



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

July 17, 2023

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination NAP-2023-00744-103
Pepper Road Property SX
Center coordinates (38.514369°, -75.224228°)

Bobby Horsey
Double H Development
28107 Beaver Dam Branch Road
Laurel, Delaware 19956

Dear Mr. Horsey:

This Approved Jurisdictional Determination (AJD) is provided in response to your request on July 7, 2023 for a determination of Federal jurisdiction by this office. The site associated with your request is located northeast of Pepper Road, Sussex County Tax Parcels 5-33-1.00-38.00, 5-33-4.00-28.00, and 5-33-4.00-28.01 in Frankford, Sussex County, Delaware.

The findings of this AJD are documented in the **enclosed** AJD Form. The findings are also depicted on the **enclosed** plan(s) identified as "Jurisdictional Determination Plan Pepper Road Property"; prepared by Geo-Technology Associates, Incorporated; dated June 23, 2023; revised July 7, 2023 & July 17, 2023; 1 sheet.

A Department of the Army permit is required for work or structures in "navigable waters of the United States" pursuant to Section 10 the Rivers and Harbors Act (RHA) of 1899 and the discharge of dredged or fill material into "waters of the United States" pursuant to Section 404 of the Clean Water Act (CWA). Any proposal to perform these activities within areas of Federal jurisdiction requires prior approval by this office.

Food Security Act statement: The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This AJD is valid for a period of five (5) years. This AJD is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify this AJD at any time should the existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete or inaccurate.

You may request an administrative appeal of this AJD if you **do not** accept this determination. **Enclosed** you will find a combined Notification of Appeal Process (NAP) and Request for Appeal (RFA) form. Should you wish to appeal this determination, you must submit a completed RFA form to the North Atlantic Division Office within 60 days of the date on the form. Additionally, for the appeal to be accepted, the Corps must determine that it is complete and that it meets the criteria for appeal under 33 CFR Part 331.5. The form should be submitted to Andrew Dangler, Regulatory Program Manager, at Andrew.C.Dangler@usace.army.mil. If you do not have the means to submit this form electronically, you may send it by mail to the Division office at:

US Army Corps of Engineers North Atlantic Division
Attn: Andrew Dangler (CENAD-PD-OR)
Fort Hamilton Military Community
301 John Warren Avenue, First Floor
Brooklyn, NY 11252-6700

If you have any questions regarding this matter, please contact James A. Colligan at 302-518-9480 or James.A.Colligan@usace.army.mil.

Sincerely,

Todd A. Hoernemann
Chief, Applications Section I

Enclosures

cc:
Matthew Janettee, Geo-Technology Associates, Incorporated
Wetlands and Waterways Section, DDNREC
Sussex County Conservation District
Wetlands Branch, USEPA Region II



US ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
2023 RULE

OMB Control Number: 0710-0024
Expiration Date: 09/30/2023

AGENCY DISCLOSURE NOTICE

The public reporting burden for this collection of information, 0710-0024, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): July 17, 2023

ORM Project Name: Pepper Road Property SX

ORM Identification Number: NAP-2023-00744-103

Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).

Associated JD Names and Numbers: N/A

Review Area Location: State/Territory: DE City: Frankford

County/Parish/Borough: Sussex County

Center Coordinates of Review Area: Latitude: 38.514369°N, Longitude: -75.224228°W

Limits of review area: See Attached Map

II. SUMMARY²

Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area). Rationale: N/A

There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).

There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).

Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

¹ The final rule "Revised Definition of 'Waters of the United States'" (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See <https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states>.

² Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.



