



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

CENAN-OP-R

20 MAY 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 NAN-2024-00049-EMI²

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.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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00049-EMI

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 WA/WY/WZ; jurisdictional; Section 404
 - ii. Wetland O; jurisdictional; Section 404
 - iii. Wetland OA; jurisdictional; Section 404
 - iv. Wetland OB; jurisdictional; Section 404
 - v. Ditch 1 (East Riser Ditch); jurisdictional; Section 10/404

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 consists of an approximately 16.46 acre portion of the Teterboro Airport in the Boroughs of Teterboro and Moonachie, Bergen County, New Jersey (40.853014°, -74.056485°). The site is bound to the northwest and northeast by the runways, tarmac, and maintained lawns, to the southwest by the Signature Flight Support Teterboro South Terminal complex, and to the southeast by freshwater wetlands.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hackensack River⁶

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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00049-EMI

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

The wetlands are adjacent to East Riser Ditch which is a tributary to Berry's Creek which is a tidal tributary of the Hackensack River.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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

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

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.

CENAN-OP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00049-EMI

d. Impoundments (a)(2): N/A

e. Tributaries (a)(3): N/A

a. Adjacent Wetlands (a)(4):

The wetlands are adjacent to East Riser Ditch. The limits of wetlands were delineated by the applicant using the 87 Manual/Regional Supplement.

- Wetland A – 12.55 acres; PEM1Jd/PEM5Jd/PFO1J; maintained lawn wetlands, emergency wetlands, degraded emergent wetland, common reed dominated wetlands, and red maple/pin oak successional forested wetland

b. 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). 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. Site Photographs Taken on May 1, 2024

b. New Jersey Department of Environmental Protection (NJDEP) Wetlands Map

c. NWI Wetlands Map

⁹ 88 FR 3004 (January 18, 2023)

CENAN-OP-R

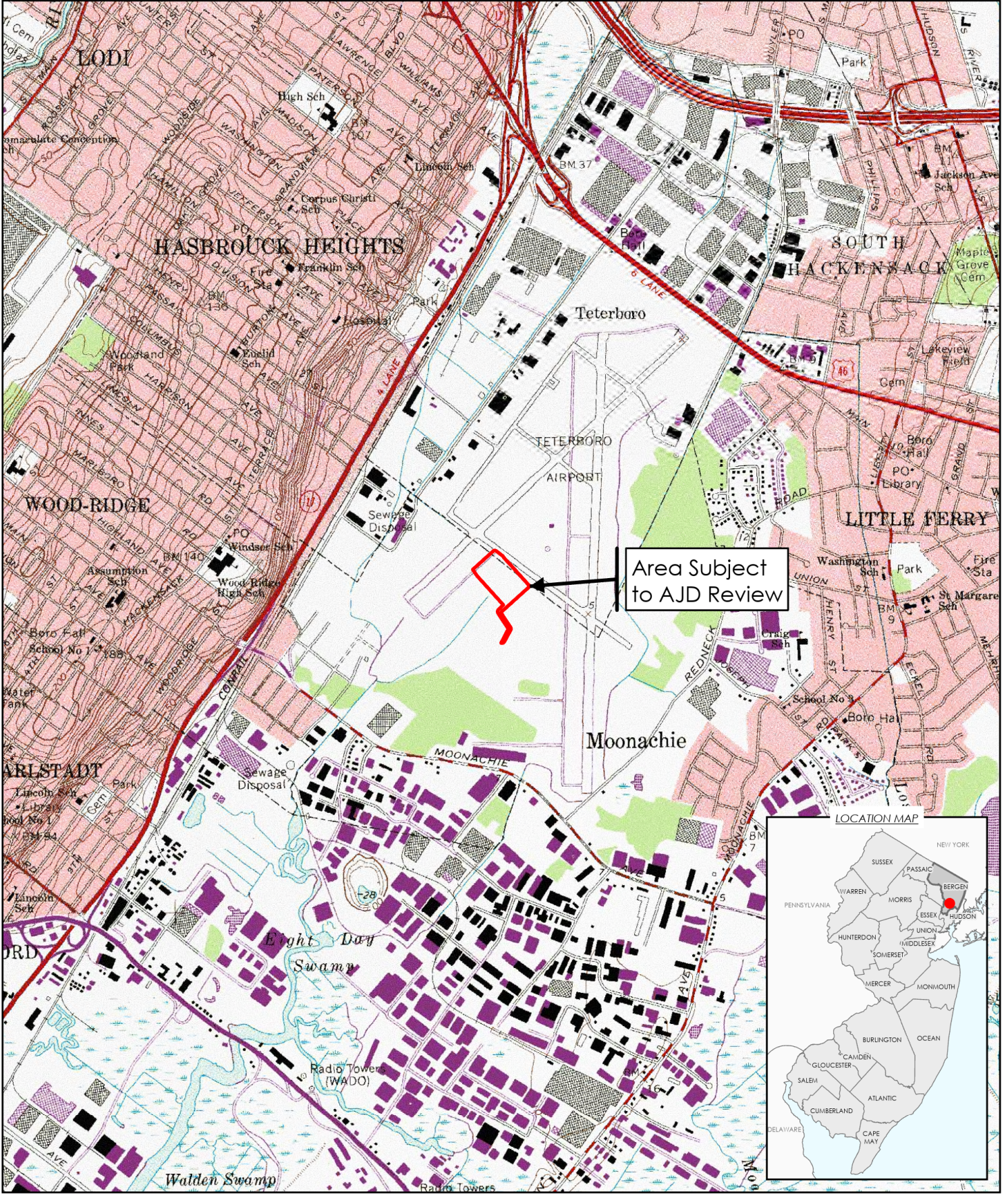
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAN-2024-00049-EMI

