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

CENAP-OPR November 22, 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-2023-01075-45. 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 (WOTUS) 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.[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. Perennial Tributary/Waters WA/WB- Jurisdictional under Section 404.

        ii. Palustrine Forested Wetlands WC – Jurisdictional under Section 404.

        iii. Palustrine Forested Wetlands WD/WE– Jurisdictional under Section 404.

        iv. Palustrine Forested Wetlands WF– Jurisdictional under Section 404.

        v. Isolated Palustrine Emergent/Forested Wetlands WG– Non-Jurisdictional.

        vi. Isolated Palustrine Emergent Wetlands WH– 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 property in question encompasses approximately 12.3 acres, located at 255-281 West Pumping Station Road, known as tax parcels 36-005-123 and 36-005-123-010, located in Richland Township, Bucks County, Pennsylvania. The latitude and longitude coordinates for the property is 40.458474˚, and - 75.364912˚. The subject property is a vacant lot bounded by West Pumping Station Road (Township Route 465), West End Boulevard (PA State Route 309), and O'Neill Drive within an existing commercial/industrial subdivision located just north of Quakertown, Pennsylvania. Historically, based on aerial photography, since 1938, woodlands have existed in the southwestern portion of the site along the Unnamed Tributary to Beaver Run. The remainder of the site was historically utilized for agricultural purposes and is currently maintained as an open field. There

is a large soil stockpile that exists at the southwestern corner of the field that first appeared in the 1975 aerial and may be associated with the offsite development that occurred at that time. A subdivision plan dated October 7, 1974 (attached) indicates that the site was part of larger subdivision that is now a commercial/industrial park. This plan shows sanitary sewer easements at the site (sewer pipes and manholes are present at the site) and indicates that the southwestern portion of the property (area containing wetlands WD/WE) is an "easement for detention pond", which was not constructed. Other than the soil stockpile and the sanitary sewer infrastructure, there is no evidence of prior development at the site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Delaware River is the nearest TNW to the site in which the aquatic resources flow. The Delaware River is approximately 26.7 miles from the site. The Delaware River has historically been designated as a Navigable water of the United States and thereby meets the definition of a TNW.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The flowpath to the TNW and/or the Delaware River begins on the property/site with the Unnamed Tributary to Beaver Run. From the property in question, the Unnamed Tributary to Beaver Run flows downstream to Beaver Run and then into Tohickon Creek, including Lake Nockamixon. Tohickon Creek/Lake Nockamixon flows downstream where it empties into the Delaware River at Point Pleasant, Pennsylvania.

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

[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.
[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.

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):

   Perennial Tributary/Waters WA/WB (Unnamed Tributary to Beaver Run) encompass approximately 1.15 acres of the property. Based on the Approved Jurisdictional Determination Report, dated October 5, 2023, this waterway exhibits a continuous bed and bank as well as an ordinary high water mark. In addition, the National Wetland Inventory Mapper depicts the waterway as Riverine Perennial Unconsolidated Bottom (R5UBH). On December 12, 2023, the USACE conducted a site visit and confirmed the presence of an ordinary high water mark and perennial/ flowing water, thus meeting the relatively permanent standard. For these reasons and because the waterway flows directly to an (a)(1) water (Delaware River), Perennial Tributary/Waters WA/WB meets the definition of an (a)(3) tributary.

   f. Adjacent Wetlands (a)(4):

   Palustrine Forested Wetland WC, Palustrine Forested Wetland WD/WE, and Palustrine Forested Wetland WF are directly abutting and have a continuous surface connection to Perennial Tributary/Waters WA/WB (Unnamed Tributary to Beaver Run) and/or an (a)(3) tributary. Therefore, Wetlands WC, WD/WE, and WF meet the definition of an (a)(4) adjacent wetlands.

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).[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. Isolated Palustrine Emergent/Forested Wetland WG (0.096 acres): Wetland WG is a depressional Palustrine Emergent/Forested wetland (PEM/PFO), located a minimum of 350 +/- linear feet from the nearest (a)(3) water and/or Waters WA/WB stated above. Wetland WG 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. Therefore, Wetland WG does not meet the definition of an (a)(4) wetland and is considered a non-jurisdictional aquatic resource.

2. Isolated Palustrine Emergent Wetlands WH (0.065 acres): Wetlands WH is a depressional Palustrine Emergent (PEM), located a minimum of 320 +/- linear feet from the nearest (a)(3) water and/or Waters WA/WB stated above. Wetland WH 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. Therefore, Wetland WH does not meet the definition of an (a)(4) wetland and is considered a non-jurisdictional aquatic resource.