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III. FINDINGS IN THE REVIEW AREA

A. Jurisdictional under the Rivers and Harbors Act of 1899³ (Section 10)⁴

Section 10 Waters		
Section 10 water name	Section 10 size in review area	Type of Section 10 water
N/A	N/A	N/A
Rationale for determination: N/A		

B. Jurisdictional under the Clean Water Act

Paragraph (a)(1) waters: ⁵ Waters which are: (i) Currently used, or 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); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands		
(a)(1) water name	(a)(1) size in review area	Type of paragraph (a)(1) water
N/A	N/A	N/A
Rationale for determination: N/A		

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)		
(a)(2) water name	(a)(2) size in review area	Type of paragraph (a)(2) water
N/A	N/A	N/A
Rationale for determination: N/A		

Paragraph (a)(3) waters: Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or		
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³ If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form 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 procedure 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 Rivers and Harbors Act.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

⁵ A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)		
(a)(3) water name	(a)(3) size in review area	Type of paragraph (a)(3) water
N/A	N/A	N/A
Rationale for determination: N/A		

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)		
(a)(4) water name	(a)(4) size in review area	Adjacency criteria
N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A	
Rationale for determination: N/A		

Paragraph (a)(5) waters: Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1) ⁶		
(a)(5) water name	(a)(5) size in review area	Type of paragraph (a)(5) water
N/A	N/A	N/A
Rationale for determination: N/A		

⁶ In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.



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C. Waters or features that are not jurisdictional under the Clean Water Act

Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional: Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)		
Water name	Water size in review area	Type of water for which significant nexus was not met
N/A	N/A	N/A
Rationale for determination: N/A		

(b)(1)-(b)(8) Excluded Features⁷		
Excluded feature name	Excluded feature size in review area	Exclusion ⁸
Agricultural Ditch A	10000 feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water (Excluded)
Rationale for determination: The agricultural ditches were excavated in uplands and drain only uplands. The ditches are ephemeral in nature and only hold water in response to rain events.		
Agricultural Ditch B	2000 feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water (Excluded)
Rationale for determination: The agricultural ditches were excavated in uplands and drain only uplands. The ditches are ephemeral in nature and only hold water in response to rain events.		

IV. SUPPORTING INFORMATION

A. Paragraph (a)(1) water that is outside the review area:

- a. Provide the name of the paragraph (a)(1) water: N/A
- b. Type of paragraph (a)(1) water: N/A.
- c. Provide the rationale for jurisdiction of the paragraph (a)(1) water: N/A

B. Significant nexus analyses

- Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).

⁷ Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

⁸ Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.



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- Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).
- There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

C. Data, models, and other relevant methods Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

X Aquatic resources delineation submitted by, or on behalf of, the requestor: "Jurisdictional Determination Plan Pepper Road Property"; prepared by Geo-Technology Associates, Incorporated; dated June 23, 2023; revised July 7, 2023 & July 17, 2023; 1 sheet.

The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD

Rationale: N/A

- Aquatic resources delineation prepared by the USACE: N/A
- Wetland field data sheets prepared by the USACE: N/A
- OHWM data sheets prepared by the USACE: N/A
- USACE site visit: Date(s) of site visit(s): N/A
- Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: N/A

X Photographs: Appendix C, 12 Photographs, dated May 2022.

X Aerial Imagery: 2022 Aerial Imagery Pepper Road Property, dated May 15, 2023.

LiDAR: N/A

X USDA NRCS Soil Survey: Soil Survey Map Pepper Road Property, dated May 15, 2023.

X USFWS NWI maps: NWI Wetlands Map Pepper Road Property, dated May 15, 2023.

X USGS topographic maps: USGS Topographic Map Pepper Road Property, Dated May 15, 2023.

