



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

OPR

May 31, 2024

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) ,<sup>1</sup> NAP-2008-00631-103

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.<sup>2</sup> 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.<sup>3</sup>

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

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

- 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. WATERBODY A (ALMS HOUSE DITCH), jurisdictional, Section 404
  - ii. WATERBODY C, jurisdictional, Section 404
  - iii. WATERBODY D, jurisdictional, Section 404
  - iv. WETLAND 1, jurisdictional, Section 404
  - v. WETLAND 2, jurisdictional, Section 404
  - vi. SWALE A, non-jurisdictional, (b)(8) exclusion
  - vii. SWALE B, non-jurisdictional, (b)(8) exclusion
  - viii. SWALE C, non-jurisdictional, (b)(8) exclusion
  - ix. DITCH B, non-jurisdictional, (b)(3) exclusion

## 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., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The subject site encompasses approximately 96.11 acres and is located west of DuPont Boulevard (US Route 113) and east of Parker Road in the Georgetown area of Sussex County, Delaware (38.671563, -75.391018). The subject site is identified as Sussex County Tax Parcels 135-19.00-64.00 and 65.00. A previous JD was completed in 2008 where jurisdiction was taken over wetlands and relatively permanent waters within the site.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Indian River Bay. The Indian River Bay is influenced by the ebb and flow of the tide, additionally it has been historically used for transportation. Following the flow path of McGee Ditch, the Indian River Bay is approximately 9.1 miles (48,212 ft) downstream.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. WATERBODY A (ALMS HOUSE DITCH) flows into Stockley Branch, which flows into Cow Bridge Branch, Which flows into the Millsboro Pond, which flows into the Indian River Bay. WATERBODY D flows into McGee Ditch, which flows into Eli Walls Ditch, which flows into Morris Mill Pond, which flows into Cow Bridge Branch, Which flows into the Millsboro Pond, which flows into the Indian River Bay. Following the flow path of McGee Ditch, the Indian River Bay is approximately 9.1 miles (48,212 ft) downstream.
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

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):
  - a. WATERBODY A (ALMS HOUSE DITCH) is a 1305 linear foot intermittent tributary. This feature originates offsite to the west and continues offsite to the east. As shown in the photolog (DATASOURCE E) it was holding water during the site visit, contained a defined bed and bank, and had an OHWM. Additionally, it exhibited a weak flow of water. These are features of an at least intermittent stream.
  - b. WATERBODY C is a 1245 linear foot intermittent tributary. At the time of the site visit, there was some water observed within WATERBODY C. It mainly serves as a drainage feature of WETLAND 2 and likely was dug for the purpose of drainage or formed due to runoff. It connects to WATERBODY D downstream with a physical hydrologic connection. The closer the stream came to WATERBODY D the clearer features such as an OHWM and bed and bank became. From the observed flow into WATERBODY D, the OHWM, bed and bank, and serving as drainage to WETLAND 2, WATERBODY C has at least intermittent stream characteristics, and is relatively permanent.
  - c. WATERBODY D is a 530 linear foot intermittent tributary. This feature runs along the northern portion of the property and continues off site to the east. An OHWM and bed and bank were observed within this feature. It was holding water and had a weak flow to the east. It is fed from WATERBODY C and WETLAND 2. From the observed factors this stream is at least intermittent and is relatively permanent.
- f. Adjacent Wetlands (a)(4):
  - a. WETLAND 1 is a 0.82 acre wetland that directly abuts an (a)(3) tributary (WATERBODY A [ALMS HOUSE DITCH]). The physical connection was

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

outside the review area, however there were observed outlets from WETLAND 1 into WATERBODY A on site as shown in the delineation report. WETLAND 1 directly drains into WATERBODY A (ALMS HOUSE DITCH) via a direct natural hydrologic connection off site.

- b. WETLAND 2 is a 9.75 acre wetland that encompasses WATERBODY C, and drains into WATERBODY D on its northern most portion.
  
