



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-RE

13 SEP 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-2024-00291-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.

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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. Water 1 (Hackensack River) – Jurisdictional; Section 10/404
 - ii. Wetland A – non-jurisdictional
 - iii. Wetland B – non-jurisdictional
 - iv. Wetland C – non-jurisdictional
 - v. Wetland D – jurisdictional; Section 404
 - vi. Wetland E – jurisdictional; Section 404
 - vii. Wetland F – jurisdictional; Section 404
 - viii. Wetland G – 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 168 acres property inclusive of approximately 44 acres of riparian open water area within the Koppers Coke Peninsula Redevelopment Area located in the Town of Kearny, Hudson County, New Jersey. The site is bound to the north and west by the Hackensack River and to the south by a railroad line.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Hackensack River⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.
 - Wetlands A-C did not appear to have any flowpath to the TNW.
 - Wetlands D drains offsite to the confluence of Wetland E and Wetland E is connected to Wetland F via a culvert. Wetland F appears to drain to the Hackensack River (TNW).
 - Wetland G was tidal and adjacent to the TNW.
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

The Hackensack River as well as portions of the tidal wetlands (Wetland G) are subject to Section 10.

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

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.

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): Hackensack River – approximately 43.2 acres and approximately 7,055 linear feet
- 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):
 - Wetland D – approximately 0.03 acres
 - Wetland E – approximately 0.33 acres
 - Wetland F – approximately 0.43 acres
 - Wetland G – approximately 0.03 acres
- 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).

⁹ 88 FR 3004 (January 18, 2023)

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- Wetland A is an approximately 0.24 acre palustrine emergent wetland dominated by phragmites. The wetland is a depressional feature that does not appear to drain into Wetland B or C or have any surface connection to a TNW or RPW.
- Wetland B is an approximately 1.42 acre palustrine emergent wetland dominated by phragmites. The wetland is a depressional feature that does not appear to drain into Wetland A or C or have any surface connection to a TNW or RPW.
- Wetland C is an approximately 0.67 acre palustrine emergent wetland dominated by phragmites. The wetland is a depressional feature that does not appear to drain into Wetland A or B or have any surface connection to a TNW or RPW.

