



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

OPR

August 12, 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-2024-00265-103 <sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended,

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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> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

## 1. SUMMARY OF CONCLUSIONS.

- 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. Wetland Area A/B, jurisdictional, Section 404
  - ii. Wetland Area C, 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., 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The 13.55 acre review area is located at 3000 Sudlersville Road, Clayton, Kent County, Delaware (39.216006, -75.702058). The tax parcels under review include: 3-00-04300.02-8000-000, 3-00-04300.02-8017, and 3-00-04300.02-8010 through 3-00-04300.02-8015, and 80.19.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Chester River. The Chester River is influenced by the ebb and flow of the tide. Following the flow path from the review area, the Chester River is approximately 12 miles downstream.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland Area A/B drains into an unnamed tributary of Jordan Branch offsite, which flows into Jordan Branch, which flows into Blanco Ditch, which flows into Sewell Branch, which flows into the Chester River. Following the flow path from the review area, the Chester River is approximately 12 miles downstream.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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. 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
  - f. Adjacent Wetlands (a)(4): Wetland Area A/B is a forested wetland that continues offsite with 1.14 acres of the wetland located onsite. Wetland Area A/B directly abuts a perennial unnamed tributary of Jordan Branch outside the review area. The review of aerial imagery and topographic maps showed that a consistent

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<sup>6</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>7</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.

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elevation of Wetland A/B continued off site into the unnamed tributary of Jordan Branch. Wetland Area A/B has a continuous surface connection to an (a)(3) tributary, thereby meeting the definition of an (a)(4) adjacent wetland.

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>8</sup> 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).
  - Wetland C is a 4.04 acre forested wetland. This wetland lacks a continuous surface connection to any other aquatic resources, leaving it geographically separated. Because Wetland C does not have a continuous surface connection to any (a)(1) through (a)(3) waters it does not meet the definition of an (a)(4) adjacent wetland. This wetland has formed within a depressional feature and is surrounded by uplands.

## 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, April 10, 2024.
- b. Wetland Delineation Plans; prepared by Civil Engineering Associates, LLC; dated March 19, 2024; unrevised; 1 sheet.
- c. Wetland Delineation – Kerrigan Construction, Incorporated, Clayton, Delaware; prepared by Watershed Eco; dated February 2, 2024.

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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d. Antecedent Precipitation Tool, titled “2024-00265\_APT”, prepared by USACE.

e. Flow Path, titled “2024-00265\_Flow\_Path”, prepared by USACE.

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.



# WETLAND AREA "C" LINE TABLE

LINE	BEARING	DISTANCE
L1	S 74°07'07" E	25.19'
L2	S 29°32'26" E	24.80'
L3	S 75°37'16" E	30.63'
L4	S 71°49'05" E	57.61'
L5	S 09°14'34" E	36.93'
L6	S 64°31'50" W	48.15'
L7	S 19°08'11" W	30.44'
L8	S 64°24'08" E	44.61'
L9	N 64°24'47" E	27.57'
L10	N 47°43'27" E	15.24'
L11	N 21°02'49" E	51.21'
L12	N 13°25'26" E	63.25'
L13	N 51°26'37" E	56.21'
L14	S 74°43'30" E	46.35'
L15	S 44°21'44" E	53.31'
L16	S 12°24'45" W	18.97'
L17	S 33°22'25" W	28.82'
L18	N 67°14'07" W	25.74'
L19	S 43°17'24" W	21.35'
L20	S 06°57'29" W	40.93'
L21	S 60°00'00" E	27.33'
L22	S 72°51'50" E	50.92'
L23	S 81°34'18" E	41.16'
L24	S 57°29'26" E	33.86'
L25	S 38°45'03" E	43.59'
L26	N 51°56'20" E	17.12'
L27	N 02°27'25" W	33.77'
L28	N 06°49'52" W	40.50'
L29	N 26°40'32" W	34.67'
L30	N 73°27'00" W	45.45'
L31	N 38°30'48" W	20.64'
L32	N 58°53'15" E	32.02'
L33	N 51°00'06" E	39.52'
L34	N 19°59'08" E	39.87'
L35	N 23°13'38" E	32.18'
L36	N 15°48'03" E	51.63'
L37	N 01°46'13" W	64.52'
L38	N 05°06'44" W	43.21'
L39	N 27°25'06" W	61.24'
L40	N 63°44'17" W	29.33'
L41	N 81°22'37" W	65.36'
L42	N 71°05'00" W	27.04'
L43	N 60°47'24" W	47.24'
L44	S 89°28'30" W	74.04'
L45	S 72°23'50" W	86.17'
L46	S 78°15'34" W	56.75'
L47	N 58°52'42" W	29.81'
L48	N 86°26'06" W	53.70'
L49	S 43°52'28" W	75.00'
L50	S 21°44'54" W	22.97'
L51	S 04°38'33" E	31.33'
L52	S 03°05'44" W	49.82'
L53	S 28°39'52" E	36.24'
L54	S 00°51'13" E	28.05'
L55	S 54°10'21" E	69.66'
L56	S 40°06'57" E	30.97'

