DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2204

CENAP-OPR July 1, 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-2023-00282-45. MFR 1 of 1[2].

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 (WOTUS) on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.[3] 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.[4]

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),[5] the 2023 Rule as amended,

[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] 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.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] 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.

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 A: Not jurisdictional under Section 404 of the Clean Water Act.

      ii. Wetland B: Not jurisdictional under Section 404 of the Clean Water Act.

      iii. Wetland C: Not jurisdictional under Section 404 of the Clean Water Act.

      iv. Wetland D: Not jurisdictional under Section 404 of the Clean Water Act.

      v. Wetland E: Not jurisdictional under Section 404 of the Clean Water Act.

      vi. Wetland F: Not jurisdictional under Section 404 of the Clean Water Act.

      vii. Wetland G: Not jurisdictional under Section 404 of the Clean Water Act.

      viii. Wetland H: Not jurisdictional under Section 404 of the Clean Water Act.

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 property in question encompasses approximately 15 acres, located at 150 Cabot Boulevard East, known as tax parcel numbers 13-003-009-011 and 13-003-009-012, located in Falls Township, Bucks County, Pennsylvania. The latitude and longitude coordinates for the property is 40.192847˚, and

-74.841500˚. Historically, based on aerial photography, the property has been disturbed (cleared, graded, fill stockpiles, vehicle trails). At this time, the property is located within an existing industrial park. The property is bounded to the north by Cabot Boulevard, to the west by an existing corn processing facility with rail and trucking services, to the east by a GM warehouse/trucking facility, and to the south by an existing railway corridor with approximately twelve (12) separate parallel tracks that also includes an intermodal rail facility.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Martins Creek. Martins Creek becomes tidal near its confluence with Tullytown Cove, off the Delaware River, making it a navigable waterway.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

   Based on a review of the AJD report, and an on-site inspection by this office on May 5, 2023, the subject property is located at the uppermost portion of the watershed. The wetlands (A-H) that were identified on the site are located within concave landscape features. There are no streams, ditches, channels, or swales on the site or near the site. Furthermore, there are no ditches, channels, pipes, or swales that directly convey water from the wetlands off the site to a waterway/WOTUS. As indicated by the USGS Stream Stats, Figure 1 of the AJD report, it seems that any surface water runoff from the property flows east along the railroad corridor for over 2500 +/- linear feet where it appears to discharge into an unnamed tributary to Rock Run, at Stony Hill Road. Rock Run then flows and/or connects to Martins Creek. Martins Creek then flows southwest becoming tidal just below, or at, the Main Street bridge over Martins Creek in Tullytown, PA. From this point, Martins Creek is a navigable water and a TNW which then empties into Tullytown Cove, a tidal waterbody off the Delaware River.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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

[6] This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (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.
[7] 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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[8] 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

[8] 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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).[9] 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).

1. Wetland A (0.19 acres): Wetland A is a concave, depressional Palustrine Emergent wetland (PEM). Wetland A is located a minimum of 1,400 +/- linear feet from the nearest (a)(3) water. Wetland A does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, or swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

2. Wetland B (0.13 acres): Wetland B is a concave, depressional Palustrine Scrub/Shrub wetland (PSS). Wetland B is located a minimum of 1,300 +/- linear feet from the nearest (a)(3) water. Wetland B does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

3. Wetland C (0.15 acres): Wetland C is a concave, depressional Palustrine Scrub/Shrub wetland (PSS). Wetland C is located a minimum of 1,800 +/- linear feet from the nearest (a)(3) water. Wetland C does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

4. Wetland D (0.12 acres): Wetland D is a concave, depressional Palustrine Emergent wetland (PEM). Wetland D is located a minimum of 1,600 +/- linear feet from the nearest (a)(3) water. Wetland D does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

5. Wetland E (0.01 acres): Wetland E is a concave, depressional Palustrine Emergent wetland (PEM). Wetland E is located a minimum of 1,700 +/- linear feet from the nearest (a)(3) water. Wetland E does not abut another WOTUS

[9] 88 FR 3004 (January 18, 2023)

and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

6. Wetland F (0.50 acres): Wetland F is a concave, depressional Palustrine Scrub/Shrub wetland (PSS). Wetland F is located a minimum of 1,800 +/- linear feet from the nearest (a)(3) water. Wetland F does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

7. Wetland G (0.06 acres): Wetland G is a concave, depressional Palustrine Emergent wetland (PEM). Wetland G is located a minimum of 1,300 +/- linear feet from the nearest (a)(3) water. Wetland G does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

8. Wetland H (0.04 acres): Wetland H is a concave, depressional Palustrine Scrub/Shrub wetland (PSS). Wetland H is located a minimum of 1,600 +/- linear feet from the nearest (a)(3) water. Wetland H does not abut another WOTUS and there are no discrete features (ditches, channels, pipes, swales, etc.) that could provide a continuous surface connection between the wetland and the nearest WOTUS.