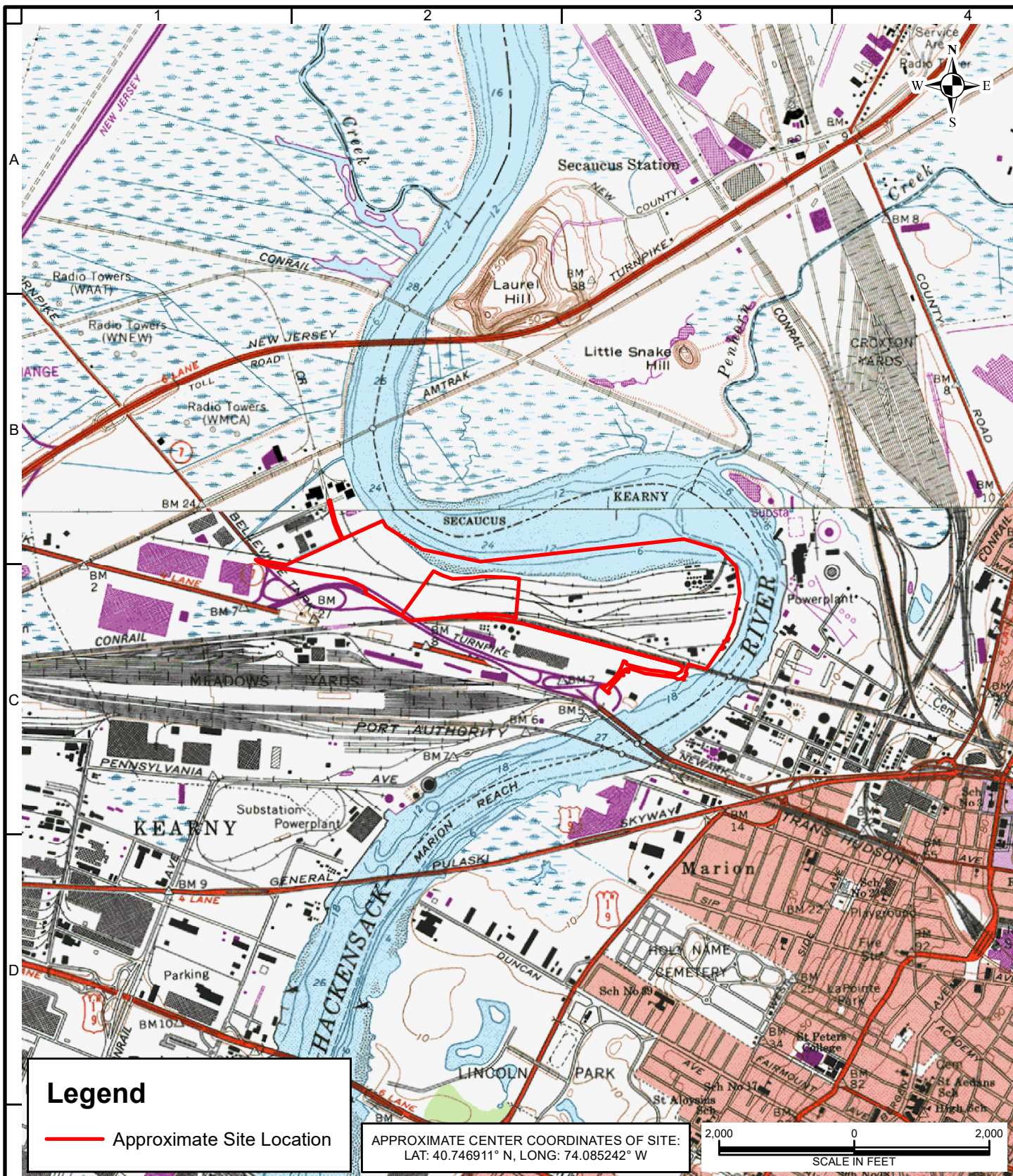
Wetlands A-C primarily appeared to collect runoff from either the existing property, the adjacent railroad and/or adjacent highway.

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. Field Visit on September 3, 2024;
- b. Wetland Delineation Plan titled “Morris Kearny Associates Urban Renewal, LLC Redevelopment Project” dated February 14, 2024;
- c. Wetland Delineation Sheets and Site Photos prepared by Langan, originally collected on May 5, 2016 and reverified on February 7, 2024;
- d. National Wetland Inventory Map dated February 7, 2024;
- e. New Jersey Department of Environmental Protection Wetlands Map dated February 7, 2024; and
- f. Google Earth Aerial Imagery dated March 2024

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.



Map References: USGS Topographic Quadrangles Weehawken C: 1998 and Jersey City C: 1967 R: 1981

LANGAN

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Langan Engineering & Environmental Services, LLC
Langan Engineering, Environmental, Surveying and
Landscape Architecture, D.P.C.
Langan International LLC
Collectively known as Langan

NJ CERTIFICATE OF AUTHORIZATION No. 24GA27996400

Project

MORRIS KEARNY
ASSOCIATES URBAN
RENEWAL, LLC
REDEVELOPMENT PROJECT

TOWN OF KEARNY

HUDSON COUNTY

NEW JERSEY

Drawing Title

USGS SITE
LOCATION MAP

Project No.