- 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).<sup>7</sup>
  - a. SWALE A (b)(8) is a 635 linear ft drainage swale that historically was an agricultural ditch. However, over the years and lack of maintenance has caused this feature to lose its bed and bank. Additionally, it did not exhibit an OHWM. This feature is linear in nature, only drains uplands, and only holds water in response to rain events. It drains into WATERBODY A (ALMS HOUSE DITCH).
  - b. SWALE B (b)(8) is a 674 linear ft drainage swale that historically was an agricultural ditch. However, over the years and lack of maintenance has caused this feature to lose its bed and bank. Additionally, it did not exhibit an OHWM. This feature is linear in nature, only drains uplands, and only holds water in response to rain events. It drains into WATERBODY A (ALMS HOUSE DITCH)
  - c. SWALE C (b)(8) is a 531 linear ft drainage swale that historically was an agricultural ditch. However, over the years and lack of maintenance has caused this feature to lose its bed and bank. Additionally, it did not exhibit an OHWM. This feature is linear in nature, only drains uplands, and only holds water in response to rain events. It drains into Ditch B.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

- d. DITCH B (b)(3) is an 1893 linear ft agricultural ditch. This ditch originates on the adjacent property directly east of the site and terminates into WATERBODY A. During the delineation it did not hold water as shown on the delineation report (DATA SOURCE b). However, during the site visit some standing water in low points. This was only in a few areas of the entire ditch, with most of the ditch not holding water. This can be seen in photos 1 and 2 of the field visit photo log (DATA SOURCE e) prepared by USACE. Historically this feature was dug to assist with drainage from the adjacent agricultural field. It was dug in uplands and drains only uplands. It does not exhibit a continuous OHWM and only flows in response to rain events. From the observed factors on site DITCH B is non-relatively permanent and meets the (b)(3) exclusion. It was created on the edge of the wooded area on the northern portion of the property to accept drainage from the agricultural fields. It drains into WATERBODY A (ALMS HOUSE DITCH).
    - 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). N/A
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 field visit on May 14, 2024.
  - b. Wetland Delineation Report titled "Wetland Delineation Report Mason Property Sussex County, Delaware"; prepared by Geo-Technology Associates, Incorporated; dated March 20, 2024.
  - c. Wetland Delineation Plan titled "Wetland Delineation Plan Mason Property Sussex County, Delaware"; prepared by Geo-Technology Associates, incorporated; dated March 20, 2024; revised May 23, 2024; 2 sheets.
  - d. Flow Path Map, created by USACE utilizing DATA SOURCE (c), dated May 31, 2024.
  - e. USACE field visit photolog.