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

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 December 12, 2023.

    b. Aerial imagery, USDA, USGS, and Environmental Data Resources, Inc., 1938 to 2017.

    c. Stream Stats Report.

    d. Google Earth imagery 1995-present.

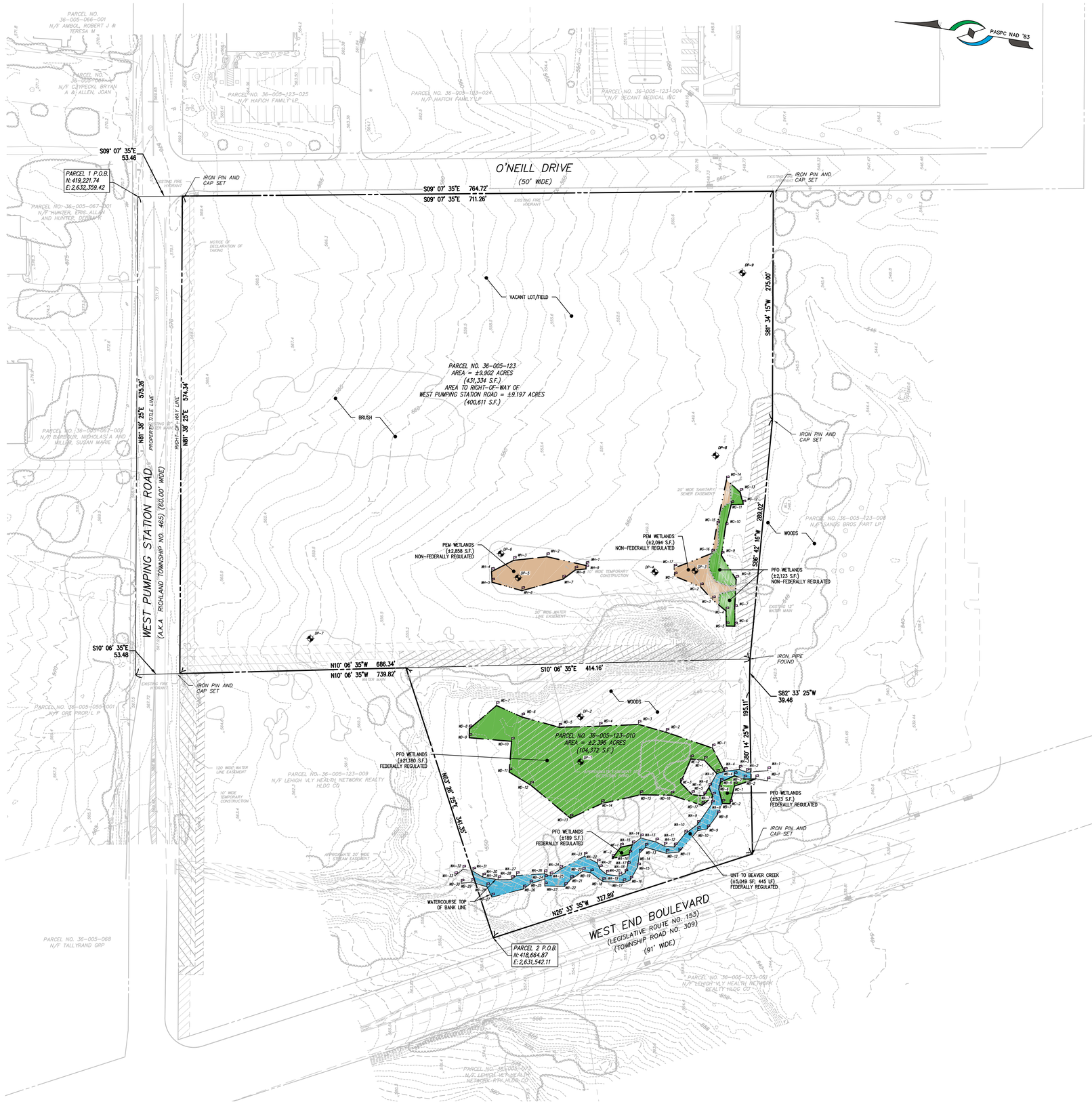
    e. “Application for Department of the Army Approved Jurisdictional Determination”, prepared by Marathon Engineering & Environmental Services, Inc., dated October 5, 2023.

    f. “Jurisdictional Determination Plan…”, dated September 22, 2023, prepared by Marathon Engineering & Environmental Services, Inc.

    g. “Final Plan property surveyed for Kelly Propertie4s, Inc.”, last revised October 7, 1974.