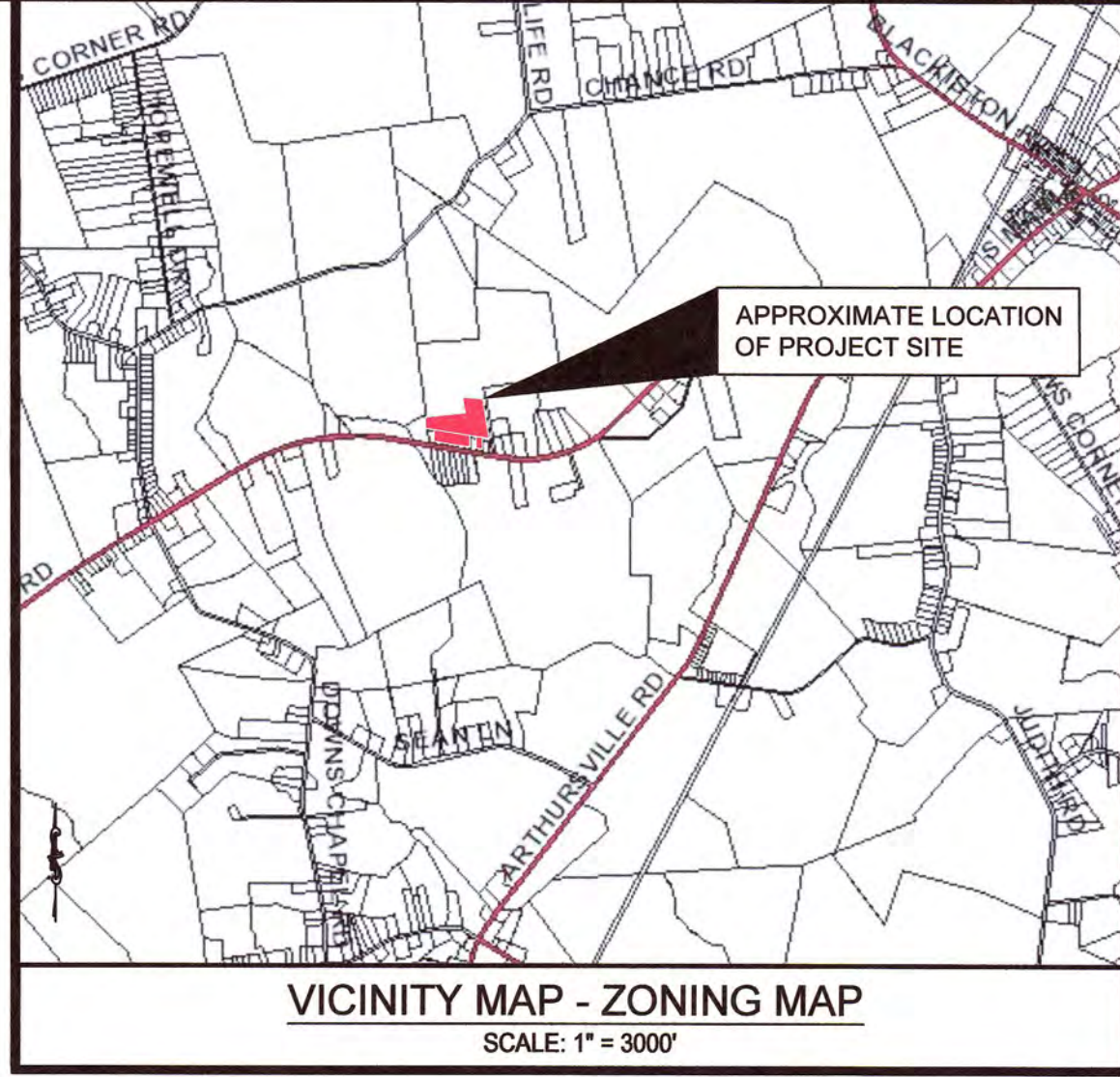
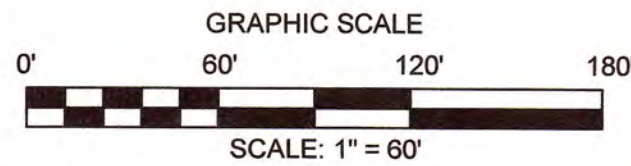


