



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 9/30/2020

ORM Number: CENAP-OP-R-2017-00093-24

Associated JDs: N/A

Review Area Location¹: State/Territory: NJ City: Middle Twp. County/Parish/Borough: Cape May

Center Coordinates of Review Area: Latitude 39.084184° Longitude -74.812258°

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
Crooked Creek	1.045	acre(s)	RHA Tidal water is subject to the ebb and flow of the tide	Crooked Creek is subject to the ebb and flow of the tide, with an indicated MHWL at elevation 1.50 feet NAVD 88. The survey indicates that 1.045 acres of this open, non-vegetated channel (below the MHWL) is present within the property boundaries.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland A	3.834	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland A is tidal marsh, contiguous with and abutting the open tidal waters of Crooked Creek, with 3.834 acres of the vegetated wetland present within the property according to the survey. The limit of this wetland area extends from the open water channel of Crooked Creek to the HTL on the embankment between the wetland and the forested uplands. The high tide line (HTL) is indicated on the property survey at elevation 2.92 feet NAVD 88. Since wetland line WA is slightly landward of the indicated HTL (or virtually identical), it represents the landward extent of Section 404 jurisdiction for this wetland that abuts Crooked Creek.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland B	0.979	acre(s)	(b)(1) Non-adjacent wetland.	Wetland B is a 0.979-acre, man-made (excavated), depressional wetland, roughly 80-120 feet wide and about 500 feet long. Much of it is dominated mainly by Phragmites australis, with some trees, shrubs and green briar (Smilax) around the outer (higher) portion. Some portions were ponded, mainly in the center lower portions (March 2017). At its closest point, it is about 130 feet from the HTL, and about 300 feet from the MHWL of Crooked Creek. There is an upland break, approximately 50-60 feet wide, between this wetland and Phragmites-dominated wetlands that are contiguous with the tidal wetlands (off-property), which abut Crooked Creek. The break between the two wetlands is very subtle, with probably a foot or so of elevation rise between the two wetlands. However, in order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach more than 2 feet above the HTL (or highest annual spring high tide) in order to flood this wetland, which does not abut Crooked Creek. As such, this wetland would not be expected to be flooded from Crooked Creek in a typical year, and it is not adjacent.
Wetland C	0.268	acre(s)	(b)(1) Non-adjacent wetland.	Wetland C is a man-made (excavated) depressional wetland that is 0.268 acre in size. It is roughly 90-100 feet wide by about 150 feet long. It is about 45 feet from the HTL, and about 100 feet from the MHWL of Crooked Creek at its closest point. It is separated from the tidal marsh by at least 35 feet of uplands, which are up to about 3 feet higher than the HTL (or highest annual spring high tide). It is dominated by trees (including red maple, Acer rubrum) and shrubs

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			(including highbush blueberry, <i>Vaccinium corymbosum</i>) with a scrubby, tangled understory including green briar (<i>Smilax</i>). In order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach approximately 3 feet above the HTL in order to flood this wetland, which does not abut Crooked Creek. As such, this wetland would not be expected to be flooded from Crooked Creek in a typical year, and it is not adjacent.
Wetland D	0.022	acre(s)	(b)(1) Non-adjacent wetland. Wetland D (0.022 acre) is a man-made (excavated) depressional wetland, which has some trees but not much shrubby understory. It is roughly 25 by 40 feet in size. It is about 30 feet from the HTL, and about 125 feet from the MHWL of Crooked Creek at its closest point. It is separated from the tidal marsh by at least 20 feet of uplands, which are up to about 3 feet higher than the HTL (or highest annual spring high tide). In order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach approximately 3 feet above the HTL in order to flood this wetland, which does not abut Crooked Creek. As such, this wetland would not be expected to be flooded from Crooked Creek in a typical year, and it is not adjacent.
Wetland H	0.031	acre(s)	(b)(1) Non-adjacent wetland. Wetland H (0.031 acre) is a man-made (excavated) depressional wetland, that is about 20-30 feet wide, and about 60 feet long. It abuts a retaining wall on the developed property. It has some trees, shrubs and green briar (<i>Smilax</i>), and a small area of standing water. It is about 485 feet from the HTL (highest annual spring high tide), and about 550 feet from the MHWL of Crooked Creek. There are about 500 feet of intervening uplands between this wetland and the tidal marsh system, including the developed portion of the property. Those uplands are up to 7-8 feet higher in elevation than the wetland (and up to 8-9 feet above the tidal marsh). In order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach at least 5-6 feet above the HTL in order to flood this wetland, which does not abut Crooked Creek. As such, this wetland would not be expected to be flooded from Crooked Creek in a typical year, and it is not adjacent.
Wetland I	0.072	acre(s)	(b)(1) Non-adjacent wetland. Wetland I (0.072 acre) is a man-made (excavated) depressional wetland, roughly 60 by 70 feet in size. It is separated from Wetland B by a narrow (5-10 feet wide) berm. The lowest portions (in the center) were ponded, with some trees, shrubs, green briar (<i>Smilax</i>) and <i>Phragmites</i> around the outer portion. It is about 650 feet from the HTL (or highest annual spring high tide), and about 725 feet from the MHWL of Crooked Creek. There are over 600 feet of intervening uplands between this wetland and the tidal marsh