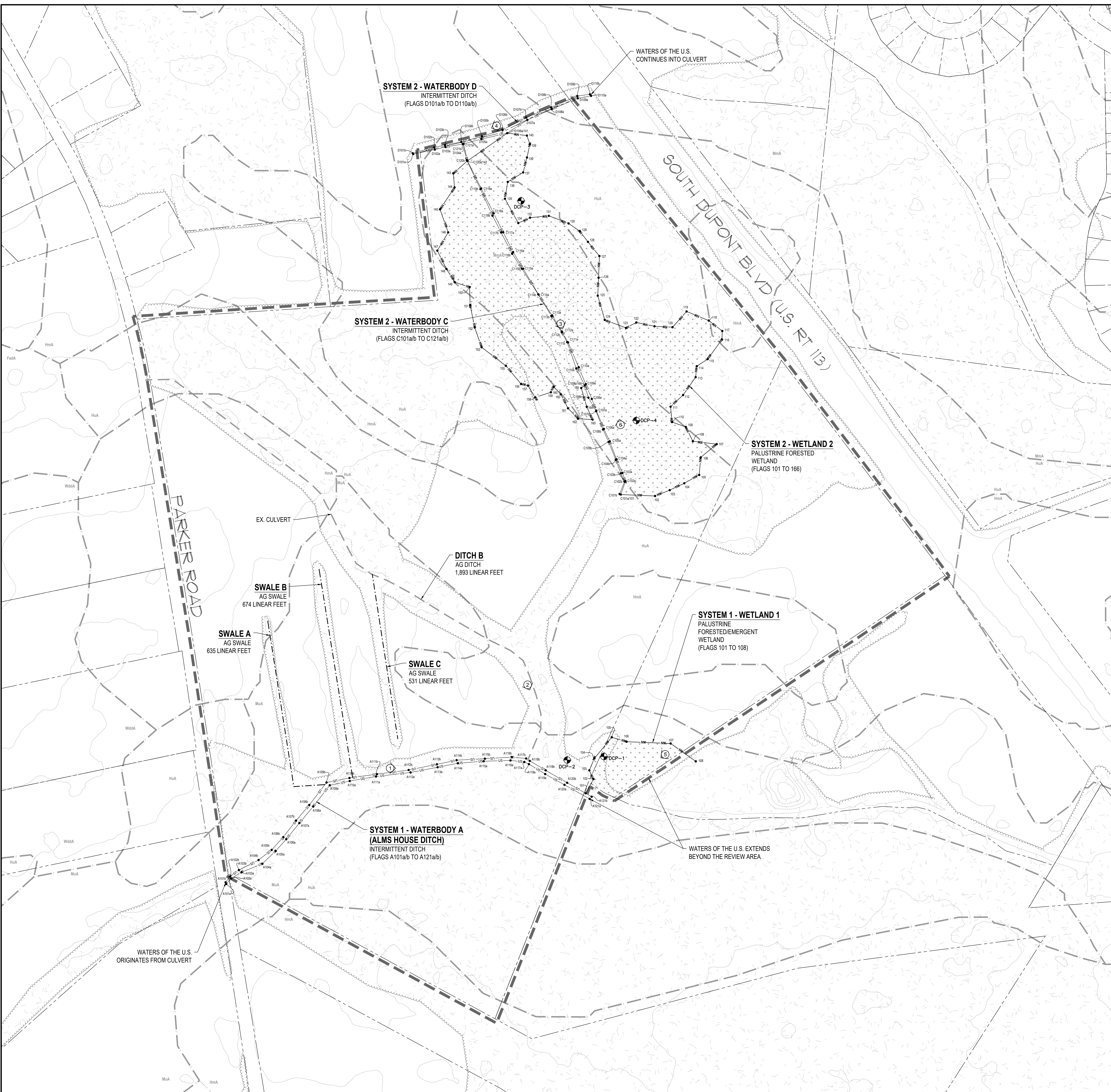
10. OTHER SUPPORTING INFORMATION. N/A

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2008-00631-103

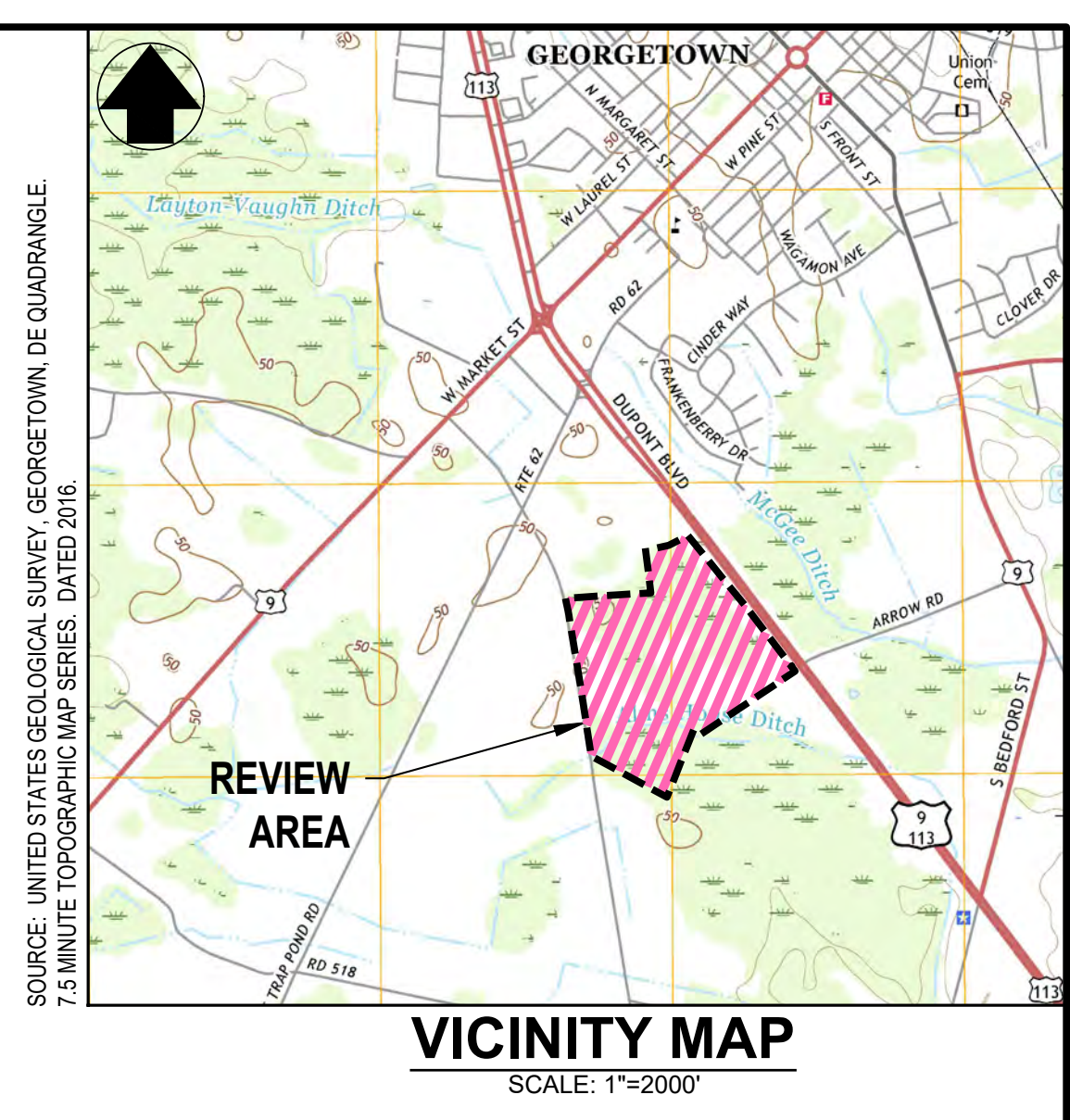
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.





**LEGEND**

- SUBJECT SITE
- - - EXISTING PROPERTY BOUNDARY
- - - EX. TIE LINE
- - - EX. 2' CONTOUR
- EX. NONTIDAL WETLAND (WITH NUMBERED FLAG LOCATIONS)
- EX. STREAM CHANNEL (WITH NUMBERED FLAG LOCATIONS)
- EX. SOIL BOUNDARY AND MAP UNIT
- DCP-1 WETLAND DELINEATION DATA COLLECTION POINT (DCP)
- NUMBERED PHOTO LOCATION