- d. SSURGO Soils Map
- e. USDA NRCS Soil Resource Report dated April 3, 2023; and
- f. Wetland Delineation Plan dated March 17, 2023 prepared by Langan Engineering.

10. OTHER SUPPORTING INFORMATION. Previous site AJD NAN-2014-01238-WCA.

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.

Files: P:\2116\Projects\2116001\GIS\APBX\Teterboro Airport Maps\Teterboro Airport Maps.aprx Layout: Figure 1. USGS Topographic Map - Signature South. Exported: 5/9/2023. Drawn by: ktrivacan. Copyright Princeton Hydro, LLC



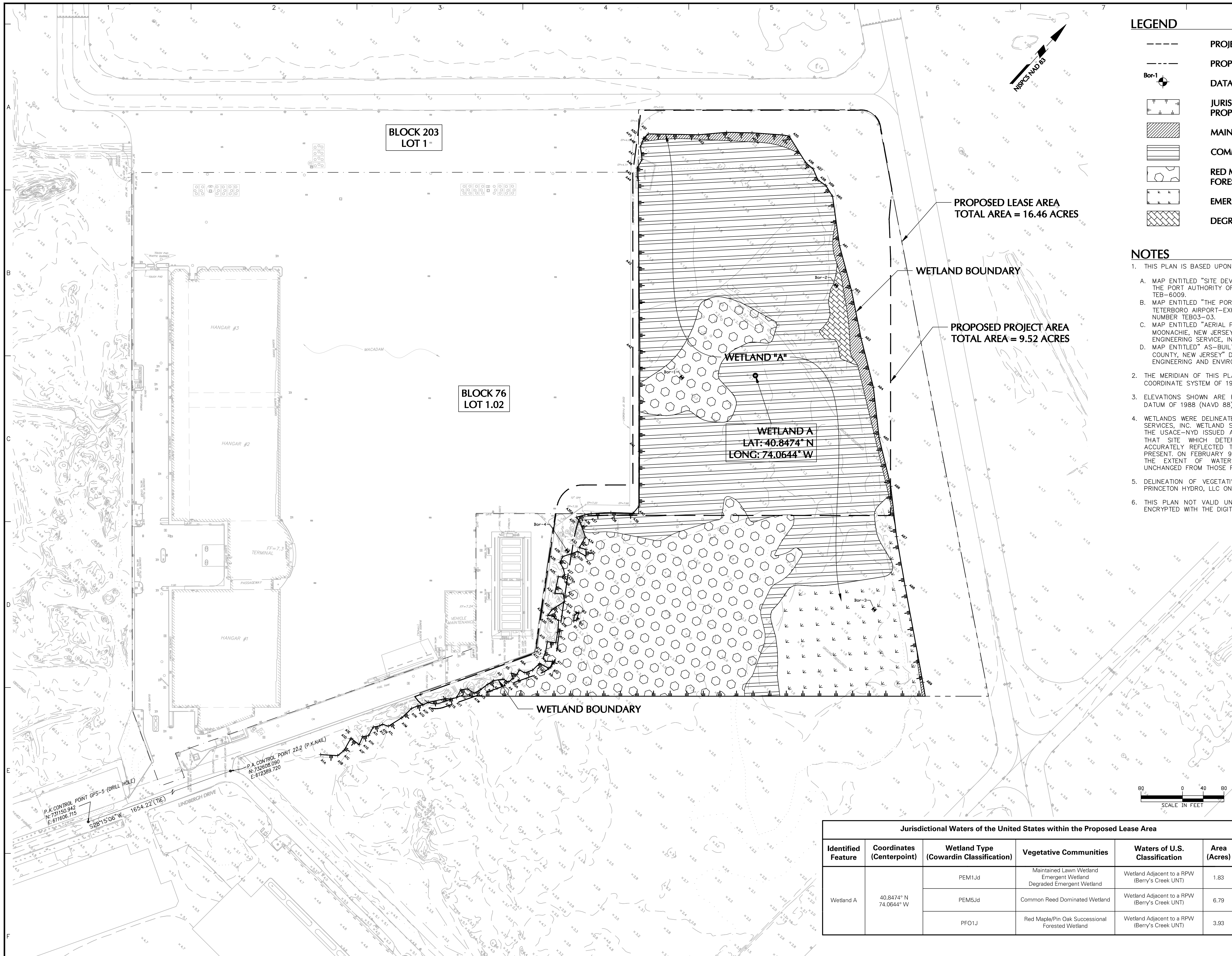
- NOTES:
1. Area Subject to AJD Review provided by Signature Flight Support.
 2. USGS topographic map obtained from the New Jersey Geographic Information Network, Weehawken, NJ quadrangle.

FIGURE 1.
USGS TOPOGRAPHIC MAP
SIGNATURE SOUTH
 SIGNATURE FLIGHT SUPPORT - TETERBORO AIRPORT
 TETERBORO AND MOONACHIE BOROUGHS
 BERGEN COUNTY, NEW JERSEY

0 1,000 2,000 Feet

Spatial Reference: NAD 1983 2011 StatePlane New Jersey FIPS 2900 Ft US

PH PRINCETON HYDRO
 SCIENCE DESIGN ENGINEERING
 www.PrincetonHydro.com



LEGEND

- PROJECT AREA
- PROPOSED LEASE AREA
- Bor-1 DATA POINT
- JURISDICTIONAL WETLANDS WITHIN PROPOSED LEASE AREA - 12.55 ACRES
- MAINTAINED LAWN WETLAND
- COMMON REED DOMINATED WETLAND
- RED MAPLE/PIN OAK SUCCESSIONAL FORESTED WETLAND
- EMERGENT WETLAND
- DEGRADED EMERGENT WETLAND

