



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

CENAP-OPR

11 April 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-2025-00130-103

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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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, jurisdictional, Section 404

- ii. Wetland B, 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 1 acre review area is located at 0 Blackbird Station Road approximately 2.7 miles southwest of Townsend, New Castle County, Delaware (39.360912, -75.704059). The subject site is identified as Tax Parcel Number 14-019.00-107. The delineation plans entitled "Wetland Location Plan for Lands of Lot #30 – Ash Spring"; prepared by Clifton L Bakhsh, Jr., Incorporated; dated February 13, 2025; unrevised, 1 sheet, show the outlined review area of the property. A site visit was conducted April 8, 2025. The goal of the site visit was to confirm the delineation plans, specifically Wetland B required field assessment to determine any continuous surface connections to other aquatic resources. See SECTION 8(b)(1) for additional discussion regarding the jurisdiction of Wetland B.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Blackbird Creek. Blackbird Creek 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. Wetland A continues off-site to the north, where it abuts an unnamed tributary of Barlow Branch. The unnamed tributary of Barlow Branch terminates into Barlow Branch, which terminates into Blackbird Creek.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ 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):
 1. Wetland A is a 0.348 acre non-tidal forested wetland located in the north portion of the review area and continues off site to the north. From the site

⁵ 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.

⁶ 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.

visit, the unnamed tributary of Barlow Branch was visible from inside the review area. From the site visit and utilizing aerial and lidar imagery, Wetland A directly abuts the unnamed tributary of Barlow Branch outside of the review area. Utilizing aerial and lidar imagery, the unnamed tributary of Barlow Branch contains relatively permanent flow. Wetland A directly abuts an (a)(3) tributary, establishing a continuous surface connection to jurisdictional waters. Wetland A has a continuous surface connection to an (a)(3) tributary, thereby meeting the definition of an (a)(4) 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).⁷ 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. Wetland B is a 0.096 acre non-tidal forested wetland entirely within the review area. Wetland B lacks a continuous surface connection to any other aquatic resource, leaving it geographically separated. Because Wetland B does not have a continuous surface connection to an (a)(1) through (a)(3) water 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.

a. USACE site visit on April 8, 2025.

⁷ 88 FR 3004 (January 18, 2023)

