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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): CENAP-OP-R-2018-695-85 Schooner Landing Polly Branch SX

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Delaware

County/parish/borough: Sussex

City: Selbyville

Center coordinates of site (lat/long in degree decimal format): Lat. 38.461151 N, Long. 75.202155 W.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: 08-JAN-2019 Field Date(s): 04-SEPT-2018.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Wetland Delineation Plan for Schooner Landing, prepared by Geo-Technology Associates, Incorporated, dated July 19, 2018, revised August 21, 2018 and January 8, 2019.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: WETLAND DELINEATION REPORT SCHOONER LANDING SUSSEX COUNTY, DELAWARE, dated July 19, 2018.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date: 1" = 2000'; Selbyville, Delaware.

USDA NRCS Soil Survey. Citation: USDA Natural Resource Conservation Service Web Soil Survey.

USFWS National Wetlands Inventory maps. Citation: USFWS National Wetland Inventory Wetland Map..

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation: FEMA Firmette Map, No. 10005C629J.

Photographs: Aerial. Citation: Delaware Firstmap, 2017. or Other. Citation: Site photos taken in January 2018.

LiDAR data/maps. Citation:

- Previous JDs. File no. and date of JD letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

- (a)(3): The territorial seas.

- **Complete Table 3 - Required**

- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

- Bordering/Contiguous.

Neighboring:

- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

(b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

(b)(2): Prior converted cropland.

(b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

(b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

(b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

(b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹

(b)(4)(iv): Small ornamental waters created in dry land.¹

(b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

(b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹

(b)(4)(vii): Puddles.¹

(b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹

(b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹

(b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The SPOE watershed has been identified based off of the best available information in ORM utilizing the JD Viewer (see attached maps). The SPOE watershed encompasses approximately 7,314 Acres and flows towards the Atlantic Ocean via the Bisopville Prong to the St. Martin River to the

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Isle of Wight Bay in Ocean City, Maryland. Only 2 other wetlands (circled in orange on the attached map) were identified with the same SVL as the subject wetlands (wetlands 5 and 6). All other wetlands identified within the SPOE are adjacent or appear to have surface connections via ditches.

Wetlands 5 and 6 are geographically-isolated and do not significantly affect the chemical, physical, or biological integrity of downstream navigable water. Both wetlands are isolated hydrogeomorphic flat systems surrounded by generally flat upland wooded areas, so they do not appear to receive significant sediment loads or contribute to downstream sediment export. Additionally, given the relatively undisturbed surrounding land-use and landscape position of these two wetlands, they do not appear to receive or sequester excess nutrients or pollutants.

According to the FEMA Flood Insurance Rate Map (10005C0629J, effective January 6, 2005), neither of the wetlands are located within a mapped 100-Year or 500-Year floodplain. Both wetlands are approximately 1,700 feet from the nearest 100-year floodplain; and, therefore, these wetlands do not appear to attenuate or retain floodwaters. Based on the contour dataset provided by the State of Delaware, these wetlands are near the uppermost reach of the subwatershed and likely do not receive significant amounts of overland flow during rain events, thus preventing the opportunity to desynchronize floodwaters and store runoff during storm events.

Both wetlands appear to be intermittently- or temporarily-flooded systems and lack a discrete depression-shape or evidence of prolonged surface water. These wetlands are also geographically isolated and do not have an outlet or drainageways to waters of the U.S. As such, these wetlands do not appear to significantly contribute to downstream navigable waters, either through surface or subsurface flow and recharge. Provided the short hydroperiods of these two wetlands, they do not appear to retain surface water sufficient for macroinvertebrates and other wildlife to complete their aquatic life stages. According to Hosen et al. (2017), the ability for a wetland to export dissolved organic matter in a wooded landscape is significantly dependent on surface connections. As mentioned above, a surface connection was not observed for Wetlands 5 and 6 to tributaries and other Waters of the U.S. Given the short hydroperiod and the lack of surface connections to Waters of the U.S., it also appears as though these wetlands do not contribute an export of food resources to downstream navigable water.

Ditches D, E and F appear to be agricultural drainage ditches. These ditches are at the top of the watershed and therefore, only receive minimal water input from rain events. These ditches did not exhibit consistent bed and banks and ordinary high water marks. Furthermore, these ditches appear to be excavated wholly from uplands and drain only uplands.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
Waters A	Intermittent	Polly Branch	No	Waters A > Polly Branch > Sandy Branch > Bishopville Prong > Saint Martin River > Assawoman Bay
Waters B	Perennial	Polly Branch	No	Waters A > Polly Branch > Sandy Branch > Bishopville Prong > Saint Martin River > Assawoman Bay
Waters C	Perennial	Polly Branch	No	Waters A > Polly Branch > Sandy Branch > Bishopville Prong > Saint Martin River > Assawoman Bay

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Wetland 1	Waters A	Directly abuts intermittent Waters of the U.S.
Wetland 2	Polly Branch	Directly abuts perennial Waters of the U.S.
Wetland 3	Waters C/Polly Branch	Directly abuts perennial Waters of the U.S.
Wetland 4	Waters C	Directly abuts perennial Waters of the U.S.

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
SPOE A	Wetland 5	Bishopville Prong	This wetland is outside of the 100-year floodplain, and is located approximately 665 from the nearest non-tidal tributary Waters of the U.S., Waters A. As such it does not meet the requirements for the “bordering”, “contiguous”, or “neighboring” components of the adjacent definition. See attached SPOE watershed and similarly situated discussion in Section D. ADDITIONAL COMMENTS TO SUPPORT AJD.
SPOE A	Wetland 6	Bishopville Prong	This wetland is outside of the 100-year floodplain, and is located approximately 495 from the nearest non-tidal tributary Waters of the U.S., Waters A. As such it does not meet the requirements for the “bordering”, “contiguous”, or “neighboring” components of the adjacent definition. See attached SPOE watershed and similarly situated discussion in Section D. ADDITIONAL COMMENTS TO SUPPORT AJD.

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
Ditch D	Did not exhibit consistent bed and banks, consistent ordinary high water marks, were excavated from uplands, and wholly drain uplands
Ditch E	Did not exhibit consistent bed and banks, consistent ordinary high water marks, were excavated from uplands, and wholly drain uplands
Ditch F	Did not exhibit consistent bed and banks, consistent ordinary high water marks, were excavated from uplands, and wholly drain uplands

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A