NOTES

1. THIS PLAN IS BASED UPON THE FOLLOWING REFERENCES:
 - A. MAP ENTITLED "SITE DEVELOPMENT LINE, 20.59 + ACRES" PREPARED BY THE PORT AUTHORITY OF NY & NJ, DATED MARCH 22, 2002, NUMBER TEB-6009.
 - B. MAP ENTITLED "THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, TETERBORO AIRPORT-EXHIBIT A-SITE-0" DATED 07/23/03 DRAWING NUMBER TEB03-03.
 - C. MAP ENTITLED "AERIAL PLAN, FIRST AVIATION SERVICES SOUTH AREA, MOONACHIE, NEW JERSEY" DATED 04/08/02, PREPARED BY LANGAN ENGINEERING SERVICE, INC., DRAWING NUMBER 11.01.
 - D. MAP ENTITLED "AS-BUILT SURVEY, FIRST AVIATION, TETERBORO, BERGEN COUNTY, NEW JERSEY" DATED 03/03/08, PREPARED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC.
2. THE MERIDIAN OF THIS PLAN IS REFERENCED TO NEW JERSEY STATE PLANE COORDINATE SYSTEM OF 1983 (NAD 83).
3. ELEVATIONS SHOWN ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
4. WETLANDS WERE DELINEATED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. WETLAND SCIENTISTS IN APRIL 2014. ON DECEMBER 9, 2014, THE USACE-NYD ISSUED AN APPROVED JURISDICTIONAL DETERMINATION FOR THAT SITE WHICH DETERMINED THAT LANGAN'S WETLAND DELINEATION ACCURATELY REFLECTED THE EXTENT OF WATERS OF THE UNITED STATES PRESENT. ON FEBRUARY 9, 2023, PRINCETON HYDRO, LLC CONFIRMED THAT THE EXTENT OF WATERS OF THE UNITED STATES ON-SITE REMAIN UNCHANGED FROM THOSE PREVIOUSLY APPROVED BY THE USACE.
5. DELINEATION OF VEGETATIVE COMMUNITIES WAS PROVIDED TO LANGAN BY PRINCETON HYDRO, LLC ON 16 MARCH 2023.
6. THIS PLAN NOT VALID UNLESS EMBOSSED WITH THE IMPRESSION SEAL OR ENCRYPTED WITH THE DIGITAL SIGNATURE AND SEAL OF THE PROFESSIONAL.

SIGNATURE MATTHEW G. SIPPLE DATE SIGNED
PROFESSIONAL LAND SURVEYOR
NJ Lic. No. 246504332100

LANGAN
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NJ CERTIFICATE OF AUTHORIZATION No. 246A2789400

Project
**SIGNATURE SOUTH
EXPANSION PROJECT**
TETERBORO AIRPORT
BOROUGH OF MOONACHIE BLOCK 76, LOT 1.02
BOROUGH OF TETERBORO BLOCK 203, LOT 1

BERGEN COUNTY NEW JERSEY
Drawing Title

**WETLAND
DELINEATION PLAN**

Project No. 001642424	Drawing No. WL101
Date 03/17/2023	
Scale 1" = 80'	
Drawn By SEP	Checked By MCS
Submission Date	

Sheet 1 of 1

Jurisdictional Waters of the United States within the Proposed Lease Area					
Identified Feature	Coordinates (Centerpoint)	Wetland Type (Cowardin Classification)	Vegetative Communities	Waters of U.S. Classification	Area (Acres)
Wetland A	40.8474° N 74.0644° W	PEM1Jd	Maintained Lawn Wetland Emergent Wetland Degraded Emergent Wetland	Wetland Adjacent to a RPW (Berry's Creek UNT)	1.83
		PEM5Jd	Common Reed Dominated Wetland	Wetland Adjacent to a RPW (Berry's Creek UNT)	6.79
		PFO1J	Red Maple/Pin Oak Successional Forested Wetland	Wetland Adjacent to a RPW (Berry's Creek UNT)	3.93