**GENERAL INFORMATION**

1. PROJECT NAME: MASON PROPERTY
2. LOCATION: WEST OF DUPONT HIGHWAY (US ROUTE 113) AND EAST OF PARKER ROAD IN GEORGETOWN AREA IN THE AREA OF SUSSEX COUNTY, DELAWARE.
3. PLAN PREPARED FOR: D.R. HORTON  
678 SOUTH CARTER ROAD, SUITE 1  
SMYRNA, DELAWARE 19877  
ATTN: MR. JOE LAROCK
4. PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)  
3445-A BOX HILL CORPORATE CENTER DRIVE  
ABINGDON, MARYLAND 21009  
ATTN: MR. MATTHEW JENNETTE
5. AREA OF REVIEW: APPROXIMATELY 96.11 ACRES
6. THE AREA OF REVIEW IS IDENTIFIED AS SUSSEX COUNTY TAX PARCELS 135-18, 00-64-00 AND 65-00.
7. ACCORDING TO FEMA FIRM MAP NUMBER 100503030K, EFFECTIVE MARCH 16, 2015, THE REVIEW AREA IS NOT LOCATED WITHIN A 100-YEAR FLOODPLAIN.
8. PROPERTY BOUNDARIES, TOPOGRAPHIC INFORMATION, TIE LINES, AND BUILDINGS SHOWN HEREON ARE BASED ON GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA OBTAINED BY THE SUSSEX COUNTY MAPPING AND ADDRESSING DEPARTMENT.
9. THE WETLAND DELINEATION WAS PERFORMED BY GTA IN DECEMBER 2021. WETLAND FLAGS WERE SURVEY LOCATED BY MORRIS & RITCHE ASSOCIATES, INC. IN JANUARY 2022.
10. 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.
11. 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 OR PREDOMINANTLY HYDROPHYTIC VEGETATION, WHICH CAN AFFECT GTA'S EVALUATION OF WETLANDS/WATERWAYS.
12. 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.
13. THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF D.R. HORTON. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESS WRITTEN PERMISSION OF GTA AND D.R. HORTON IS UNAUTHORIZED, AND SUCH USE IS AT SOLE RISK OF THE USER.

**AREA OF WETLANDS / WATERWAYS WITHIN THE SUBJECT SITE:**

WETLAND	APPROXIMATE AREA
WETLAND 1	35,996 SF (0.82 AC)
WETLAND 2	424,700 SF (9.75 AC)
<b>TOTAL WETLAND AREA</b>	<b>460,296 SF (10.57 AC)</b>

WATERBODY	APPROXIMATE AREA	APPROXIMATE LENGTH
ALMS HOUSE DITCH (WATERBODY A)	13,869 SF (0.31 AC)	1,305 LINEAR FEET
WATERBODY C	4,757 SF (0.11 AC)	1,245 LINEAR FEET
WATERBODY D	4,385 SF (0.10 AC)	530 LINEAR FEET
<b>TOTAL WATERBODIES</b>	<b>22,831 SF (0.52 AC)</b>	<b>3,080 LINEAR FEET</b>

**SOILS CHART**

SYMBOL	NAME/DESCRIPTION <sup>1</sup>	HYDRIC SOIL	HYDRIC COMPONENT <sup>2</sup>	PERCENTAGE OF MAPPING UNIT	POSITION IN LANDSCAPE <sup>1</sup>
HmA	HAMMONTON LOAMY SAND, 0-2% SLOPES	YES	HURLOCK, DRAINED	5	FLATS
HuA	HURLOCK LOAMY SAND, 0-2% SLOPES	YES	HURLOCK, UNDRAINED	40	FLATS
			MULLICA, DRAINED	40	FLATS
MmA	MULLICA MUCKY SANDY LOAM, 0-2% SLOPES	YES	MULLICA, DRAINED	50	FLATS
			MULLICA, UNDRAINED	30	FLATS
			BERRYLAND	10	FLATS
			HURLOCK	10	FLATS
MuA	MULLICA-BERRYLAND SANDY LOAM, 0-2% SLOPES	YES	BERRYLAND, DRAINED	25	FLATS
			MULLICA, DRAINED	25	FLATS
			MULLICA, UNDRAINED	15	FLATS
			BERRYLAND, UNDRAINED	15	FLATS
			ASKECKSY, DRAINED	5	FLATS