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.



GENERAL SITE NOTES

1. TRACT FOR DEVELOPMENT CONSISTS OF PARCELS 36-005-123 & 36-005-123-010, OF THE OFFICIAL TAX MAP OF THE RICHLAND TOWNSHIP.
2. TOTAL AREA OF TRACT = 12.298± ACRES OF LAND.

SURVEY NOTES

1. BEARINGS REFER TO THE PENNSYLVANIA STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM REFERS TO NAD83.
2. BOUNDARY, TOPOGRAPHICAL, AND EXISTING CONDITIONS INFORMATION TAKEN FROM PLAN ENTITLED "ALTA/NSPS LAND TITLE SURVEY – PARCEL IDS: 36-005-123 & 35-005-123-010, RICHLAND TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA", PREPARED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, DATED APRIL 12, 2022.

WETLANDS NOTES

1. LIMITS OF WETLANDS AND WATERS SHOWN HEREON WERE FIELD DELINEATED AND SURVEYED BY MARATHON ENGINEERING & ENVIRONMENTAL SERVICES ON AUGUST 24, 2022.

REGULATED FEATURES TABLE

FEATURE	FLAGGING	SQUARE FEET	LINEAR FEET
UNT TO BEAVER CREEK[1]	WA-1 TO WA-33 WB-1 TO WB-30	5,049	445
PFO WETLANDS[1]	WC-1 TO WC-2	573	N/A
PFO WETLANDS[1]	WD-1 TO WD-17 WE-1 TO WE-5	21,180	N/A
PFO WETLANDS[1]	WF-1 TO WF-2	189	N/A
PEM / PFO WETLANDS[2]	WG-1 TO WG-17	2,094 (PEM) 2,123 (PFO)	N/A
PEM WETLANDS[2]	WH-1 TO WH-9	2,858	N/A

[1] FEDERALLY REGULATED [2] NON-FEDERALLY REGULATED

LEGEND

- SUBJECT PROPERTY OUTBOUND LIMIT
- EXISTING RIGHT-OF-WAY LINE
- ADJACENT LOT LINE
- EASEMENT LINE
- SANITARY SEWER LINE
- WATER LINE
- STREAM/DITCH
- FRESHWATER WETLANDS BOUNDARY LINE
- EXISTING WOODS LINE
- EXISTING BRUSH LINE
- EXISTING MAJOR CONTOUR LINE
- EXISTING MINOR CONTOUR LINE
- EASEMENT AREA
- PEM WETLANDS (4,952 S.F.)
- PFO WETLANDS (24,065 S.F.)
- WATERCOURSE – UNT TO BEAVER CREEK (5,049 S.F.; 445 L.F.)
- WATERCOURSE TOP OF BANK LINE
- WA-1 WETLANDS/WATERS FLAG
- DP-1 WETLANDS DELINEATION DATA POINT

GRAPHIC SCALE

50 0 25 50 100 200

1 INCH = 50 FEET

EXISTING UTILITY INFORMATION SHOWN ON THESE PLANS IS FURNISHED BY THE UTILITY COMPANIES AND/OR THE SURVEYOR AND THE ACCURACY THEREOF IS NOT THE RESPONSIBILITY OF MARATHON ENGINEERING & ENVIRONMENTAL SERVICES, INC. IT IS THE RESPONSIBILITY OF THE OWNERS AND/OR CONTRACTOR TO CALL 1-800-272-1000 FOR FIELD LOCATION OF UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.

ISSUE DATE	ISSUE NO.	SUBMISSION/REVISION	BY	APPR.
09/22/2023	1	INITIAL SUBMISSION	KJT	DJD

255-281 WEST PUMPING STATION ROAD

PARCEL IDS: 36-005-123 & 36-005-123-010
TOWNSHIP OF RICHLAND, BUCKS COUNTY, PENNSYLVANIA

JURISDICTIONAL DETERMINATION PLAN

PNK P4 LLC
500 OFFICE CENTER DRIVE, SUITE 4023
FORT WASHINGTON, PA 19034

DAVID J. DOMEN, P.E.
PROFESSIONAL ENGINEER
PENNSYLVANIA LICENSE NO. PE093117

09/22/2023

PNK 006.02

MARATHON
Engineering & Environmental Services
Swedesboro Office
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ph (856) 241-0705 fax (856) 241-9709
Certificate of Authorization #24GA27995700

SCALE	APPROVED
1" = 50'	DJD
DRAWN BY	SHEET
SK	1 OF 1

DRAWING NO.
JD1801