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. This office conducted an on-site inspection on May 5, 2023.

   b. Google Earth aerial imagery from March 1995 to February 2024.

   c. U.S. Fish and Wildlife Survey National Wetlands Inventory.

   d. Conservation Service Web Soil Survey/Bucks County.

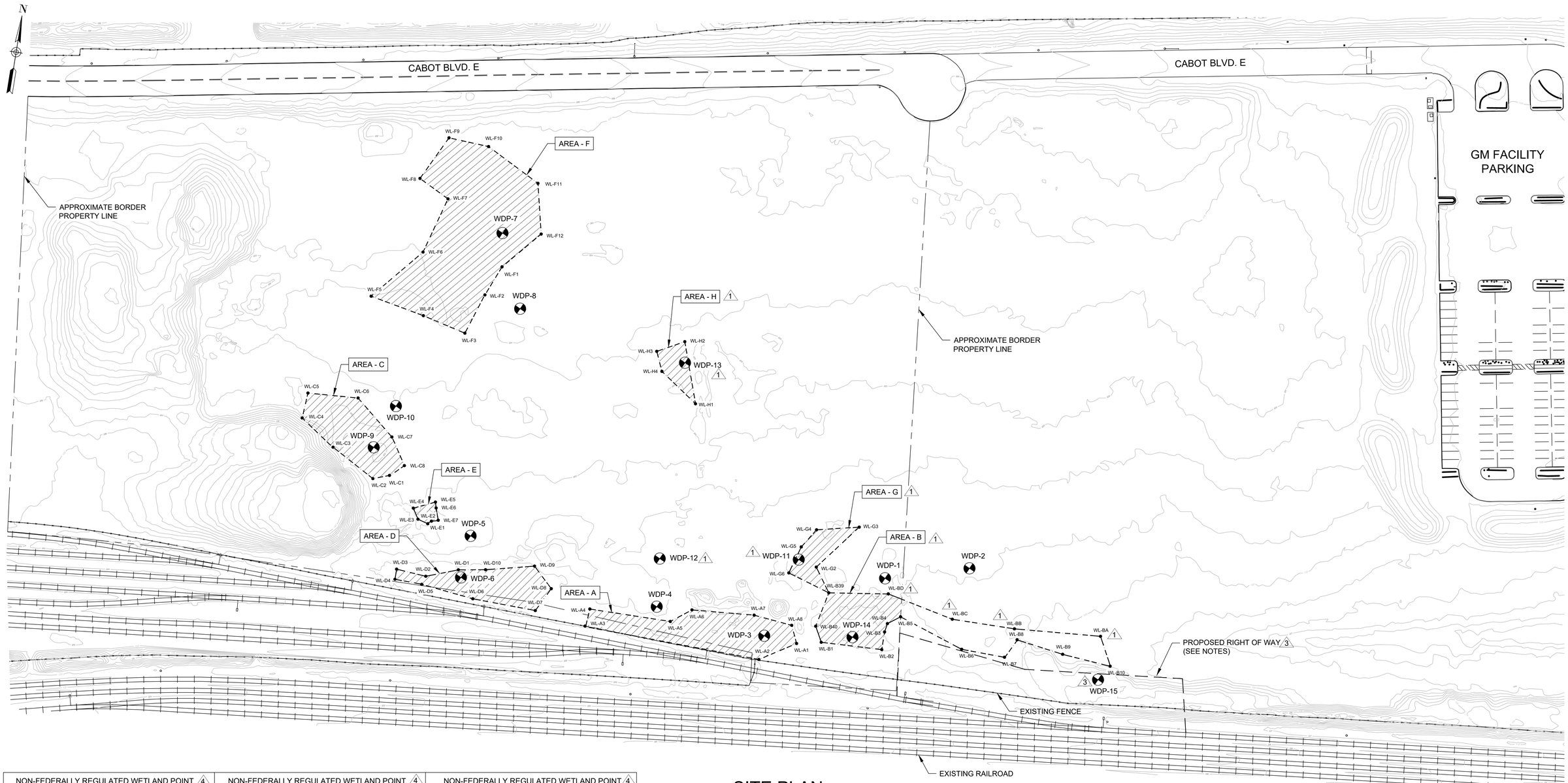
   e. USGS Quadrangle (Trenton West).

   f. Wetland Delineation Report prepared by S.T. Hudson Engineers, Inc., revised February 2024.

g. Aerial imagery, Penn Pilot, dated 1959, 1965, 1975, 1980, 1985, and 1990.