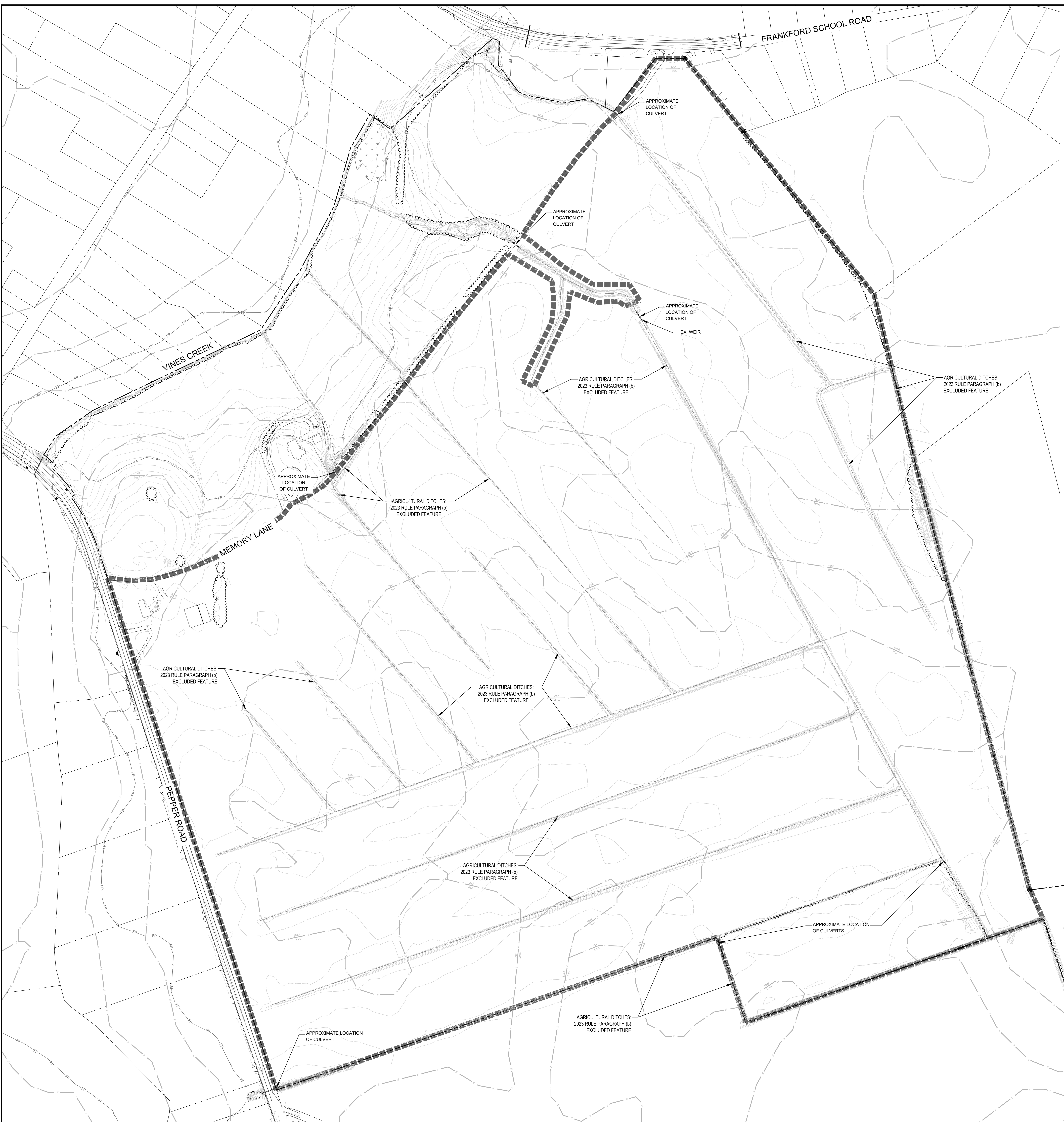
- USGS NHD data/maps: N/A
- USGS Dynamic Surface Water Extent: N/A
- Section 10 navigability resource used: N/A

Other data sources or models used to aid in this determination:

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	N/A
USEPA Sources	N/A
USDA Sources ⁹	N/A
NOAA Sources	N/A
USACE Sources	N/A
State/Local/Tribal Sources	N/A
Other Sources	N/A

D. Additional comments to support AJD: N/A

⁹ Including Certified Wetland Determination from the NRCS.



LEGEND

- J.D. REVIEW AREA
- ▬ SUBJECT SITE
- ▬ ADJACENT PROPERTY BOUNDARIES
- ▬ EX. 1-FOOT CONTOUR
- ▬ EX. PAVING/GRAVEL
- ▬ EX. FENCE
- ▬ EX. SOIL BOUNDARY
- ▬ EX. TREELINE
- ▬ PREVIOUSLY DELINEATED PERENNIAL STREAM
- ▬ PREVIOUSLY DELINEATED PERENNIAL DITCH
- ▬ EX. AGRICULTURAL DITCH
- ▬ PREVIOUSLY DELINEATED NONTIDAL WETLAND

UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, SUSSEX COUNTY, DELAWARE, SOIL SURVEY DATA VERSION 23, DATED SEPTEMBER 14, 2022.
 7.5 MINUTE TOPOGRAPHIC MAP SHEET 18010, DATED 2011.