100238102

Date

2/07/2024

Scale

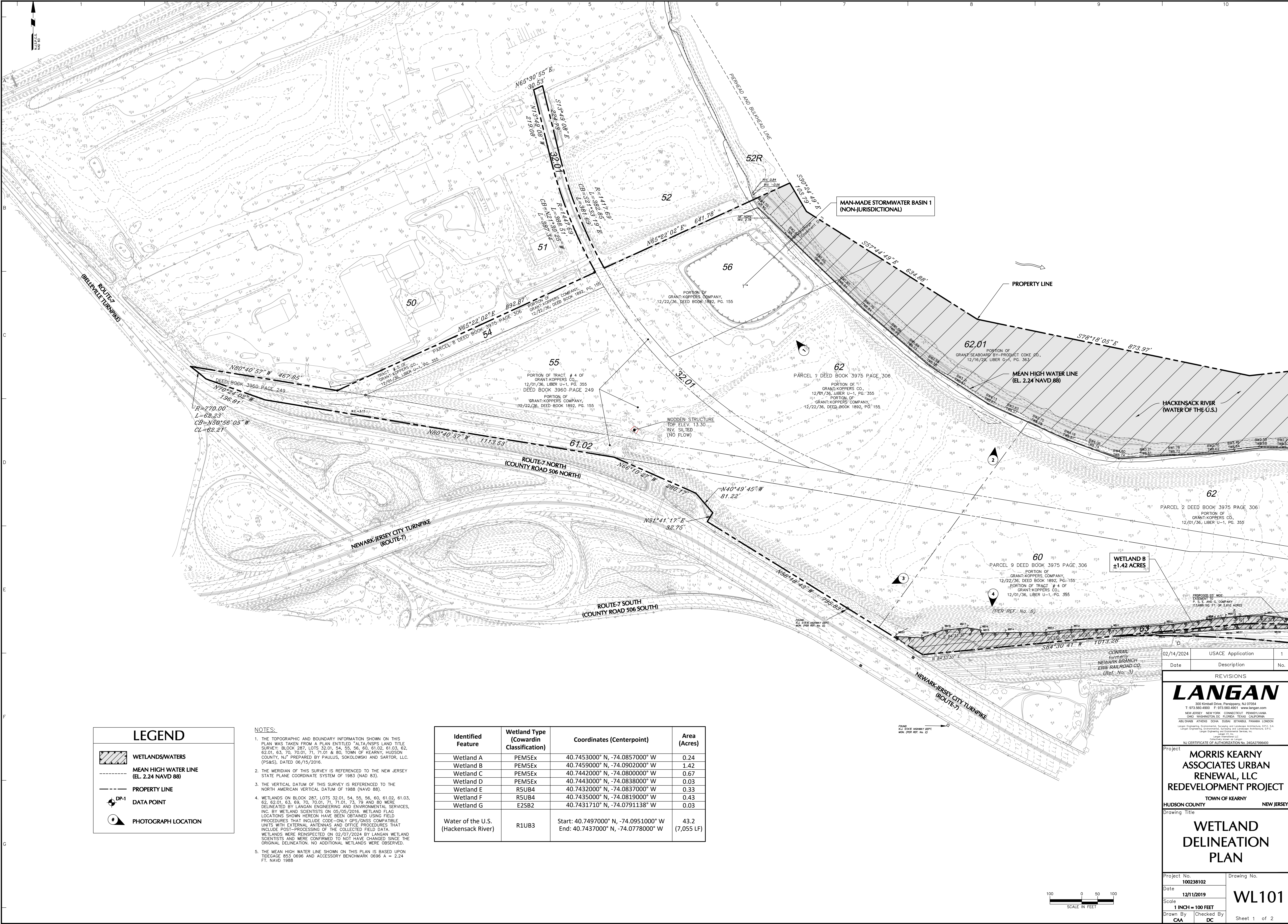
1" = 2,000'

Drawn By

MAD

Figure

1



WETLANDS/WATERS

MEAN HIGH WATER LINE
(EL. 2.24 NAVD 88)

PROPERTY LINE

DP-1

DATA POINT

PHOTOGRAPH LOCATION

NOTES:

1. THE TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN ON THIS PLAN WAS TAKEN FROM A PLAN ENTITLED "ALTA/NGPS LAND TITLE SURVEY: BLOCK 287, LOTS 32.01, 54, 55, 56, 60, 61.02, 61.03, 62, 62.01, 63, 70, 70.01, 71, 71.01 & 80, TOWN OF KEARNY, HUDSON COUNTY, NJ" PREPARED BY PAULUS, SOKOLOWSKI AND SARTOR, LLC, (PS&S), DATED 06/15/2016.

