



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

CENAP-OPR

September 15, 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-2025-00298-103

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. SUMMARY OF CONCLUSIONS.

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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- 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. W-1, 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 property is located approximately 1.23 miles northwest of the town known as Middletown, New Castle County, Delaware. The property is located at 39.459068 and -75.736609 and is identified as New Castle County Tax Parcel No. 2302400172 consisting of approximately 22.43 Acres. The limit of investigation is approximately 1.9 Acres within the property. This area consists of previously cleared land with evidence of early stages of development. Construction access roads were installed with fill stockpiles surrounded by silt fence, but no other construction has occurred. Historically, the site contained a large stormwater pond that was built between 2002 and 2007. During the construction of Rt 301 around 2017, a portion of this stormwater pond was filled in. Wetland W-1 is located in the footprint of the old stormwater pond. A wetland delineation report was compiled on July 2025, by Century Engineering. A site visit was conducted on August 28, 2025, with James Colligan – USACE and Matt Fetters – Century Engineering. The purpose of the site visit was to assess if the delineated wetland exhibited a continuous surface connection to any other aquatic resources.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Great Bohemia Creek. Great Bohemia Creek is influenced by the ebb and flow of the tide.⁵

⁵ 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. The aquatic resources on site do not flow off site. Great Bohemia Creek is approximately 1.75 miles away from the review area.
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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).⁸ 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. W-1 is a 0.44 acre non-tidal 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 W-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.

a. USACE site visit on August 28, 2025.

b. Field MFR prepared by USACE entitled “2025-00298_Field_MFR”.

c. Wetland Delineation Report entitled “Waters of the U.S. Delineation For St. John Properties Middletown Ramunno Property”; prepared by Century Engineering, dated July 2025.

d. Wetland Delineation Plan entitled “St. John Properties – Middletown Metes & Bounds Map”; prepared by Century Engineering; dated August 2025; unrevised; 1 sheet.

⁸ 88 FR 3004 (January 18, 2023)

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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.

LEGEND

LIMITS OF INVESTIGATION

PFO WETLAND

SITE DATA:
TOTAL PARCEL SIZE = 22.43 +/- AC

NON-FEDERALLY REGULATED WETLANDS
TOTAL PFO = 0.4454 +/- AC
TOTAL WETLANDS = 0.4454 +/- AC

Approximate Area: 0.4454 AC

Flag ID	Longitude (DD)	Latitude (DD)
1	-75.738694	39.460218
2	-75.738623	39.460373
3	-75.738564	39.460499
4	-75.738564	39.46055
5	-75.73849	39.46059
6	-75.738422	39.46063
7	-75.738342	39.46061
8	-75.73829	39.46056
9	-75.738156	39.46042
10	-75.738068	39.46031
11	-75.73812	39.46019
12	-75.738155	39.46020
13	-75.73827	39.46017
14	-75.738342	39.46011
15	-75.738432	39.46008
16	-75.738548	39.46004
17	-75.738646	39.45999
18	-75.738717	39.45992
19	-75.738756	39.45991
20	-75.738813	39.45991
21	-75.738856	39.45994
22	-75.738780	39.46005



NOTES:

1. BASE MAPPING OBTAINED FROM FIRSTMAP.

2. LIMITS OF WETLAND AND STREAMS DEPICTED ON THIS MAP WERE SURVEYED BY CENTURY.

3. WETLANDS ARE DELINEATED IN ACCORDANCE WITH THE ROUTINE DETERMINATION FOR AREAS LARGER THAN FIVE (5) ACRES AS OUTLINED IN THE 1987 U.S. ARMY CORPS OF ENGINEERS WETLAND DELINEATION MANUAL. OTHER WATERS OF THE U.S. & DELAWARE ARE DELINEATED BASED ON THE PRESENCE OF AN ORDINARY HIGH WATER MARK, AS IDENTIFIED BY THE U.S. ARMY CORPS OF ENGINEERS DEFINITION OF WATERS OF THE U.S.

CENTURY
ENGINEERING
A Kleinfelder Company

550 Bay Road | Dover, DE 19901 | P: 302.734.9188

ST. JOHN PROPERTIES - MIDDLETOWN
METES & BOUNDS MAP
NEW CASTLE COUNTY, DELAWARE

1 inch = 50 feet

Project Manager:	AS
Drawn:	MF
Job Number:	25003153.001A
Date:	August 2025