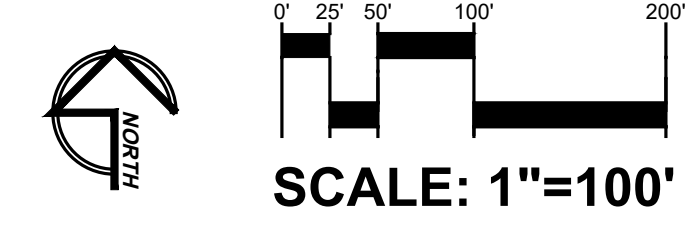
1. U.S. DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE'S WEB SOIL SURVEY, ON DECEMBER 17, 2014. AT: HTTP://WWW.WEB-KEYWORD.USDA.GOV/TECHNICAL/SOILS/.  
2. HYDRIC SOIL INFORMATION DERIVED FROM THE STATE SOIL DATA ACQUISITION PROJECT (SDAP), AT: HTTP://WWW.WEB-KEYWORD.USDA.GOV/TECHNICAL/SOILS/.  
HWSP020108.PDF#page=11. ACCESSED: DECEMBER 17, 2021.

**GEO-TECHNOLOGY ASSOCIATES, INC.**  
GEO-TECHNICAL AND ENVIRONMENTAL CONSULTANTS  
3445-A BOX HILL CORPORATE CENTER DRIVE  
ABINGDON, MARYLAND 21009  
410-515-5848  
FAX: 410-515-4895  
WWW.GTAENG.COM

**WETLAND DELINEATION PLAN**  
**MASON PROPERTY**

REVISIONS:  
MAY 23, 2024 - REVISED TO ADD METERS AND BOUNDS OF FEATURES ON SITE

JOB NO: 3118043XZ  
SCALE: 1"=100'  
DATE: MARCH 20, 2024  
DRAWN BY: CEL  
DESIGN BY: MAJTAS  
REVIEW BY: MAJTAS  
SHEET: 1 OF 2





**WATERBODY Aa METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., A101a TO A102a) and Metes and Bounds description (e.g., THENCE (1) North 42°10'45" East, 23.97 feet to a point of non-tangency).

**WATERBODY Aa METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., A101b TO A102b) and Metes and Bounds description (e.g., THENCE (1) North 37°33'48" East, 24.06 feet to a point of non-tangency).

**WETLAND 1 METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., 101 TO 102) and Metes and Bounds description (e.g., THENCE (1) North 28°50'52" East, 51.85 feet to a point of non-tangency).

**WETLAND 2 EAST METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., 101 TO 102) and Metes and Bounds description (e.g., THENCE (1) South 87°38'03" East, 109.77 feet to a point of non-tangency).

**WATERBODY Ca METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., C101a TO C102a) and Metes and Bounds description (e.g., THENCE (1) North 19°30'59" East, 44.53 feet to a point of non-tangency).

**WATERBODY Cb METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., C101b TO C102b) and Metes and Bounds description (e.g., THENCE (1) North 21°53'58" East, 42.45 feet to a point of non-tangency).

**WATERBODY Da METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., D101a TO D102a) and Metes and Bounds description (e.g., THENCE (1) North 78°15'25" East, 70.56 feet to a point of non-tangency).

**WATERBODY Db METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., D101b TO D102b) and Metes and Bounds description (e.g., THENCE (1) North 74°52'03" East, 71.33 feet to a point of non-tangency).

**WETLAND 2 WEST METES AND BOUNDS**

Table with 2 columns: Point ID (e.g., 142 TO 143) and Metes and Bounds description (e.g., THENCE (1) South 48°41'34" West, 59.28 feet to a point of non-tangency).

GTA logo, GEO-TECHNOLOGY ASSOCIATES, INC. logo, project details for WETLAND DELINATION PLAN MASON PROPERTY in SUSSEX COUNTY, DELAWARE, including revision history and scale information.

SHMEE\PROJECT FILES\2024\1518\BAG02 - MASON PROPERTY\WETLAND\DTL\1518A02.dwg - 10/28/2024 - 10/28/2024