VICINITY MAP
SCALE: 1" = 2,000'

GENERAL INFORMATION

1. LOCATION: NORTHEAST OF PEPPER ROAD AND SOUTH OF FRANKFORD SCHOOL ROAD IN THE FRANKFORD AREA OF SUSSEX COUNTY, DELAWARE.
1. PLAN PREPARED FOR: DOUBLE H DEVELOPMENT 28157 BEAVER DAM BRANCH ROAD LAUREL, DELAWARE 19956 ATTN: MR. BOBBY HORSEY
2. PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA) 3445-A BOX HILL CORPORATE CENTER DRIVE ABINGDON, MARYLAND 21009 ATTN: MR. MATTHEW JENNETTE
3. AREA OF REVIEW: 123.35± ACRES
4. EXISTING CONDITIONS SHOWN HEREON WERE PROVIDED BY DAVIS, BOWEN & FRIEDEL, INC.
5. THE SUBJECT SITE IS IDENTIFIED AS SUSSEX COUNTY TAX PARCELS 5-33-1-00-38.00, 5-33-4-00-28.00, AND 5-33-4-00-28.01.
6. ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) NUMBERS 10050C0488J EFFECTIVE JANUARY 6, 2005 AND 10050C0489K EFFECTIVE MARCH 16, 2015, PORTIONS OF THE SUBJECT SITE IS LOCATED WITHIN THE LIMITS OF THE 100-YEAR FLOODPLAIN.
7. SOILS SHOWN ON THIS PLAN WERE ADAPTED FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE'S WEB SOIL SURVEY, ACCESSED ON JUNE 13, 2023. AVAILABLE ONLINE AT HTTP://WWW.NRCS.USDA.GOV/TECHNICAL/SOILS.HTML.
8. WETLAND DELINEATION OF THE SUBJECT SITE WAS PERFORMED BY GTA IN MAY 2023. WETLAND FLAG LOCATIONS WITHIN THE SUBJECT SITE WERE SURVEY LOCATED BY DAVIS, BOWEN & FRIEDEL, INC. IN JUNE 2023.
9. AS A RESULT OF THE REVIEW OF THE SITE, IT IS GTA'S PROFESSIONAL OPINION THAT THERE ARE JURISDICTIONAL "WATERS OF THE U.S.", INCLUDING WETLANDS, PRESENT WITHIN THE SUBJECT SITE. IT IS GTA'S PROFESSIONAL OPINION THAT THERE ARE NO JURISDICTIONAL "WATERS OF THE U.S.", INCLUDING WETLANDS, PRESENT WITHIN THE JURISDICTIONAL DETERMINATION REVIEW AREA.
10. GTA'S CONCLUSIONS REGARDING THIS SITE HAVE BEEN BASED ON OBSERVATIONS OF EXISTING CONDITIONS, PROFESSIONAL EXPERIENCE, AND GENERALLY ACCEPTED PROFESSIONAL ENVIRONMENTAL PRACTICE UNDER SIMILAR CIRCUMSTANCES. SEASONAL VEGETATION CYCLES AND FLUCTUATIONS IN PRECIPITATION OR WEATHER CONDITIONS CAN RESULT IN DIFFERENCES IN THE PERCEPTION OF HYDROLOGIC CONDITIONS AND THE PRESENCE OF PREDOMINANTLY HYDROPHYTIC VEGETATION, WHICH CAN ALTER GTA'S EVALUATION OF WETLANDS/WATERWAYS.
11. IT IS IMPORTANT TO NOTE THAT THIS EVALUATION IS GTA'S PROFESSIONAL OPINION, ONLY. DECISIONS REGARDING THE OFFICIAL JURISDICTIONAL STATUS OF WETLANDS/WATERWAYS ARE MADE BY FEDERAL, STATE, AND/OR LOCAL REGULATORY AGENCIES.
12. THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF DOUBLE H DEVELOPMENT. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND DOUBLE H DEVELOPMENT IS UNAUTHORIZED, AND SUCH USE IS AT SOLE RISK OF THE USER.