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.



NON-FEDERALLY REGULATED WETLAND POINT 4		
I.D.	LATITUDE	LONGITUDE
WL-A1	40°11'31.49"	-074°50'24.02"
WL-A2	40°11'31.23"	-074°50'24.55"
WL-A3	40°11'31.30"	-074°50'27.26"
2 WL-A4	40°11'31.50"	-074°50'27.23"
WL-A5	40°11'31.51"	-074°50'25.99"
WL-A6	40°11'31.50"	-074°50'25.69"
WL-A7	40°11'31.74"	-074°50'24.73"
WL-A8	40°11'31.69"	-074°50'24.14"
WL-B1	40°11'31.55"	-074°50'23.65"
WL-B2	40°11'31.58"	-074°50'22.72"
WL-B3	40°11'31.79"	-074°50'22.72"
WL-B4	40°11'31.89"	-074°50'22.70"
WL-B5	40°11'31.99"	-074°50'22.52"
WL-B6	40°11'31.73"	-074°50'21.51"
WL-B7	40°11'31.72"	-074°50'20.85"
WL-B8	40°11'31.94"	-074°50'20.70"
WL-B9	40°11'31.86"	-074°50'19.97"
WL-B10	40°11'31.81"	-074°50'19.23"
1 WL-BA	40°11'32.14"	-074°50'19.45"
1 WL-BB	40°11'32.06"	-074°50'20.76"
1 WL-BC	40°11'32.06"	-074°50'21.73"
1 WL-BD	40°11'32.14"	-074°50'19.45"
WL-B39	40°11'32.14"	-074°50'23.66"
WL-B40	40°11'31.72"	-074°50'23.78"
WL-C1	40°11'32.68"	-074°50'30.59"
WL-C2	40°11'32.61"	-074°50'30.83"
WL-C3	40°11'32.90"	-074°50'31.51"
WL-C4	40°11'33.19"	-074°50'32.05"
WL-C5	40°11'33.48"	-074°50'32.02"
WL-C6	40°11'33.52"	-074°50'31.25"

NON-FEDERALLY REGULATED WETLAND POINT 4		
I.D.	LATITUDE	LONGITUDE
WL-C7	40°11'33.13"	-074°50'30.64"
WL-C8	40°11'32.82"	-074°50'30.39"
WL-D1	40°11'31.71"	-074°50'29.32"
WL-D2	40°11'31.58"	-074°50'29.79"
WL-D3	40°11'31.61"	-074°50'30.25"
WL-D4	40°11'31.49"	-074°50'30.25"
WL-D5	40°11'31.48"	-074°50'29.84"
WL-D6	40°11'31.41"	-074°50'29.03"
WL-D7	40°11'31.38"	-074°50'28.05"
WL-D8	40°11'31.67"	-074°50'27.87"
WL-D9	40°11'31.90"	-074°50'28.17"
WL-D10	40°11'31.77"	-074°50'28.90"
WL-E1	40°11'32.23"	-074°50'29.84"
WL-E2	40°11'32.19"	-074°50'29.89"
WL-E3	40°11'32.23"	-074°50'30.05"
WL-E4	40°11'32.35"	-074°50'30.15"
WL-E5	40°11'32.46"	-074°50'29.83"
WL-E6	40°11'32.39"	-074°50'29.80"
WL-E7	40°11'32.25"	-074°50'29.74"
WL-F1	40°11'35.31"	-074°50'29.39"
WL-F2	40°11'34.95"	-074°50'29.58"
WL-F3	40°11'34.47"	-074°50'29.79"
WL-F4	40°11'34.60"	-074°50'30.46"
WL-F5	40°11'34.73"	-074°50'31.30"
WL-F6	40°11'35.33"	-074°50'30.62"
WL-F7	40°11'36.00"	-074°50'30.37"
WL-F8	40°11'36.18"	-074°50'30.85"
WL-F9	40°11'36.71"	-074°50'30.51"
WL-F10	40°11'36.68"	-074°50'29.89"
WL-F11	40°11'36.35"	-074°50'29.05"

