



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

CENAP-OPR

September 13, 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-2024-00552-103

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.

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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.

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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 1, jurisdictional, Section 404

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 includes approximately 69.5 acres and is located south of Legion Road and west of Emily Gut in the Millsboro area of Sussex County, Delaware (38.61136, -75.189388). The subject site is identified as Tax Parcel IDs 234-29.00-260.00, 264.00, and 265.00. The site consists of agricultural fields and forested areas.

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. It is approximately 1.5 miles downstream of the review area.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland 1 flows offsite into Emily Gut, which flows into The Indian River Bay.

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

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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.

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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. 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):

- a. Wetland 1 is a 1 acre forested wetland located at the southeastern portion of the review area. Wetland 1 continues offsite to the south east into Emily Gut a paragraph (a)(3) tributary. On the USGS Topographic maps, Wetland 1 is shown as a blue line stream that flows into Emily Gut. A desktop review of Lidar, USGS topographic maps, and aerial imagery was utilized to confirm a continuous surface connection between Wetland 1 and Emily Gut. Based on mapping resources Wetland 1 directly abuts and has continuous surface connection with Emily Gut, an (a)(3) tributary. Wetland 1 has a continuous surface connection to an (a)(3) tributary, thereby meeting the definition of an (a)(4) adjacent wetland.

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<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.

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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> 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).  
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 Site Visit August 20, 2024.

b. Wetland Delineation Report titled “Approved Jurisdictional Determination Request”; prepared by Geo-Technology Associates, Incorporated; dated August 6, 2024.

c. Wetland Delineation Plans titled “Wetland Delineation Plan Reynolds Property Sussex County, Delaware”; prepared by Geo-Technology Associates, Incorporated; dated April 18, 2024; revised August 21, 2024; 1 sheet.

d. Flow Path Map, created by USACE on August 30, 2024.

e. Lidar Map, created by USACE using the National Regulatory Viewer on August 30, 2024.

## 10. OTHER SUPPORTING INFORMATION. N/A

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

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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.