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			system. Those uplands are up to 4-5 feet higher in elevation than the wetland (and up to 5-6 feet above the tidal marsh). In order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach approximately 3 feet above the HTL (or highest annual spring tide) in order to flood this wetland, which does not abut Crooked Creek. As such, this wetland would not be expected to be flooded from Crooked Creek in a typical year, and it is not adjacent.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: Original delineation report submitted under a letter from Lomax Consulting Group dated 02-MAR-2017, with their data sheets dated 24-JAN-2011. This was in support of our previous Approved Jurisdictional Determination (AJD) dated 17-AUG-2018. A request for reconsideration of that AJD was received under a letter from Lomax Consulting Group dated 02-JUL-2019, with additional data sheets dated 21-MAY-2019. No new data sheets or delineation documentation necessary for the current AJD, as there are no changes to the delineated wetland limits. Rather, this is a re-issuance and revision as per the NWPR rule and associated guidance, which took effect subsequent to the previously issued AJDs for this property.

This information is sufficient for purposes of this AJD.

Rationale: N/A.

- Data sheets prepared by the Corps: N/A.
- Photographs: Aerial and Other: Google Earth and ground photos during inspections.
- Corps site visit(s) conducted on: 30-MAR-2017 and 17-JUL-2019 (in support of referenced prior AJDs).
- Previous Jurisdictional Determinations (AJDs or PJDs): CENAP-OPR-2017-00093-24; two (2) prior AJDs issued for this property (17-AUG-2018 and 30-AUG-2019).
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Cape May County, Sheet 101
- USFWS NWI maps: U.S. FWS web site
- USGS topographic maps: Stone Harbor, NJ, 1:24000

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): N/A



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- C. Additional comments to support AJD:**
1. This Memorandum for Record (MFR) is to supplement the two (2) previous decision documentation MFRs by this office dated 10 May 2018 and 18-JUL-2019. The first MFR was in support of an approved jurisdictional determination (AJD) under Rapanos/SWANCC dated 17 August 2018. That memo is incorporated by reference with respect to the property identification and location, background information, basic observations during a previous site inspection (30 March 2017), and sizes and descriptions of previously delineated (and verified) wetlands on the property. The second MFR was in support of an AJD re-verification dated 30 August 2019 under the 2015 Clean Water Rule. That memo is also incorporated by reference with respect to observations and findings during a second site inspection (17 July 2019).

 2. As part of the AJD verified on 30 August 2019, Wetlands H and I, which were previously determined to be isolated “SWANCC” wetlands, were determined to be regulated Waters of the U.S. pursuant to the 2015 Clean Water Rule, along with the tidal waters of Crooked Creek, tidal Wetland A, and nontidal Wetlands B, C and D.

 3. In addition to the change in status of Wetlands H and I under the 2015 Clean Water Rule, the applicant had requested reconsideration on previously delineated wetlands E, F and G. They provided additional soil documentation. Based on the information provided by the consultant and our observations on 17 July 2019, this office concurred that the three previously-delineated wetlands in question (E, F and G) did not meet the criteria for a wetland under the 1987 Delineation Manual (Atlantic and Coastal Plain Supplement), and the NRCS Field Indicators of Hydric Soils.

 4. In a letter dated 16 September 2020, received by e-mail the same date, the applicant’s consultant requested a revision and re-issuance of the AJD under the 2020 Navigable Waters Protection Rule (NWPR), which took effect 22 June 2020 (i.e. subsequent to the latest AJD issued for this property).

 5. Under the NWPR, there is no change in status for the tidal waters of Crooked Creek and the abutting, tidal wetlands (i.e. Wetland A). These remain Waters of the U.S. Crooked Creek is subject to the ebb and flow of the tide, with a mean high water line. As such, these waters are regulated pursuant to 33 CFR 328.3(a)(1). Wetland A abuts Crooked Creek, with no breaks between the two. As such, these wetlands are adjacent to Crooked Creek and are regulated pursuant to 33 CFR 328.3(a)(4).

