



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

OPR

September 6, 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) ,¹ NAP-2024-00563-103

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.² 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.³

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

1. SUMMARY OF CONCLUSIONS

¹ 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.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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-2024-00563-103

- 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. Ditch 1, non-jurisdictional
 - ii. Ditch 2, non-jurisdictional
 - iii. Ditch 3, 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 review area is approximately 19.46 acres located at 209 Fairground Road, Harrington, Kent County, De Delaware (38.915309, -75.579042). It is comprised of a historic gravel pit adjacent to agricultural fields.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. There are no aquatic resources connected to TNW. All aquatic resources within the review area are geographically isolated.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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

⁵ 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.

OPR

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAP-2024-00563-103

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ 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): N/A
- 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

⁶ 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-2024-00563-103

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷

- a. Ditch 1 is a 49 linear foot ephemeral feature that is entirely within the review area. During the USACE field visit on August 20, 2024 there was no observed water within the ditch. It is best described as a man made linear depression excavated entirely in dry land and draining only dry land. It did not exhibit an ordinary high water mark, nor relatively permanent flow. Additionally, it had large amounts of vegetation growth. Ditch 1 is excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water, thereby meeting the definition of a (b)(3) Ditch.
- b. Ditch 2 is a 271 linear foot ephemeral feature that is entirely within the review area. During the USACE field visit on August 20, 2024 there were areas where the ditch held water. However, most of the ditch did not hold water and no water was observed in Ditch 2 during the initial delineation. It is best described as a man made linear depression excavated entirely in dry land and draining only dry land. Additionally, it had large amounts of vegetation growth. Ditch 2 is excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water, thereby meeting the definition of a (b)(3) Ditch.
- c. Ditch 3 is a 40 linear foot ephemeral feature that is entirely within the review area. During the USACE field visit on August 20, 2024 there was no observed water within the ditch. It is best described as a man made linear depression excavated entirely in dry land and draining only dry land. It did not exhibit an ordinary high water mark, nor relatively permanent flow. Additionally, it had large amounts of vegetation growth. Ditch 3 is excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water, thereby meeting the definition of a (b)(3) 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

⁷ 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-2024-00563-103

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 on August 20, 2024.
 - b. Wetland Delineation Report titled "Wetland Delineation Letter Report"; prepared by Geo-Technology Associates, Incorporated; dated July 24, 2024.
 - c. Wetland Delineation Plan titled "Wetland Delineation Plan 209 Fairground Road Kent County, Delaware"; prepared by Geo-Technology Associates, Incorporated; dated June 24, 2024; revised August 21, 2024; 1 sheet.
 - d. Lidar Map prepared by USACE.

10. OTHER SUPPORTING INFORMATION.

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.

SOILS TABLE

SYMBOL ¹	NAME/DESCRIPTION ¹	HYDRIC SOIL ²	HYDRIC COMPONENT ²	PERCENTAGE OF MAPPING UNIT ²	POSITION IN LANDSCAPE ²
F&B	FALLSINGTON-URBAN LAND COMPLEX, 0 TO 5 PERCENT SLOPES	YES	FALLSINGTON, DRAINED	40	FLATS
			FALLSINGTON, UNDRAINED	25	FLATS

1. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, KENT COUNTY, DELAWARE, SOIL SURVEY DATA VERSION 20, DATED SEPTEMBER 12, 2023.
2. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, HYDRIC SOILS LIST BY STATE, AVAILABLE AT [HTTPS://EFOTS.SC.EGOV.USDA.GOV/REFERENCES/PUBLICIL/STATE_LIST_NRCS_HYDRIC_SOILS_REPORT_DYNAMIC_DATA.HTML](https://efots.sc.egov.usda.gov/references/public/il/STATE_LIST_NRCS_HYDRIC_SOILS_REPORT_DYNAMIC_DATA.HTML) AND ACCESSED ON JULY 1, 2024.