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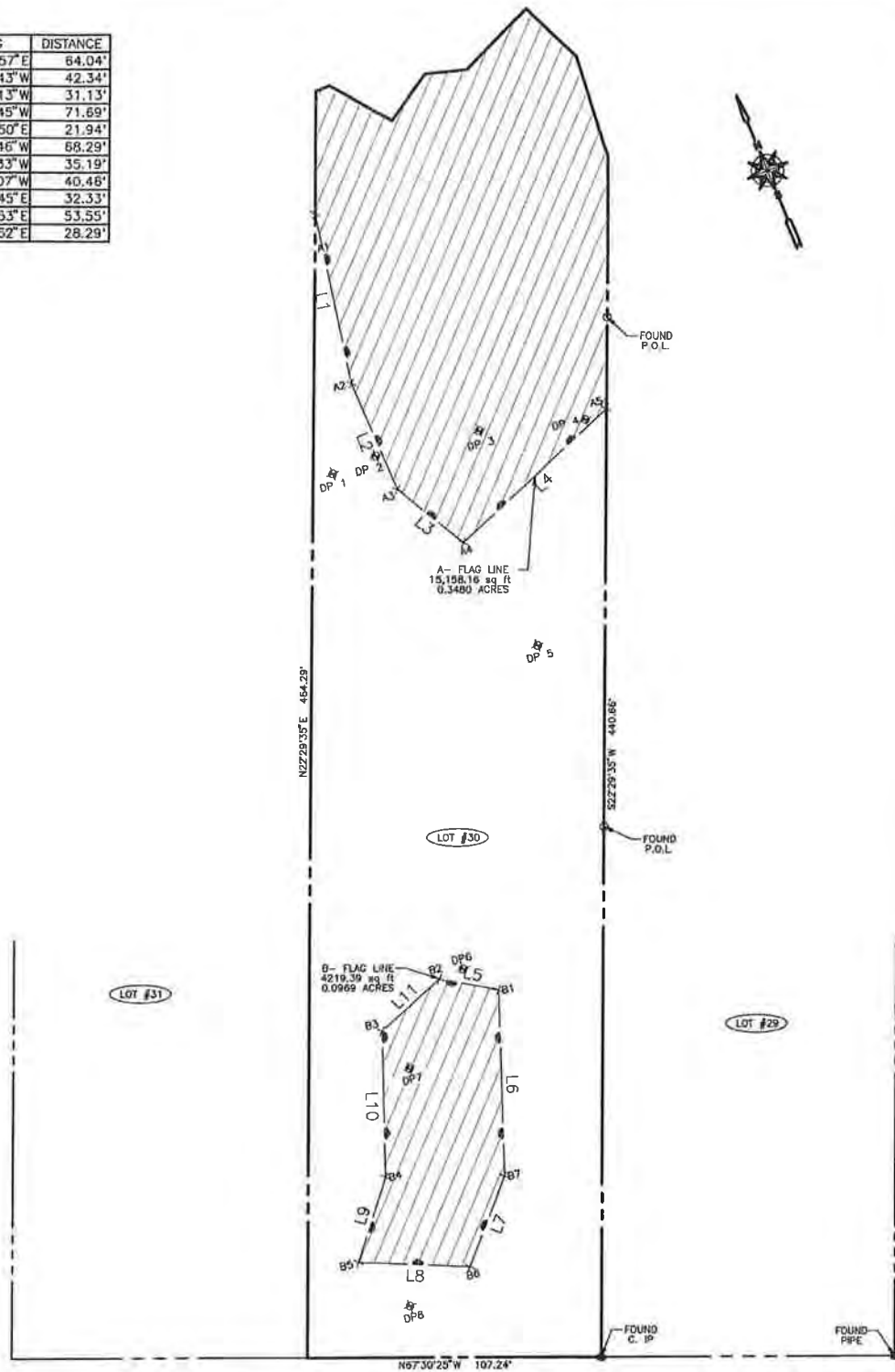
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- b. Wetland Delineation Report entitled “Wetlands Investigation and Delineation of The 0 Blackbird Station Road Site”; prepared by Environmental Consulting Services, Incorporated; dated March 27, 2025.
- c. Wetland Delineation Plan entitled “Wetland Location Plan for Lands of Lot #30 – Ash Spring”; prepared by Clifton L Bakhsh, Jr., Incorporated; dated February 13, 2025; unrevised, 1 sheet.
- d. Lidar imagery prepared by USACE National Regulatory Viewer.

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.

LINE	BEARING	DISTANCE
L1	N10°01'57"E	64.04'
L2	N01°14'43"W	42.34'
L3	N28°32'13"W	31.13'
L4	S69°11'45"W	71.69'
L5	S56°46'50"E	21.94'
L6	S20°19'46"W	68.29'
L7	S43°16'33"W	35.19'
L8	N65°08'07"W	40.46'
L9	N39°39'45"E	32.33'
L10	N20°48'53"E	53.55'
L11	N69°55'52"E	28.29'



BLACKBIRD STATION ROAD
50' WIDE R/W

WETLAND LOCATION PLAN
FOR LANDS OF
LOT #30- ASH SPRING
T.P. #14-019.00-107
PREPARED FOR
THOMAS HENRY
APPOQUINIMINK HUNDRED
NEW CASTLE COUNTY DELAWARE

Clifton L. Bakhsh, Jr., Inc.
Land Surveyors & Planners

4400 Summit Bridge Road, Middletown, DE 19709 (302) 378-8000

Date: February 13, 2025 Drawn By: C.L.B.
Scale: 1" = 40' Checked By:
Job No.: BJ - 28279

APPROVED BY: [Signature]
Sheet No. 1 of 1

Revision Date