 6. In the most recent AJD issued 30 August 2019, Wetlands B, C, D, H and I were determined to be adjacent to Crooked Creek, and thus regulated as Waters of the U.S. These wetlands have now been reviewed pursuant to the NWPR and associated guidance on wetland adjacency received from our Headquarters. These wetlands (B, C, D, H and I) are situated within the 100-year flood plain (1 percent chance of flooding in a given year). However, none of these wetlands abut Crooked Creek (or any other water body). There are intervening uplands between each of these wetlands and the tidal wetlands (Wetland A). These intervening uplands range from approximately 2 feet to as much as 6 feet above the elevation of the high tide line (HTL), which represents the highest of all the predicted spring high tides for the year. The HTL coincides closely with the edge of Wetland A, and it is approximately 1.5 feet above the MHWL. In order to be flooded from Crooked Creek, such a storm surge or flood waters would have to reach several



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feet above the HTL in order to flood these wetlands, which do not abut Crooked Creek. As such, these wetlands (B, C, D, H and I) would not be expected to be flooded from Crooked Creek in a typical year, and they are not adjacent to (a)(1) waters. Therefore, these wetlands are not regulated as Waters of the U.S. under the NWPR.

Waters_Name	Latitude	Longitude	Waters Size	Type Of Aquatic Res	Geographic Auth
2017-93 Wetland A Tidal	39.08503	-74.8112	3.834 ACRES	A4WETABUT	Section 404
2017-93 Wetland B Isolated	39.08391	-74.8099	.979 ACRES	B1WETNONADJ	None
2017-93 Wetland C Isolated	39.08483	-74.8105	.268 ACRES	B1WETNONADJ	None
2017-93 Wetland D Isolated	39.08486	-74.81	.022 ACRES	B1WETNONADJ	None
2017-93 Wetland H Isolated	39.08362	-74.8112	.031 ACRES	B1WETNONADJ	None
2017-93 Wetland I Isolated	39.08327	-74.8105	.072 ACRES	B1WETNONADJ	None
2017-93 Crooked Creek	39.0854	-74.8113	1.045 ACRES	A1TNW10	Section 10/404

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WA:

COURSE	BEARING	DISTANCE
ℓ TO WA-4	S 71° 48' 12" E	23.84'
WA-4 TO WA-5	S 85° 13' 15" E	30.31'
WA-5 TO WA-6	N 47° 22' 06" E	68.28'
WA-6 TO WA-7	N 48° 41' 21" E	56.89'
WA-7 TO WA-8	N 53° 42' 27" E	88.32'
WA-8 TO WA-9	N 66° 31' 11" E	52.54'
WA-9 TO WA-10	N 84° 33' 27" E	53.13'
WA-10 TO WA-11	S 84° 39' 54" E	47.92'
WA-11 TO WA-12	N 68° 48' 21" E	70.80'
WA-12 TO WA-13	N 64° 07' 15" E	78.72'
WA-13 TO WA-14	N 78° 43' 12" E	70.28'
WA-14 TO WA-15	S 53° 03' 12" E	56.97'
WA-15 TO WA-16	S 84° 21' 13" E	71.45'
WA-16 TO WA-17	N 86° 48' 40" E	89.31'
WA-17 TO WA-18	S 77° 32' 26" E	69.30'
WA-18 TO WA-19	S 75° 29' 47" E	71.83'
WA-19 TO WA-20	S 77° 04' 55" E	62.84'
WA-20 TO WA-21	S 69° 30' 07" E	66.75'
WA-21 TO WA-22	S 40° 46' 11" E	31.26'
WA-22 TO WA-23	S 11° 57' 15" E	38.11'
WA-23 TO WA-24	S 68° 58' 25" E	64.74'
WA-24 TO WA-25	S 52° 53' 48" E	43.36'
WA-25 TO WA-26	S 24° 36' 43" E	72.96'
WA-26 TO ℓ	S 25° 31' 47" E	13.45'

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WB:

COURSE	BEARING	DISTANCE
WB-1 TO WB-2	N 60° 54' 41" W	50.78'
WB-2 TO WB-3	S 40° 46' 51" W	72.07'
WB-3 TO WB-4	S 41° 31' 07" W	48.51'
WB-4 TO WB-5	N 27° 59' 43" W	47.22'
WB-5 TO WB-6	S 86° 33' 54" W	22.78'
WB-6 TO WB-7	S 32° 35' 14" W	58.93'
WB-7 TO WB-8	S 50° 22' 20" W	17.66'
WB-8 TO WB-9	N 77° 19' 02" W	24.39'
WB-9 TO WB-10	S 03° 59' 43" W	46.39'
WB-10 TO WB-11	S 38° 20' 48" E	35.80'
WB-11 TO WB-12	S 38° 22' 27" W	10.55'
WB-12 TO WB-13	N 44° 10' 54" W	34.42'
WB-13 TO WB-14	N 52° 14' 35" W	27.34'
WB-14 TO WB-15	S 48° 30' 28" W	57.11'
WB-15 TO WB-16	S 18° 40' 28" W	81.78'
WB-16 TO WB-17	S 42° 26' 09" W	50.56'
WB-17 TO WB-18	S 40° 32' 41" W	29.42'
WB-18 TO WB-19	S 36° 54' 33" E	34.78'
WB-19 TO WB-20	S 58° 46' 48" E	31.38'
WB-20 TO WB-21	S 71° 47' 41" E	16.90'
WB-21 TO WB-22	N 55° 27' 00" E	23.27'
WB-22 TO WB-23	N 41° 07' 21" E	73.73'
WB-23 TO WB-24	N 21° 54' 17" E	29.81'
WB-24 TO WB-25	N 37° 55' 54" E	77.58'
WB-25 TO WB-26	N 61° 20' 34" E	88.66'
WB-26 TO WB-27	N 48° 34' 29" E	61.11'
WB-27 TO ℓ	N 49° 18' 59" E	47.49'
ALONG ℓ	N 45° 10' 00" E	23.02'
ℓ TO WB-29	N 43° 56' 19" E	40.22'
WB-29 TO WB-1	N 02° 05' 20" W	30.30'

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WC:

COURSE	BEARING	DISTANCE
WC-1 TO WC-2	S 52° 23' 21" E	55.47'
WC-2 TO WC-3	N 67° 56' 17" E	47.14'
WC-3 TO WC-4	S 61° 05' 10" E	36.43'
WC-4 TO WC-5	N 37° 44' 57" E	40.51'
WC-5 TO WC-6	N 20° 39' 26" E	47.01'
WC-6 TO WC-7	N 28° 17' 26" W	25.73'
WC-7 TO WC-8	N 84° 40' 26" W	40.82'
WC-8 TO WC-9	S 85° 25' 44" W	28.61'
WC-9 TO WC-10	S 32° 21' 34" W	16.68'
WC-10 TO WC-11	S 53° 49' 30" W	23.69'
WC-11 TO WC-12	N 41° 28' 51" W	24.27'
WC-12 TO WC-13	S 59° 43' 48" W	34.11'
WC-13 TO WC-1	S 08° 36' 36" W	39.79'

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WD:

COURSE	BEARING	DISTANCE
WD-1 TO WD-2	S 69° 20' 08" E	28.85'
WD-2 TO WD-3	N 41° 08' 14" E	16.95'
WD-3 TO WD-4	N 39° 58' 10" W	26.21'
WD-4 TO WD-5	S 88° 04' 50" W	27.58'
WD-5 TO WD-1	S 16° 02' 20" E	22.63'

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WH:

COURSE	BEARING	DISTANCE
WH-1 TO WH-2	S 27° 10' 25" W	36.51'
WH-2 TO ℓ	S 45° 17' 05" W	26.50'
ALONG ℓ	S 44° 50' 00" E	16.24'
ℓ TO WH-5	N 56° 23' 15" E	42.79'
WH-5 TO WH-6	N 30° 15' 21" E	11.08'
WH-6 TO WH-1	N 30° 16' 59" W	34.03'

BEARINGS AND DISTANCES TO POINTS ALONG WETLANDS LINE WI:

COURSE	BEARING	DISTANCE
WI-1 TO WI-2	S 52° 29' 59" W	16.81'
WI-2 TO WI-3	S 17° 32' 50" E	22.99'
WI-3 TO ℓ	S 36° 17' 59" W	5.89'
ALONG ℓ	S 44° 50' 00" E	56.32'
ℓ TO WI-8	N 59° 05' 12" E	13.66'
WI-8 TO WI-9	N 40° 01' 03" E	44.31'
WI-9 TO WI-10	N 70° 04' 26" W	38.40'
WI-10 TO WI-1	N 56° 06' 11" W	40.87'

USACOE WETLANDS PLAN

PREPARED BY:  MARK J. GIBSON LICENSED PROFESSIONAL LAND SURVEYOR N.J.P.L.S. LICENSE No. 32115	 GIBSON ASSOCIATES, P.A. CONSULTING ENGINEERS AND SURVEYORS 522 SEA ISLE BOULEVARD OCEAN VIEW, NEW JERSEY 08230 (609) 624-1944				
		PLAN OF SURVEY LOT 28, BLOCK 132.01 MIDDLE TOWNSHIP CAPE MAY COUNTY, NEW JERSEY			
DATE: 08-20-19 REVISIONS:	REV. PER COMMENTS FROM LOMAX DATED 07-17-19 AND 08-19-19	DRAWN: JJS CHECKED: WPF/MJG	DATE: 07-12-18 SCALE: NONE	SHEET 2 OF 2	DWG. No. 3237-20

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