NON-FEDERALLY REGULATED WETLAND POINT 4		
I.D.	LATITUDE	LONGITUDE
1 WL-G2	40°11'32.41"	-074°50'23.91"
1 WL-G3	40°11'32.96"	-074°50'23.36"
1 WL-G4	40°11'32.84"	-074°50'24.00"
1 WL-G5	40°11'32.62"	-074°50'24.19"
1 WL-G6	40°11'32.29"	-074°50'24.31"
1 WL-H1	40°11'34.78"	-074°50'26.45"
1 WL-H2	40°11'35.76"	-074°50'28.88"
1 WL-H3	40°11'34.62"	-074°50'26.85"
1 WL-H4	40°11'34.39"	-074°50'26.72"

SITE PLAN

SCALE: 1" = 50'

NOTES:

1. HORIZONTAL CONTROL IS BASED ON PENNSYLVANIA SOUTH PLANE, NAD83, AS ESTABLISHED IN THE FIELD AND SOLELY FOR THE USE OF THIS SURVEY.
2. VERTICAL CONTROL WAS OBTAINED FROM KEYNET GPS (TRIMBLE VIRTUAL REVERENCE STATION NETWORK)REAL-TIME KINEMATIC (RTK) CORRECTIONS TO NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
3. SURVEY OF WETLAND LOCATIONS WAS TAKEN ON THURSDAY MARCH 16, 2023 AND TUESDAY MARCH 20, 2023. RE-SURVEYED ON WEDNESDAY MAY 31, 2023 ON THE REQUEST OF THE ARMY CORPS OF ENGINEERS
4. BACKGROUND DRAWING AND CONTOURS WERE SUPPLIED BY EUSTACE ENGINEERS.
5. RIGHT OF WAY INFORMATION PROVIDED BY HERBERT, ROWLAND, AND GRUBIC INC.

LEGEND

4 = NON-FEDERALLY REGULATED WETLAND LOCATED ON PROPERTY

WDP-5 = WETLAND SAMPLE DATA POINT

WDP = WETLAND DATA POINT

4 WL-D26 = NON-FEDERALLY REGULATED WETLAND BOUNDARY POINT

= EXISTING CONTOURS

= EXISTING FENCE

WETLAND SAMPLE DATA POINT		
I.D.	LATITUDE	LONGITUDE
WDP-1	40°11'32.42"	-074°50'22.85"
WDP-2	40°11'32.68"	-074°50'21.59"
WDP-3	40°11'31.52"	-074°50'24.53"
WDP-4	40°11'31.66"	-074°50'26.23"
WDP-5	40°11'32.13"	-074°50'29.22"
WDP-6	40°11'31.63"	-074°50'29.26"
WDP-7	40°11'35.71"	-074°50'29.47"
WDP-8	40°11'34.86"	-074°50'29.02"
WDP-9	40°11'32.98"	-074°50'30.89"
WDP-10	40°11'33.50"	-074°50'30.66"
1 WDP-11	40°11'32.47"	-074°50'24.19"
1 WDP-12	40°11'32.22"	-074°50'26.30"
1 WDP-13	40°11'34.54"	-074°50'26.39"
1 WDP-14	40°11'31.67"	-074°50'23.19"
3 WDP-15	40°11'31.63"	-074°50'19.38"

AREA OF WETLAND LOCATIONS	
I.D.	AREA
AREA - A	0.19 ACRES (±)
1 AREA - B	0.13 ACRES (±)
AREA - C	0.15 ACRES (±)
AREA - D	0.12 ACRES (±)
AREA - E	0.01 ACRES (±)
AREA - F	0.50 ACRES (±)
1 AREA - G	0.06 ACRES (±)
1 AREA - H	0.04 ACRES (±)

rev.	date	description	by	appr.
4	6/1/24	Proposed easements on "Non-Federally Regulated Wetlands"	PF	PF
3	7/18/23	Added Right of Way and WDP-15	DJD	PF
2	7/18/23	Added WL-A4 to chart. Adjusted Wetland Boundaries	DJD	PF
1	6/6/23		DJD	PF

approvals

approved by	for	date

seal seal

"Drawings (PDF)and in electronic form are provided for the convenience of the recipients and are used as the sole risk of the user. Reliance may be placed only on hard copies of drawings issued by S.T. Hudson Engineers. In the event of any discrepancy, the hard copy will govern."

S.T. HUDSON ENGINEERS, INC.
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900 Dudley Avenue
Cherry Hill, N.J. 08002
Phone 856-342-5600
Fax No. 856-342-8323

AGILE COLD STORAGE
3117 ATHENS HWY.
GAINSVILLE, GA 30507

drawn	DJD	date 3/27/2023	contract
checked	PF, AJD	FILE A-1530	23-066
drftg. approval	TK		

CABOT BLVD., BUCKS COUNTY, PA

WETLAND DELINEATION PLAN — dwg. no. 1 — rev. 4