APPROXIMATE AREA OF FEATURES

FEATURE	APPROXIMATE AREA	APPROXIMATE LENGTH
DITCH 1	1,625 SF (0.04 AC)	49 LF
DITCH 2	451 SF (0.01 AC)	271 LF
DITCH 3	248 SF (0.01 AC)	40 LF
TOTAL AREA	2,324 SF (0.06 AC)	360 LF

DITCH 1 M&B

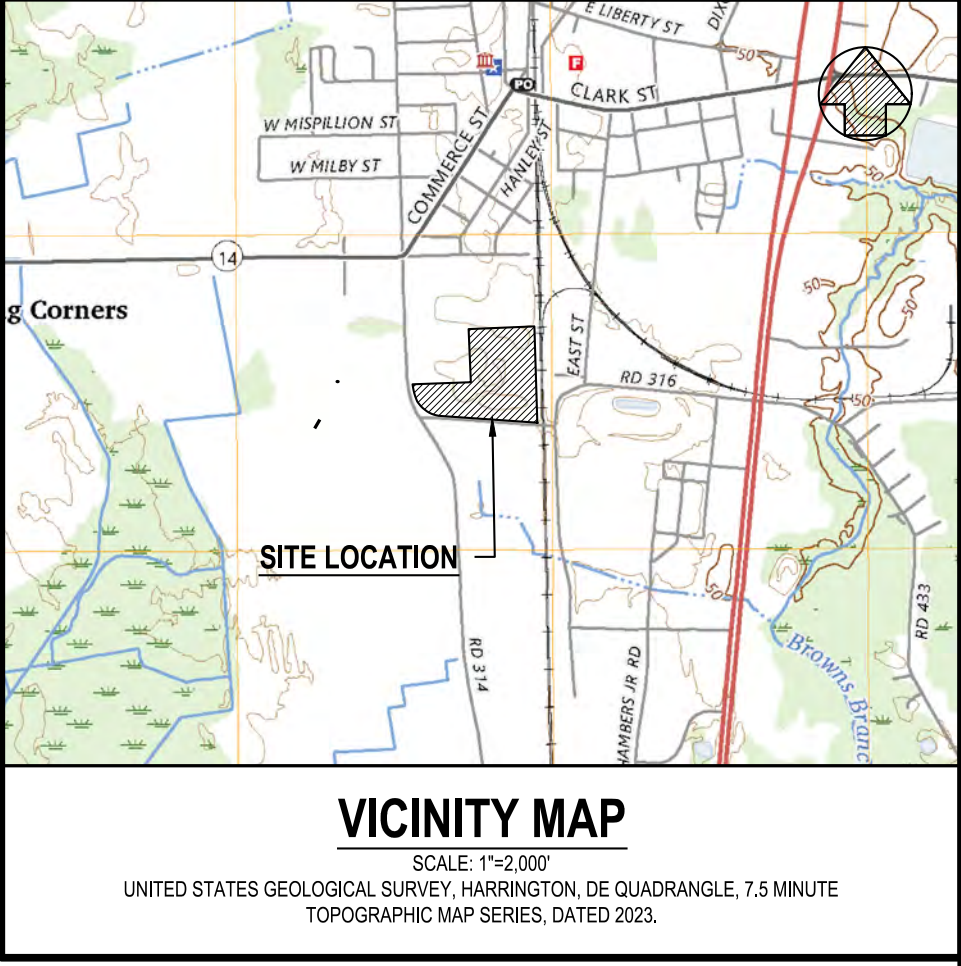
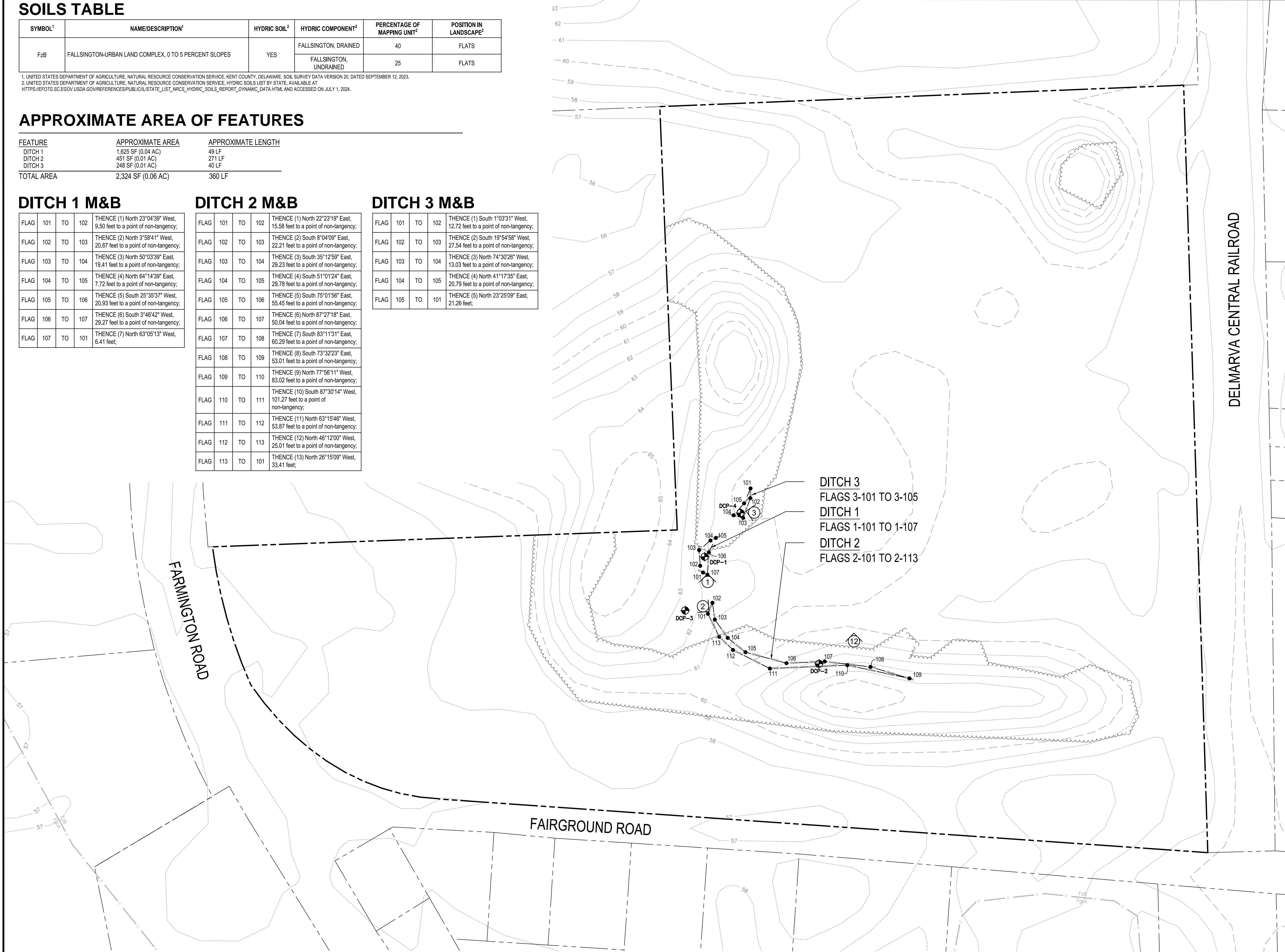
FLAG	101	TO	102	THENCE (1) North 23°04'39" West, 9.50 feet to a point of non-tangency;
FLAG	102	TO	103	THENCE (2) North 3°58'41" West, 20.67 feet to a point of non-tangency;
FLAG	103	TO	104	THENCE (3) North 50°03'39" East, 19.41 feet to a point of non-tangency;
FLAG	104	TO	105	THENCE (4) North 64°14'39" East, 7.72 feet to a point of non-tangency;
FLAG	105	TO	106	THENCE (5) South 25°35'37" West, 20.53 feet to a point of non-tangency;
FLAG	106	TO	107	THENCE (6) South 3°46'42" West, 29.27 feet to a point of non-tangency;
FLAG	107	TO	101	THENCE (7) North 63°05'13" West, 6.41 feet;