## WETLAND AREA "A/B" LINE TABLE

LINE	BEARING	DISTANCE
L1	S 64°27'41" E	8.11'
L2	S 41°13'26" E	21.25'
L3	N 80°38'27" E	26.20'
L4	N 64°18'41" E	51.35'
L5	S 62°16'49" E	59.54'
L6	S 52°51'05" E	38.55'
L7	S 11°36'27" E	38.86'
L8	S 45°18'55" E	19.51'
L9	S 53°03'54" E	61.88'
L10	S 14°44'52" E	35.14'
L11	S 00°41'53" E	46.34'
L12	S 14°44'34" W	46.21'
L13	S 77°35'13" W	32.46'
L14	S 52°30'25" W	26.93'
L15	S 20°31'16" W	43.53'
L16	S 03°47'42" W	63.74'
L17	S 35°14'29" E	20.51'
L18	S 34°01'47" E	49.14'
L19	S 13°36'02" E	28.08'
L20	S 19°23'11" E	35.80'
L21	S 52°15'17" E	25.57'
L22	N 54°41'59" E	29.33'
L23	N 74°23'12" E	35.42'
L24	N 79°11'46" E	32.14'
L25	N 22°42'44" E	38.78'
L26	N 13°42'20" E	48.23'
L27	N 25°03'40" W	52.52'
L28	N 04°21'43" W	47.78'
L29	N 19°09'52" W	82.19'
L30	N 29°36'16" W	85.95'
L31	N 06°50'50" E	16.00'
L32	N 24°49'51" W	34.83'
L33	N 09°18'54" W	39.93'
L34	N 03°50'11" E	30.72'
L35	N 10°48'46" W	37.20'

## LEGEND

PROPERTY LINE	---
ADJOINING PROPERTY LINE	---
EXISTING CONTOUR	---
WETLANDS LINE & FLAG	---
WETLAND HATCH	---



## SITE DATA:

OWNER: KERRIGAN CONSTRUCTION INC.

ADDRESS: 257 WEST DENNEYS ROAD  
DOVER DE, 19904

ENGINEER: CIVIL ENGINEERING ASSOCIATES  
55 WEST MAIN STREET  
MIDDLETOWN, DE 19709  
PHONE 302-376-8833

TAX PARCEL#:

3-00-043.00-02-80.00  
3-00-043.00-02-80.10 (LOT 8)  
3-00-043.00-02-80.11 (LOT 9)  
3-00-043.00-02-80.12 (LOT 10)  
3-00-043.00-02-80.13 (LOT 11)  
3-00-043.00-02-80.14 (LOT 12)  
3-00-043.00-02-80.15 (LOT 13)  
3-00-043.00-02-80.17 (LOT 15)

DEED

REFERENCE: D.B. V46, PG. 204  
W.R. 10, PG. 69  
T.D.B. 3534, PG. 249  
T.D.B. 4872, PG. 34  
P.B. 25, PG. 45  
P.B. 46, PG. 26

ZONING:

AR

SETBACKS:

FRONT/STREET YARD: 75 FEET  
SIDE YARD: 15 FEET  
REAR YARD: 25 FEET

WETLANDS:

WETLAND DELINEATION CONDUCTED BY  
WATERSHED ECO, LLC. IN OCTOBER, 2022.

AREAS:

T.P. # 80.00 = 436,748 S.F. ±, 10.03 AC.  
T.P. # 80.10 = 21,781 S.F. ±, 0.50 AC.  
T.P. # 80.11 = 21,780 S.F. ±, 0.50 AC.  
T.P. # 80.12 = 21,779 S.F. ±, 0.50 AC.  
T.P. # 80.13 = 21,780 S.F. ±, 0.50 AC.  
T.P. # 80.14 = 21,902 S.F. ±, 0.50 AC.  
T.P. # 80.15 = 22,343 S.F. ±, 0.51 AC.  
T.P. # 80.17 = 22,380 S.F. ±, 0.51 AC.

✱ POB (POINT OF BEGINNING & IPF)  
✱ POB (POINT OF BEGINNING)  
● IPF (IRON PIN FOUND)  
⊙ IPS (IRON PIN TO BE SET)

## WETLAND DELINEATION PLAN

FOR  
LOTS 8, 9, 10, 11, 12, 13, & 15  
& T.P. # 3-00-04300.00-8000  
SUDLERSVILLE ROAD  
RALPH E. JOHNSON SUBDIVISION  
KENTON HUNDRED  
KENT COUNTY, DELAWARE

DATE: MARCH 19, 2024

DESIGNED BY: JH APPROVED BY: RHS

FILE: P-22065

SHEET NO.:

1 OF 1

CIVIL ENGINEERING  
ASSOCIATES, LLC  
• ENGINEERING • SURVEYING • CONSTRUCTION SERVICES

55 W. MAIN STREET  
MIDDLETOWN, DE 19709  
PHONE (302) 376-8833  
FAX (302) 376-8834  
WWW.CEA-DE.COM

REVISIONS	DESCRIPTION	DATE
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