2. THE MERIDIAN OF THIS SURVEY IS REFERENCED TO THE NEW JERSEY STATE PLANE COORDINATE SYSTEM OF 1983 (NAD 83).

3. THE VERTICAL DATUM OF THIS SURVEY IS REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).

4. WETLANDS ON BLOCK 287, LOTS 32.01, 54, 55, 56, 60, 61.02, 61.03, 62, 62.01, 63, 69, 70, 70.01, 71, 71.01, 73, 79 AND 80 WERE DELINEATED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. BY WETLAND SCIENTISTS ON 05/05/2016. WETLAND FLAG LOCATIONS SHOWN HEREON HAVE BEEN OBTAINED USING FIELD PROCEDURES THAT INCLUDE CODE-ONLY GPS/GNSS COMPATIBLE UNITS WITH EXTERNAL ANTENNAS AND OFFICE PROCEDURES THAT INCLUDE POST-PROCESSING OF THE COLLECTED FIELD DATA. WETLANDS WERE REINSPECTED ON 02/07/2024 BY LANGAN WETLAND SCIENTISTS AND WERE CONFIRMED TO NOT HAVE CHANGED SINCE THE ORIGINAL DELINEATION. NO ADDITIONAL WETLANDS WERE OBSERVED.

5. THE MEAN HIGH WATER LINE SHOWN ON THIS PLAN IS BASED UPON TIDE GAUGE 853 0696 AND ACCESSORY BENCHMARK 0696 A = 2.24 FT. NAVD 1988

Identified Feature	Wetland Type (Cowardin Classification)	Coordinates (Centerpoint)	Area (Acres)
Wetland A	PEM5Ex	40.7453000° N, -74.0857000° W	0.24
Wetland B	PEM5Ex	40.7459000° N, -74.0902000° W	1.42
Wetland C	PEM5Ex	40.7442000° N, -74.0800000° W	0.67
Wetland D	PEM5Ex	40.7443000° N, -74.0838000° W	0.03
Wetland E	R5UB4	40.7432000° N, -74.0837000° W	0.33
Wetland F	R5UB4	40.7435000° N, -74.0819000° W	0.43
Wetland G	E2SB2	40.7431710° N, -74.0791138° W	0.03
Water of the U.S. (Hackensack River)	R1UB3	Start: 40.7497000° N, -74.0951000° W End: 40.7437000° N, -74.0778000° W	43.2 (7,055 LF)

02/14/2024

USACE Application

1

Date

Description

No.

REVISIONS

LANGAN

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LANGAN ENGINEERING AND CONSTRUCTION SERVICES, INC.
NJ CERTIFICATE OF AUTHORIZATION NO. 246A27996400

Project

MORRIS KEARNY ASSOCIATES URBAN RENEWAL, LLC REDEVELOPMENT PROJECT

HUDSON COUNTY

NEW JERSEY

Drawing Title

WETLAND DELINEATION PLAN

Project No.