DITCH 2 M&B

FLAG	101	TO	102	THENCE (1) North 22°23'19" East, 15.58 feet to a point of non-tangency;
FLAG	102	TO	103	THENCE (2) South 8°04'09" East, 22.21 feet to a point of non-tangency;
FLAG	103	TO	104	THENCE (3) South 35°12'59" East, 29.23 feet to a point of non-tangency;
FLAG	104	TO	105	THENCE (4) South 51°01'24" East, 29.78 feet to a point of non-tangency;
FLAG	105	TO	106	THENCE (5) South 75°01'56" East, 55.45 feet to a point of non-tangency;
FLAG	106	TO	107	THENCE (6) North 87°27'18" East, 50.04 feet to a point of non-tangency;
FLAG	107	TO	108	THENCE (7) South 83°11'31" East, 60.29 feet to a point of non-tangency;
FLAG	108	TO	109	THENCE (8) South 73°32'23" East, 53.01 feet to a point of non-tangency;
FLAG	109	TO	110	THENCE (9) North 77°56'11" West, 83.02 feet to a point of non-tangency;
FLAG	110	TO	111	THENCE (10) South 87°30'14" West, 101.27 feet to a point of non-tangency;
FLAG	111	TO	112	THENCE (11) North 63°15'46" West, 53.87 feet to a point of non-tangency;
FLAG	112	TO	113	THENCE (12) North 46°12'00" West, 25.01 feet to a point of non-tangency;
FLAG	113	TO	101	THENCE (13) North 26°15'09" West, 33.41 feet;

