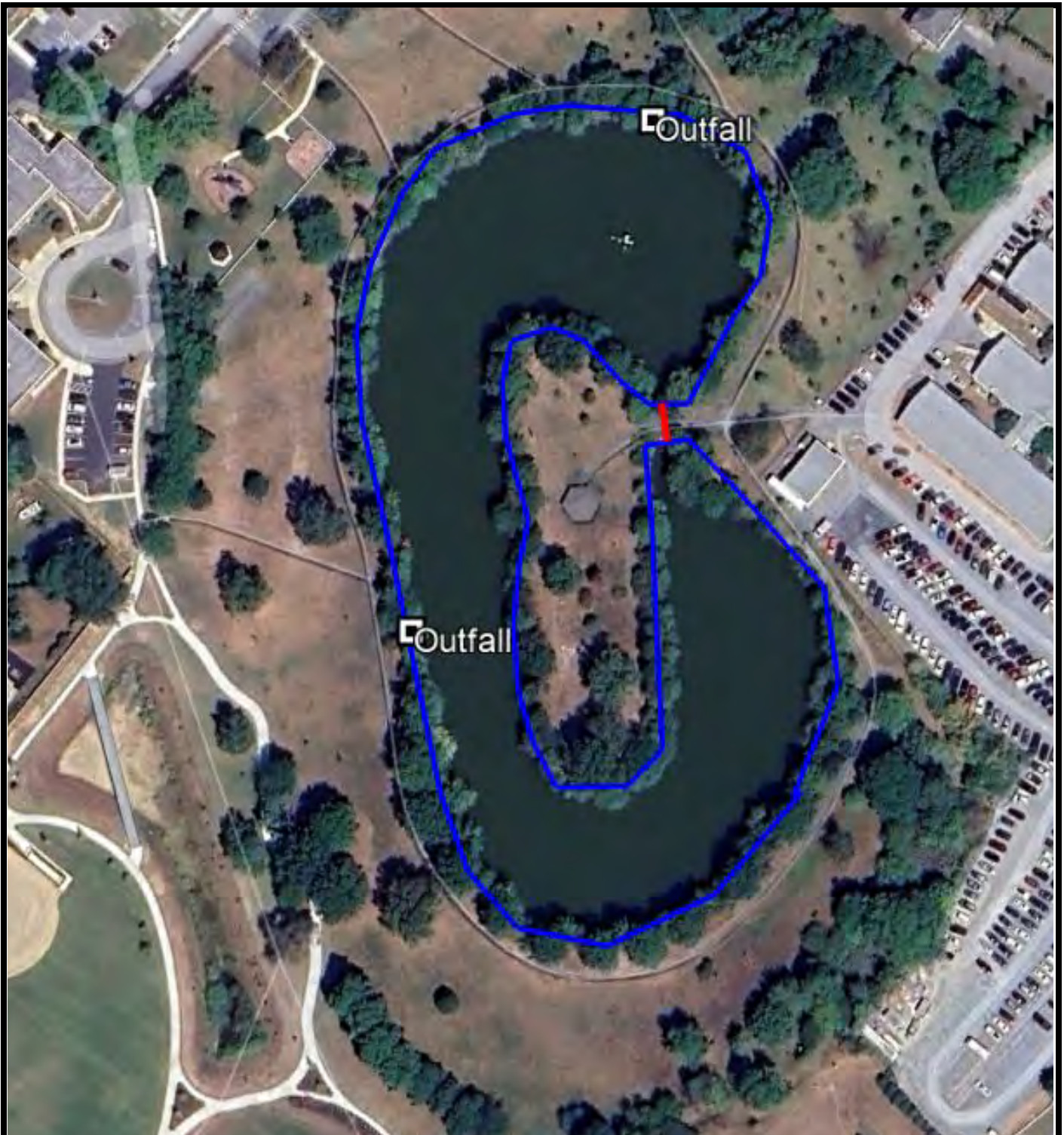
- a. USACE site visit on April 23, 2025.
- b. Approved Plans entitled “Figure 1 – Blockhouse Pond Aerial Photograph”; prepared by Envirotech Environmental Consulting, Incorporated; dated March 7, 2025; unrevised; 3 sheets.