SOILS CHART

SYMBOL ¹	NAME/DESCRIPTION ¹	HYDRIC SOIL ²	HYDRIC COMPONENT ²	PERCENTAGE OF MAPPING UNIT ²	POSITION IN LANDSCAPE ²
AaA	ASKECKSY LOAMY SAND, 0 TO 2 PERCENT SLOPES	YES	ASKECKSY, UNDRAINED	45	FLATS
			ASKECKSY, DRAINED	30	FLATS
			HURLOCK, UNDRAINED	10	FLATS
			MULLICA, UNDRAINED	5	FLATS
Evd	EVESBORO LOAMY SAND, 5 TO 15 PERCENT SLOPES	NO	-	-	-
			-	-	-
HmA	HAMMONTON LOAMY SAND, 0 TO 2 PERCENT SLOPES	YES	HURLOCK, DRAINED	5	FLATS
			HURLOCK, UNDRAINED	41	FLATS
HuA	HURLOCK LOAMY SAND, 0 TO 2 PERCENT SLOPES	YES	HURLOCK, UNDRAINED	39	FLATS
			BERRYLAND, DRAINED	5	FLATS
KsA	KLEJ LOAMY SAND, 0 TO 2 PERCENT SLOPES	YES	HURLOCK, DRAINED	5	FLATS
			HURLOCK, UNDRAINED	5	FLATS
L0	LONGMARSH AND INDIANTOWN SOILS, FREQUENTLY FLOODED	YES	LONGMARSH	43	FLOOD PLAINS
			INDIANTOWN	37	FLOOD PLAINS
			ZEKIAH	10	FLOOD PLAINS
			MANNAWINK	5	FLOOD PLAINS
			MULLICA, DRAINED	50	FLATS
MmA	MULLICA MUCKY SANDY LOAM, 0 TO 2 PERCENT SLOPES	YES	MULLICA, UNDRAINED	30	FLATS
			BERRYLAND, UNDRAINED	10	FLATS
			HURLOCK	10	FLATS
			MULLICA, DRAINED	26	FLATS
MmA	MULLICA-BERRYLAND COMPLEX, 0 TO 2 PERCENT SLOPES	YES	BERRYLAND, DRAINED	24	FLATS
			MULLICA, UNDRAINED	16	FLATS
			BERRYLAND, UNDRAINED	14	FLATS
			ASKECKSY, DRAINED	5	FLATS

1. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, SUSSEX COUNTY, DELAWARE, SOIL SURVEY DATA VERSION 23, DATED SEPTEMBER 14, 2022.
 2. HYDRIC SOILS INFORMATION AVAILABLE FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE SOIL DATA ACCESS HYDRIC SOILS LIST, ACCESSED JUNE 12, 2023.

GEO-TECHNOLOGY ASSOCIATES, INC.
 GEO-TECHNICAL AND ENVIRONMENTAL CONSULTANTS
 3445-A BOX HILL CORPORATE CENTER DRIVE
 ABINGDON, MARYLAND 21009
 410-515-9446
 FAX: 410-515-4695
 WWW.GTAENGL.COM
 © GEO-TECHNOLOGY ASSOCIATES, INC.

JURISDICTIONAL DETERMINATION PLAN
PEPPER ROAD PROPERTY

SUSSEX COUNTY, DELAWARE

REVISIONS:
 2023-07-17 - REVISION OF JURISDICTIONAL DETERMINATION REVIEW AREA PER USACE REVIEWER.

JOB NO: 312389F
 SCALE: 1"=100'
 DATE: JULY 7, 2023
 DRAWN BY: GEL
 DESIGN BY:
 REVIEW BY: MAJ/TAS
 SHEET: 1 OF 1