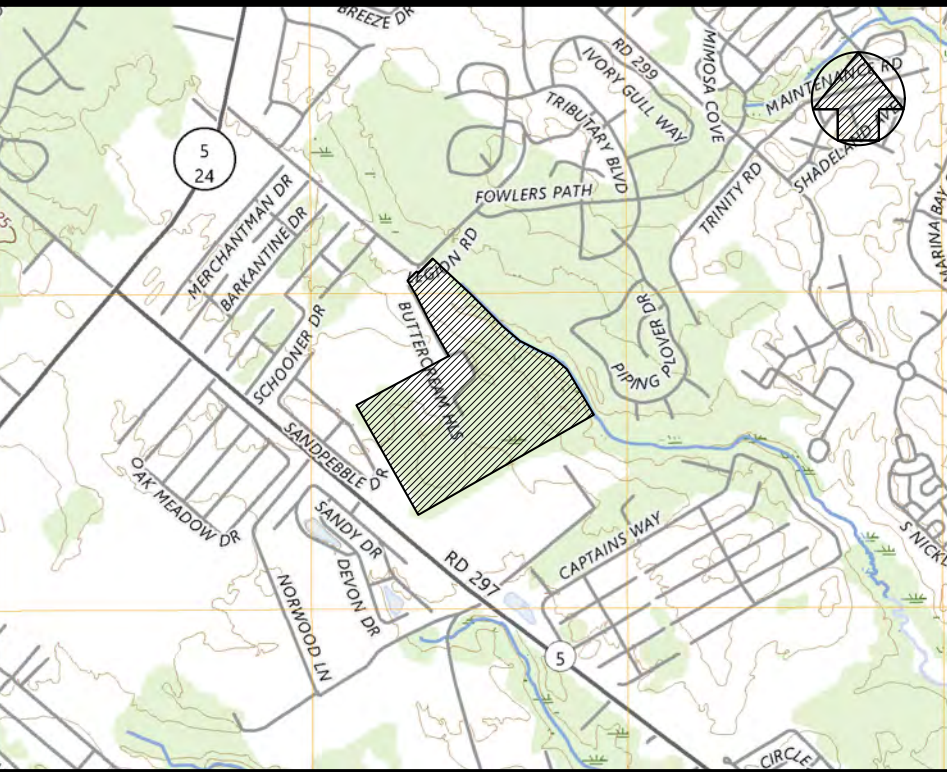
SOILS TABLE

SYMBOL <sup>1</sup>	NAME/DESCRIPTION <sup>1</sup>	HYDRIC SOIL <sup>2</sup>	HYDRIC COMPONENT <sup>2</sup>	PERCENTAGE OF MAPPING UNIT <sup>2</sup>	POSITION IN LANDSCAPE <sup>2</sup>
FmA	FORT MOTT SAND, 0-2% SLOPES	NO	-	-	-
FmB	FORT MOTT LOAMY SAND, 2-5% SLOPES	NO	-	-	-
IeA	INGLESIDE LOAMY SAND, 0-2% SLOPES	NO	-	-	-
KsA	KLEJ LOAMY SAND, 0-2% SLOPES	YES	HURLOCK, DRAINED	5	FLATS
			BERRYLAND, DRAINED	5	FLATS
PsA	PEPPERBOX-ROSEDALE COMPLEX, 0-2% SLOPES	NO	-	-	-

1. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, SUSSEX COUNTY, DELAWARE, SOIL SURVEY DATA VERSION 24, DATED SEPTEMBER 12, 2023.  
2. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE, HYDRIC SOILS LIST BY STATE, AVAILABLE AT [HTTPS://EFOTG.SC.EGOV.USDA.GOV/REFERENCES/PUBLIC/STATE\\_LIST\\_NRCS\\_HYDRIC\\_SOILS\\_REPORT\\_DYNAMIC\\_DATA.HTML](https://efotg.sc.egov.usda.gov/references/public/STATE_LIST_NRCS_HYDRIC_SOILS_REPORT_DYNAMIC_DATA.HTML) AND ACCESSED ON APRIL 18, 2024.

AREA OF WETLANDS

WETLAND	APPROXIMATE AREA
WETLAND 1	41,935 SF (1.0 ACRE)

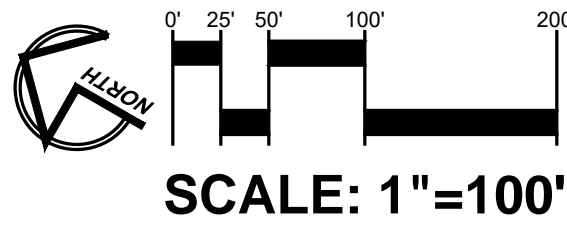


VICINITY MAP

SCALE: 1"=2,000'  
UNITED STATES GEOLOGICAL SURVEY, FRANKFORD, DE QUADRANGLE,  
7.5 MINUTE TOPOGRAPHIC MAP SERIES, DATED 2023.

GENERAL INFORMATION

- PLAN PREPARED FOR: ELU DELUCA SUSSEX LLC  
370 EAST MAPLE AVENUE, SUITE 101  
LANGHORNE, PENNSYLVANIA 19047  
ATTN: REISS ROSENTHAL
- PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)  
3445-A BOX HILL CORPORATE CENTER DRIVE  
ABINGDON, MARYLAND 21009  
ATTN: MATTHEW JENNETTE  
PHONE: 410-515-9446  
EMAIL: MJENNETTE@GTAENG.COM
- THE SUBJECT SITE ENCOMPASSES APPROXIMATELY 69.5 ACRES AND IS LOCATED SOUTH OF LEGION ROAD AND WEST OF EMILY GUT IN THE MILLSBORO AREA OF SUSSEX COUNTY, DELAWARE. THE SUBJECT SITE IS IDENTIFIED AS TAX PARCEL IDS 234-29.00-260.00, 264.00, AND 265.00.
- THIS PLAN WAS PRODUCED ON A BASE MAP PROVIDED BY SOLUTIONS' ITEM. EXISTING TOPOGRAPHIC INFORMATION SHOWN HEREON WAS PROVIDED BY SUSSEX COUNTY GEOGRAPHIC INFORMATION SYSTEMS.
- THERE ARE NO AREAS OF MAPPED 100-YEAR FLOODPLAIN WITHIN THE SUBJECT SITE PER FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) NUMBERS 10005C0477K AND 10005C0481K, EFFECTIVE MARCH 16, 2015.
- THE SUBJECT SITE GENERALLY DRAINS NORTHEAST TOWARDS EMILY GUT.
- A WETLAND DELINEATION OF THE SUBJECT SITE WAS PERFORMED BY GTA IN MARCH 2024. WETLAND FLAG LOCATIONS WITHIN THE SUBJECT SITE WERE LOCATED BY GTA USING A GLOBAL POSITIONING SYSTEM (GPS) UNIT RATED WITH SUBMETER ACCURACY.
- AS A RESULT OF THE REVIEW OF THE SUBJECT SITE, IT IS GTA'S PROFESSIONAL OPINION THAT THERE ARE WETLANDS PRESENT WITHIN THE SUBJECT SITE.
- 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 ELU DELUCA SUSSEX LLC. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND ELU DELUCA SUSSEX LLC IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.