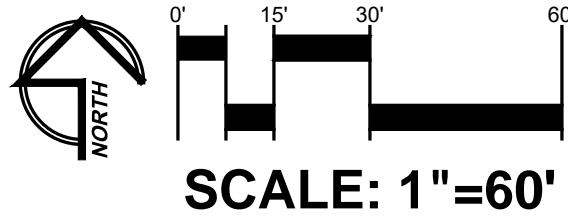
DITCH 3 M&B

FLAG	101	TO	102	THENCE (1) South 1°03'31" West, 12.72 feet to a point of non-tangency;
FLAG	102	TO	103	THENCE (2) South 19°54'58" West, 27.54 feet to a point of non-tangency;
FLAG	103	TO	104	THENCE (3) North 74°30'28" West, 13.03 feet to a point of non-tangency;
FLAG	104	TO	105	THENCE (4) North 41°17'35" East, 20.79 feet to a point of non-tangency;
FLAG	105	TO	101	THENCE (5) North 23°25'09" East, 21.26 feet;




GENERAL INFORMATION

- PLAN PREPARED FOR: OLD DOMINION FREIGHT LINE, INC.
500 OLD DOMINION WAY
THOMASVILLE, NORTH CAROLINA 27360
C/O RICK RICCI, PG, CPG ODFL OWNERS REPRESENTATIVE
1 REBECCA LANE
SAVANNAH, GEORGIA 31411
ATTN: MR. CRAIG KISER
- PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
ATTN: MR. MATTHEW JENNETTE
PHONE: 410-515-9446
EMAIL: MJENNETTE@GTAENG.COM
- AREA OF REVIEW: 19.46± ACRES
- PARCEL ID: 6-09-17912-01-0100-00001
- AN EXISTING CONDITIONS BASE SHOWN HEREON WAS ADAPTED FROM KENT COUNTY GIS DATA.
- THERE ARE NO AREAS OF 100-YEAR FLOODPLAIN WITHIN THE SUBJECT SITE PER FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10001C0337J, EFFECTIVE JULY 7, 2014.
- A WETLAND DELINEATION OF THE SUBJECT SITE WAS PERFORMED BY GTA IN JULY 2024. FLAG LOCATIONS WITHIN THE SUBJECT SITE WERE LOCATED BY GTA USING A GLOBAL POSITIONING SYSTEM (GPS) UNIT RATED WITH SUBMETER ACCURACY.
- DURING THE REVIEW OF THE SUBJECT SITE, GTA OBSERVED THREE GEOGRAPHICALLY ISOLATED DITCHES. IT IS GTA'S PROFESSIONAL OPINION THAT THESE DITCHES ARE NOT FEDERALLY JURISDICTIONAL.
- 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/WATERBODIES.
- IT IS IMPORTANT TO NOTE THAT THIS EVALUATION IS GTA'S PROFESSIONAL OPINION, ONLY. DECISIONS REGARDING THE OFFICIAL JURISDICTIONAL STATUS OF WETLANDS/WATERBODIES ARE MADE BY FEDERAL, STATE, AND/OR LOCAL REGULATORY AGENCIES.
- THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF OLD DOMINION FREIGHT LINE, INC. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND OLD DOMINION FREIGHT LINE, INC. IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.



LEGEND

- SUBJECT SITE
- EX. PROPERTY BOUNDARY
- EX. 1-FOOT CONTOUR
- EX. 5-FOOT CONTOUR
- EX. TREELINE
- EX. SOIL BOUNDARY
- NUMBERED PHOTOGRAPH LOCATION
- WETLAND DELINEATION DATA COLLECTION POINT (DCP)



GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
PHONE: 410-515-9446
FAX: 410-515-4895
WWW.GTAENG.COM
© GEO-TECHNOLOGY ASSOCIATES, INC.

WETLAND DELINEATION PLAN
209 FAIRGROUND ROAD
KENT COUNTY, DELAWARE

REVISIONS:
AUGUST 21, 2024 - REVISED PER COMMENTS FROM U.S. ARMY CORPS OF ENGINEERS

JOB NO: 31240883
SCALE: 1"=60'
DATE: JUNE 24, 2024
DRAWN BY: PJM
DESIGN BY:
REVIEW BY: MAJITAS
SHEET: 1 OF 1