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.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)



Note: This image was obtained through aerial photograph via Google Earth



Envirotech Environmental Consulting, Inc.  
 17605 Nassau Commons Boulevard, Unit D  
 Lewes, DE 19958  
 Phone: (302) 684-5201 Fax: (302) 684-5204

**FIGURE 1 - BLOCKHOUSE POND AERIAL PHOTOGRAPH**



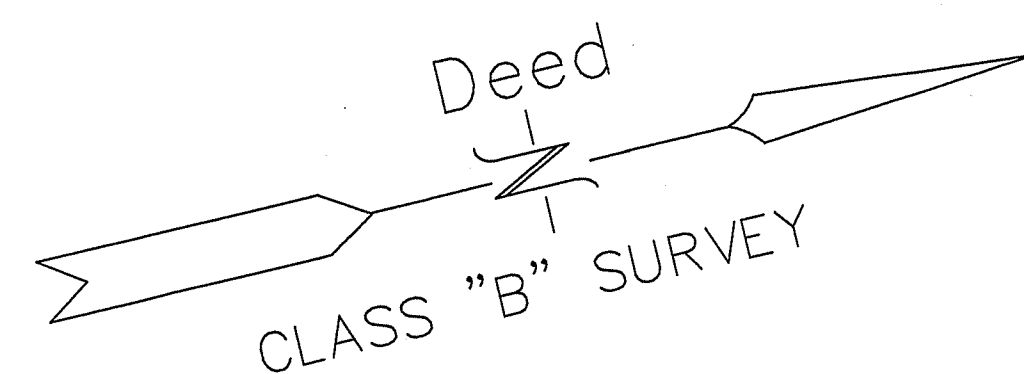
= Targeted shoreline for existing conditions study (+/- 3,100 linear feet)



= land bridge stormwater pipe (+/- 30 feet)

|             |                         |             |          |
|-------------|-------------------------|-------------|----------|
| DATE:       | 3/7/25                  | REF NUMBER: | 36772    |
| DRAWN BY:   | LAD                     | SCALE:      | As shown |
| CHECKED BY: | TAF                     | FIGURE NO:  | 1        |
| PROJECT:    | Shoreline Stabilization | SHEET       | 1 OF 1   |





"LEWES SPECIAL SCHOOL DISTRICT"

"HIGHLAND ACRES"

"LEWES SPECIAL SCHOOL DISTRICT" ("The Consortium")

DUPONT AVENUE

JOHNSON STREET

SHIPCARPENTER AVENUE STREET (PARK)

"METHODIST EPISCOPAL CHURCH OF LEWES CEMETERY"

"BEEBE HOSPITAL OF SUSSEX COUNTY, INC."

"LEWES CONVALESCENT CENTER, INC."

"LEWES CONVALESCENT CENTER, INC."

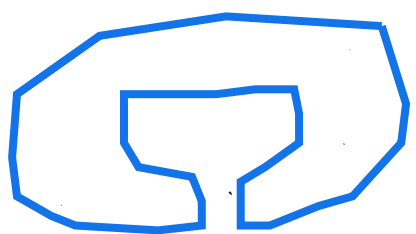
| LINE TABLE |               |          |
|------------|---------------|----------|
| LINE       | BEARING       | DISTANCE |
| L1         | N 42°48'47" W | 72.93'   |
| L2         | N 42°44'03" W | 57.20'   |
| L3         | S 43°22'10" W | 7.45'    |
| L4         | S 23°03'54" E | 20.34'   |
| L5         | N 43°02'42" E | 34.48'   |
| L6         | N 02°54'02" W | 32.25'   |

Total Area = 14.1366 Acres

11.6484 Acre Parcel  
& 2.4882 Acre Lease

Prepared for  
**CITY OF LEWES**

Located in  
CITY OF LEWES  
LEWES & REHOBOTH HUNDRED - SUSSEX COUNTY - DELAWARE  
Scale: 1" = 60' March 29, 2011



= Ordinary High Water Line (OHWL)  
(marked by Envirotech on 3/31/25)

COAST SURVEY, INC.  
Land Surveying & Planning  
P.O. Box 117  
Nassau, DE 19669  
(302) 645-7184



**Blockhouse Pond - Ordinary High Water Line**

| Point | Latitude   | Longitude   |
|-------|------------|-------------|
| 1     | 38.771563° | -75.146970° |
| 2     | 38.771242° | -75.146872° |
| 3     | 38.770964° | -75.146798° |
| 4     | 38.770741° | -75.146665° |
| 5     | 38.770591° | -75.146272° |
| 6     | 38.770723° | -75.145930° |
| 7     | 38.770957° | -75.145653° |
| 8     | 38.771446° | -75.145553° |
| 9     | 38.771774° | -75.145911° |
| 10    | 38.771835° | -75.146073° |
| 11    | 38.771626° | -75.146115° |
| 12    | 38.771305° | -75.146095° |
| 13    | 38.770975° | -75.146297° |
| 14    | 38.771249° | -75.146539° |
| 15    | 38.771807° | -75.146582° |
| 16    | 38.772132° | -75.146436° |
| 17    | 38.771951° | -75.146076° |
| 18    | 38.772242° | -75.145812° |
| 19    | 38.772559° | -75.145802° |
| 20    | 38.772679° | -75.146227° |
| 21    | 38.772631° | -75.146660° |
| 22    | 38.772393° | -75.146963° |
| 23    | 38.772163° | -75.147083° |
| 24    | 38.771878° | -75.147030° |