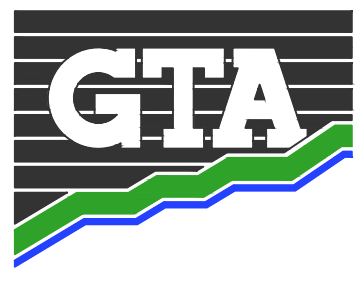


LEGEND

- SUBJECT SITE
- EX. PROPERTY BOUNDARY
- EX. 1-FOOT CONTOUR
- APPROX. TREELINE
- EX. SOIL BOUNDARY
- FEMA 100-YEAR FLOODPLAIN
- EX. NONTIDAL WETLAND (WITH NUMBERED FLAG LOCATIONS)
- WETLAND DELINEATION DATA COLLECTION POINT (DCP)
- NUMBERED PHOTOGRAPH LOCATION

WETLAND 1 M&B

FLAG	89	TO	90	THENCE (1) North 80°01'45" West, 28.59 feet to a point of non-tangency;
FLAG	90	TO	91	THENCE (2) South 70°29'41" West, 27.50 feet to a point of non-tangency;
FLAG	91	TO	92	THENCE (3) South 76°30'13" East, 24.00 feet to a point of non-tangency;
FLAG	92	TO	93	THENCE (4) South 31°39'18" East, 31.79 feet to a point of non-tangency;
FLAG	93	TO	94	THENCE (5) South 65°16'40" East, 52.83 feet to a point of non-tangency;
FLAG	94	TO	95	THENCE (6) North 6°36'25" East, 29.75 feet to a point of non-tangency;
FLAG	95	TO	96	THENCE (7) South 18°15'02" East, 18.72 feet to a point of non-tangency;
FLAG	96	TO	97	THENCE (8) South 43°43'08" East, 74.05 feet to a point of non-tangency;
FLAG	97	TO	98	THENCE (9) South 65°10'05" East, 78.13 feet to a point of non-tangency;
FLAG	98	TO	99	THENCE (10) South 60°51'52" East, 68.08 feet to a point of non-tangency;
FLAG	99	TO	100	THENCE (11) South 62°04'02" East, 82.47 feet to a point of non-tangency;
FLAG	100	TO	101	THENCE (12) South 58°38'00" East, 82.46 feet to a point of non-tangency;
FLAG	101	TO	102	THENCE (13) South 62°28'18" East, 73.58 feet to a point of non-tangency;
FLAG	102	TO	103	THENCE (14) South 66°14'59" East, 53.09 feet to a point of non-tangency;
FLAG	103	TO	104	THENCE (15) South 61°35'34" East, 67.42 feet to a point of non-tangency;
FLAG	104	TO	105	THENCE (16) South 33°21'19" East, 65.28 feet to a point of non-tangency;
FLAG	105	TO	106	THENCE (17) South 29°19'29" East, 79.93 feet to a point of non-tangency;
FLAG	106	TO	107	THENCE (18) South 39°53'46" East, 84.84 feet to a point of non-tangency;
FLAG	107	TO	108	THENCE (19) South 48°08'16" East, 72.35 feet to a point of non-tangency;
FLAG	108	TO	109	THENCE (20) South 40°47'16" East, 89.22 feet to a point of non-tangency;
FLAG	109	TO	110	THENCE (21) South 34°19'54" East, 100.39 feet to a point of non-tangency;
FLAG	110	TO	111	THENCE (22) South 29°26'05" East, 76.81 feet to a point of non-tangency;
FLAG	111	TO	112	THENCE (23) South 15°15'41" East, 59.69 feet to a point of non-tangency;
FLAG	112	TO	113	THENCE (24) South 42°27'39" East, 68.65 feet;



**GEO-TECHNOLOGY ASSOCIATES, INC.**  
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS  
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ABINGDON, MARYLAND 21009  
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FAX: 410-515-4895  
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**WETLAND DELINEATION PLAN**  
**REYNOLDS PROPERTY**  
SUSSEX COUNTY, DELAWARE

REVISIONS:  
AUGUST 21, 2024 - ADDED METES & BOUNDS FOR NONTIDAL WETLANDS

JOB NO: 31232535x1  
SCALE: 1"=100'  
DATE: APRIL 18, 2024  
DRAWN BY: BMS  
DESIGN BY:  
REVIEW BY: MAJITAS  
SHEET: 1 OF 1