100238102

Date

12/11/2019

Scale

1 INCH = 100 FEET

Drawn By

CA

Checked By

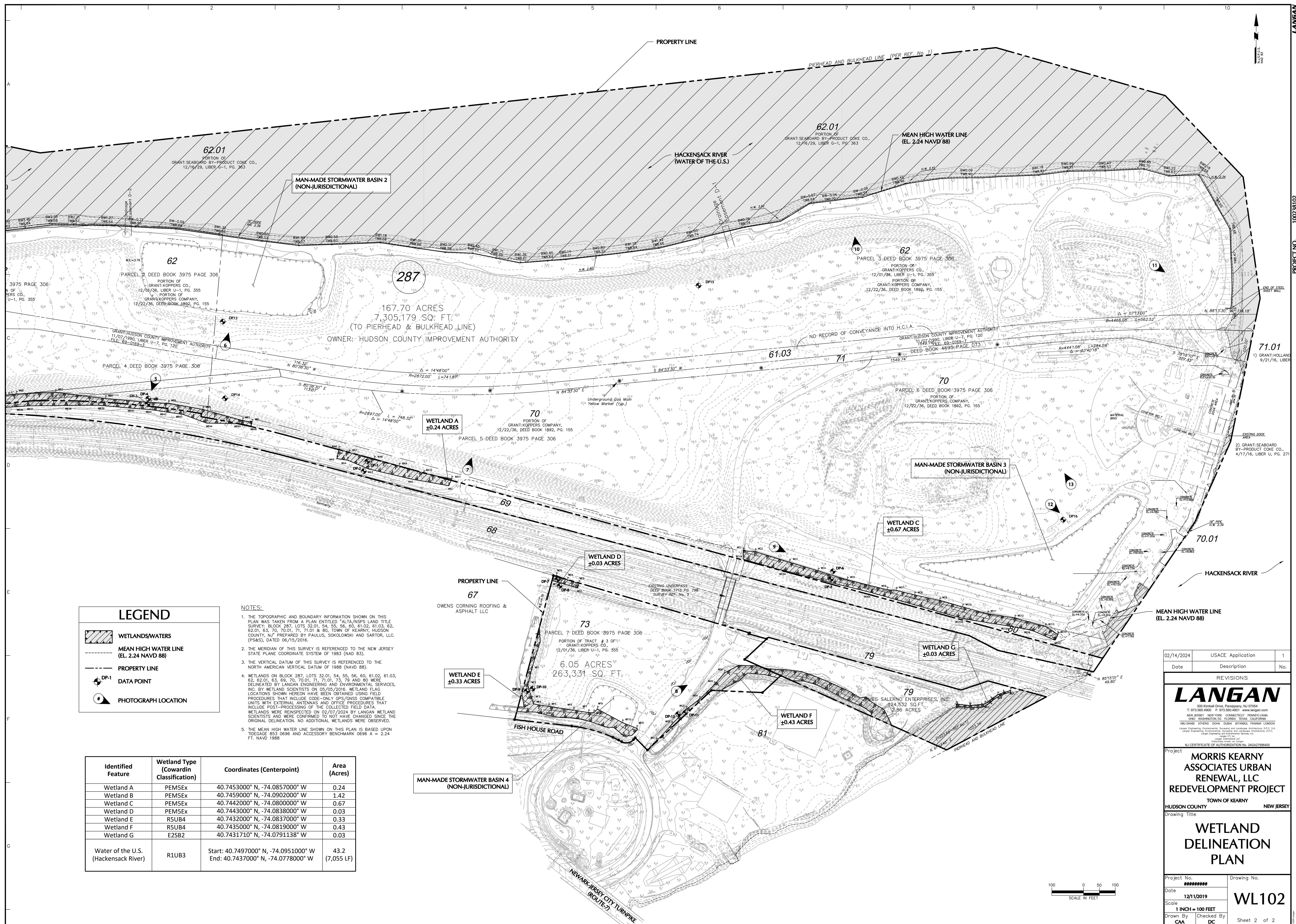
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Drawing No.

WL101

Sheet 1 of 2

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02/14/2024	USACE Application	1
Date	Description	No.

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Langan Engineering, Environmental, Surveying and Landscaping Architecture, P.C.E. S.A.
Langer Engineering, Environmental, Surveying and Landscaping Architecture, P.C.E. S.A.
London Engineering and Environmental Services, Ltd.
Colombian Branch: Langan Colombia LLC

NJ CERTIFICATE OF AUTHORIZATION NO. 24AG2799640

Project

**MORRIS KEARNY
ASSOCIATES URBAN
RENEWAL, LLC
REDEVELOPMENT PROJECT**

TOWN OF KEARNY

HUDSON COUNTY NEW JERSEY

Drawing Title

WETLAND DELINEATION PLAN

Project No. *****		Drawing No. WL102
Date 12/11/2019		
Scale 1 INCH = 100 FEET		
Drawn By CAA	Checked By DC	
		Sheet 2 of 2